Federal Register

4–6–05 Wednesday
Vol. 70 No. 65 Apr. 6, 2005

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4. An introduction to the finding aids of the FR/CFR system.

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

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

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street
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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Presidential Documents

Title 3—

The President

Proclamation 7881 of April 2, 2005

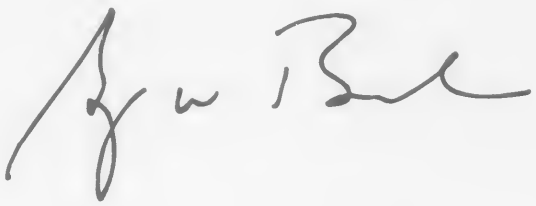
Honoring the Memory of Pope John Paul II

By the President of the United States of America

A Proclamation

As a mark of respect for His Holiness Pope John Paul II, I hereby order, by the authority vested in me by the Constitution and laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and on all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on the day of his interment. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Filed 4–5–05; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA24

Corporate Governance

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final amendments.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing amendments to its corporate governance regulation establishing corporate governance standards applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in order to further promote the safety and soundness of their operations.

DATES: Effective June 6, 2005.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises or government sponsored enterprises) are adequately capitalized and operate safely and soundly in compliance with applicable laws, rules, and regulations.

In furtherance of its supervisory responsibilities, in 2002, OFHEO published a final corporate governance regulation, taking into consideration comments filed in response to an earlier proposed regulation.[1] The corporate governance regulation sets forth standards with respect to corporate governance practices and procedures of the Enterprises. It establishes a framework for corporate governance addressing applicable law, requirements and responsibilities of the board of directors and board committees, conflict-of-interest standards, and indemnification. As a result of findings and recommendations contained in the *Report of the Special Examination of Freddie Mac*[2] *(Report of Special Examination)*, and based on the experience of OFHEO supervising the activities of the Enterprises, as well as developments in law, OFHEO is amending the corporate governance regulation within this framework.

On June 7, 2003, the Director of OFHEO ordered a special examination of the events leading to the public announcement by Freddie Mac of an audit of prior year financial statements and the termination, resignation, and retirement of three principal executive officers of Freddie Mac. The *Report of Special Examination* found that "[t]he accounting and management problems of Freddie Mac were largely the product of a corporate culture that demanded steady but rapid growth in profits and focused on management of credit and interest rate risks but neglected key elements of the infrastructure of the enterprise needed to support growth."[3] The *Report of Special Examination*, among other things, made specific recommendations with respect to practices in corporate governance that Freddie Mac should follow and that OFHEO should require.[4] For example, included are recommendations that functions of the chief executive officer and the chairperson of the board of directors should be separated; board members should become more actively involved in the oversight of the Enterprise; adequate and appropriate information should be provided to the board of directors; financial incentives for board members, executive officers, and employees should be developed based on long-term goals, not short-term earnings; strict term limits should be placed on board members; firms that audit the Enterprises, not merely the audit partners, should be changed periodically; and formal compliance and risk management programs should be established. A Consent Order, issued by OFHEO to Freddie Mac on December 9, 2003, required Freddie Mac to implement certain corporate governance practices that were recommended in the *Report of Special Examination*, as well as other remedial steps.[5]

Through ongoing oversight and supervision of both Enterprises and its special examinations, OFHEO has gained insights as to the need for enhancements or adjustments in the existing corporate governance standards for both Enterprises. Thus, OFHEO proposed to add prudential requirements to its corporate governance regulation that would have general applicability consistent with the practices recommended or required by the *Report of Special Examination* or the Consent Order.

OFHEO also notes that the Enterprises are privately owned but federally chartered companies. Created by Congress to facilitate liquidity and stability in mortgage markets and to advance affordable housing, they receive in exchange special benefits from their Government sponsorship which makes them unlike many other large financial institutions in some significant respects. Since their creation, the Enterprises have grown to become two of the largest and highly leveraged financial companies in the world in terms of assets, and together they control a majority share of the secondary market for conforming mortgages. Yet they are relatively small in terms of their total numbers of employees, and have a unique board

[1] 12 CFR Part 1710, 67 FR 38361 (June 4, 2002).

[2] OFHEO, *Report of the Special Examination of Freddie Mac (Dec. 2003)* (Report of Special Examination), which may be found at *http://www.ofheo.gov/media/pdf/specialreport122003.pdf.*

[3] *Id.*, at 4 (footnote omitted).

[4] *Id.*, at 163–171.

[5] OFHEO Order No. 2003–02, "Consent Order, In the Matter of the Federal Home Loan Mortgage Corporation" (Dec. 9, 2003) (Consent Order), which may be found at *http://www.ofheo.gov/media/pdf/consentorder12903.pdf.*

structure, public mission and regulatory framework. In addition, due to their Government sponsorship, the Enterprises are not as susceptible to some forms of market and management discipline. These distinctive characteristics also played a large part in the determination that Fannie Mae and Freddie Mac should adhere to certain policies that may not be applicable to other companies.

With respect to other developments, the New York Stock Exchange(NYSE) issued amendments to its corporate governance rules that are applicable to companies listed on the NYSE, including the listed Enterprises.[6] In addition, Congress passed the Sarbanes-Oxley Act of 2002 (SOA),[7] which contains corporate governance requirements, and the U.S. Securities and Exchange Commission (Commission) issued regulations to implement the SOA. Fannie Mae voluntarily registered its common stock with the Commission effective March 31, 2003; Freddie Mac announced its intention to register.[8]

Since registration, Fannie Mae files periodic financial disclosures with the Commission as required by the Securities Exchange Act of 1934 and is subject to the requirements of the SOA and implementing rules and regulations of the Commission.[9] Upon registration, Freddie Mac will be subject to the same requirements. To help meet its statutory responsibilities, OFHEO intends to ensure that such requirements and implementing rules and regulations are or remain applicable to the Enterprises even if Freddie Mac does not register with the Commission or if one or both Enterprises deregister. In connection with any conduct regulated by the Commission, OFHEO would look to any rules, regulations, and interpretations issued by the Commission and its requirements. OFHEO may initiate an enforcement action in the area of Enterprise corporate governance in response to a violation of its corporate governance regulation, including behavior that violates laws or requirements set forth therein.

Comments Received

The proposed amendments were published on April 12, 2004 (69 FR 19126). OFHEO received comments from 19 commenters as follows: (1) An individual shareholder of an Enterprise; (2) an individual; (3) Ernst & Young, an accounting firm; (4) America's Community Bankers, a trade association representing community banks; (5) National Association of Corporate Directors, an educational, publishing, and research organization on board leadership and a membership association for boards, directors, director candidates, and board advisers; (6) PriceWaterhouseCoopers, an accounting firm; (7) Business Roundtable, an association of chief executive officers of corporations; (8) Chamber of Commerce, a business federation; (9) American Institute of Certified Public Accountants, a professional association of certified public accountants; (10) KPMG, an accounting firm; (11) Deloitte & Touche, an accounting firm; (12) Freddie Mac; (13) Consumer Mortgage Coalition, a trade association of national mortgage lenders, servicers, and service providers; (14) an individual, Dean's Professor of Financial Regulatory Policy, University of Massachusetts-Amherst; (15) Nominating and Corporate Governance Committee of Fannie Mae; (16) FM Policy Focus, a coalition of six financial services and housing related trade associations; (17) Independent Community Bankers of America, a trade association of community banks; (18) Mortgage Insurance Companies of America, a trade association representing the private mortgage insurance industry; and, (19) Fannie Mae.

Response to Comments

Board of Directors (§ 1710.11)

OFHEO proposed a section that would add requirements and consolidate existing requirements relating to the board of directors of an Enterprise. OFHEO carefully considered the comments provided.

Separate Chairperson/Chief Executive Officer (§ 1710.11(a)(1))

One provision would require an Enterprise to prohibit the chairperson of the board from also serving as chief executive officer of the Enterprise. Often drawing on the experience and circumstances of non-government sponsored companies, many commenters urged that OFHEO leave this matter to the determination of the board of directors or suggested that a separate chairperson and chief executive officer is not in the best interests of the shareholders. The commenters who urged such a result did not focus on the impact of the unique characteristics of the Enterprises, such as their size, public mission, insulation from full market discipline and distinct board structure—characteristics that counsel against the concentration of power in a single chairperson/chief executive officer. Likewise, commenters did not make a substantial case for disregarding the lessons learned in the special examination of Freddie Mac about the risks of consolidating the chairperson and chief executive officer positions.

OFHEO believes that separating the functions of chairperson and chief executive officer is prudent for safe and sound operations of the Enterprises because it strengthens board independence and oversight of management on behalf of shareholders consistent with the public mission of the Enterprises. Separating the role of chief executive officer would similarly clarify the role and responsibility of the individual charged with leading each Enterprise's management team.[10] OFHEO recognizes that this is a different standard than is required of many other private corporations but it is appropriate for the Enterprises not only because of their government sponsorship, but also in light of the recent experience at Freddie Mac and the experience of OFHEO supervising both Enterprises. In the case of Freddie Mac, an earlier separation of the two roles could have caused the board to provide stronger independent guidance to management and identify problems sooner. OFHEO believes that a separation of the chairperson and the

[6] Final NYSE Corporate Governance Rules (Nov. 4, 2003), Section 303A. The NYSE final Corporate Governance Rules may be found at *http://www.nyse.com*. Note that except for final NYSE rule Section 303A.08, which became effective June 30, 2003, listed companies have until the earlier of their first annual meeting after January 15, 2004. or October 31, 2004, to comply with the new rules. The Enterprises are companies listed on the NYSE. As listed companies, the rules of the NYSE, including those addressing corporate governance, are applicable to the Enterprises.

[7] Pub. L. 107–204 (Jul. 30, 2002).

[8] See *http://www.fanniemae.com/ir/sec/index.jtml?s=SEC+filings* for Fannie Mae and *http://www.freddiemac.com/news/archives/investors/2003/restatement_112103.html* for Freddie Mac.

[9] The existing corporate governance regulation provides that the corporate governance practices and procedures of an Enterprise must comply with its respective chartering act and *other Federal law, rules, and regulations*, and that the practices and procedures must be consistent with the safe and sound operations of the Enterprise. 12 CFR 1710.10(a), 67 FR 38361, 38370 (Jun. 4, 2002).

[10] *See Report of Special Examination, supra* note 2, at 164. The concept of a non-executive chairman has support in recent discussions on improvements to corporate governance. For example, see General Accounting Office, Testimony of Comptroller General Walker before Senate Banking Committee, *Government-Sponsored Enterprises: A Framework for Strengthening GSE Governance and Oversight*, GAO–04–269T (February 10, 2004) (calling for separation of Chairman and CEO positions at Fannie Mae and Freddie Mac).

chief executive officer functions would enhance the effectiveness of changes being proposed in requirements for the boards of directors to meet their obligations and would promote the public interest in the safety and soundness of the Enterprises. Comments that this would limit the flexibility of the board to structure the company or limit corporate flexibility in general do not overcome the concern that OFHEO expressed for the benefits resulting from greater independence of the board and stronger oversight of these government sponsored enterprises.

OFHEO notes with approval that each Enterprise has now formally agreed to separate the positions of chairperson of the board and chief executive officer. Accordingly, the provision is not included in the final regulation at this time.

Term and Age Limits (§ 1710.11(a)(2))

A requirement that would limit the service of a board member to no more than 10 years or past the age of 72, whichever comes first, was proposed by OFHEO. One commenter approved of the limits, some commenters disapproved of the limits as undermining board leadership, and other commenters recommended transition periods or the ability to seek a waiver. Another commenter requested clarification that the age and term limits be applied as of the date of the meeting of the shareholders.

OFHEO found that a limit on years of service and age for the board members promotes an appropriate level of functioning of the board, strengthens the diversity and expertise of the board, and enhances its ability to respond to the unique, but constantly evolving business environment in which each Enterprise operates.[11] Overall, OFHEO determined that the potential loss of familiarity with the company and the possibility of having an experienced board member leave due to a fixed term based on age or years of service were outweighed by the experience of OFHEO supervising both Enterprises and the possibility of an entrenched board's failing to oversee adequately the company.

In response to comments, OFHEO is making changes to the provision to clarify that a board member who meets the age and term limits as of the date of his or her election or appointment may serve his or her full term. In addition, express language has been added to provide for a waiver by the Director, for good cause consistent with the supervisory responsibilities of OFHEO.

Independence of Board Members (§ 1710.11(a)(3))

OFHEO proposed that a majority of the seated board members of an Enterprise be independent under the rules of the NYSE.[12] OFHEO makes no distinction between those board members who are elected by shareholders and those who are appointed by the President. Thus, if one or more vacancies exist on a board among either elected or appointed shareholders, a majority of seated board members is required.

One commenter recommended that OFHEO should supplement the NYSE standards with additional standards. OFHEO determined that the NYSE rule appropriately covers what constitutes independence. As expressly provided by proposed § 1710.30, discussed below, OFHEO has the authority to provide for a different definition of the term "independent board member" or to provide additional guidance covering general or specific circumstances, if necessary in light of the special characteristics of the two Enterprises, including but not limited to circumstances where a board member has prior affiliation with an accounting firm currently serving as auditor of the Enterprise.

Another commenter recommended that the independence standard apply to all board members. Section 1710.11(a)(3), as proposed, does not differentiate between elected and presidentially-appointed board members. It was also requested that the provision reflect that the NYSE rules apply as changed from time to time by the NYSE. A technical revision has been made to the provision expressly to address this point. Finally, one commenter recommended that the term "seated" be defined. The term is intended to encompass those elected or appointed board members who serve on the board; OFHEO, however, does not believe it useful at this time to define further the term in the regulation.

Frequency of Meetings (§ 1710.11(b)(1))

The proposal would require that the board of directors of an Enterprise meet at least twice a quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines. One commenter supported the frequency requirement while another commenter suggested that this requirement amounts to micromanagement of the Enterprises. Other commenters suggested that requiring eight meetings a year, with at least one each calendar quarter was more appropriate. Another commenter suggested that the number of meetings be set in the aggregate, but the board be permitted to schedule meetings in such quarters as the board would determine. OFHEO determined that the number of meetings is reasonable and that spreading them over the course of the fiscal year is prudent.

Given the special nature of the Enterprises and the oversight required, OFHEO disagrees that the frequency requirement amounts to micromanagement or that requiring eight meetings a year is inappropriate. Meetings must be frequent enough to ensure that the board of directors can exercise adequate oversight of management. OFHEO determined in its review of Freddie Mac that the meetings of the board of directors were too infrequent to address the issues presented by the company, given its status, size, and complexity. OFHEO determined that to provide flexibility and to avoid practical issues such as requests for waivers and related procedural matters, the proposal would be adopted with the deletion of the requirement that two meetings occur per quarter. OFHEO has determined that the board of directors should meet no less than eight times a year and no less than once a calendar quarter.

Non-Management Board Meetings, Quorum of Board of Directors, Proxies (§ 1710.11(b)(2) and (3))

OFHEO received supporting comments on the provisions of § 1710.11(b)(2) and (3) and has issued them without change. The provisions require that the non-management directors of an Enterprise meet at regularly scheduled executive sessions without management participation in order to promote open discussion.[13] They also consolidate without substantive change the existing requirements of the current OFHEO corporate governance regulation with respect to the constitution of a quorum of the board of directors and the prohibition against a board member voting by proxy.

Information (§ 1710.11(b)(4))

As proposed, § 1710.11(b)(4) would require that management of an Enterprise provide board members with information that is adequate and appropriate considering what a

[11] *Report of Special Examination, supra* note 2, at 166. An age limit and term limit will work well in tandem and have been part of Enterprise bylaws in one form or another.

[12] Final NYSE rule Section 303A.

[13] For reference, see final NYSE rule Section 303A.03.

reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations to the Enterprise.[14] One commenter supported this requirement, while another recommended that it be limited to that information consistent with the requirements of the selected corporate governance law of the Enterprise. It would not be useful to limit information required by the selected corporate governance law because, unlike board members of state-chartered corporations, board members of the Enterprises have specific obligations set forth in the corporate governance regulation that may require additional information to fulfill such obligations. Therefore, OFHEO has determined not to limit the provision as requested and is adopting the provision as proposed.

Annual Review (§ 1710.11(b)(5))

The proposal would require, at least annually, that the Enterprise board of directors review requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties, with appropriate professional assistance.[15] One commenter recommended that the annual review be expanded to include an annual review of the effectiveness of the corporate governance system. OFHEO has determined not to adopt that recommendation in the context of review of the Enterprise board of director activities and duties. The provision is being adopted as proposed.

Committees of Board of Directors (§ 1710.12)

OFHEO proposed to add a requirement to § 1710.11, redesignated as § 1710.12, that a committee of the board of directors of an Enterprise meet as frequently as necessary to carry out its obligations and duties and to exercise adequate oversight of management.[16]

The current corporate governance regulation requires that an Enterprise establish audit and compensation committees of the board of directors. OFHEO proposed to add a requirement that an Enterprise establish a nominating/corporate governance committee consistent with appropriate application of the final NYSE rules[17] and that the committees of the board of directors comply with NYSE rules.[18] The NYSE rules address, among other things, the independence of audit committee members; the responsibility of the audit committee to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and, funding for the independent auditor and any outside advisors engaged by the audit committee.

As proposed, the amended section also would require that Enterprise audit committees comply with the requirements set forth in section 301 of the SOA, which address, among other things, audit committee responsibilities, independence, establishment of complaint procedures, and authority to engage advisers, as well as adequate funding of the committee. The reference to the SOA and the final NYSE rules would not restrict the authority of OFHEO to mandate additional requirements appropriate to the Enterprises" situations and their oversight, as provided under § 1710.30.

OFHEO received one comment on this section that recommended that the provision should be made co-extensive with the corresponding NYSE rules issued pursuant to the SOA, which are incorporated by reference, as those rules may be interpreted or changed from time to time by the responsible bodies. OFHEO has determined that the section, as proposed, has incorporated by reference the appropriate NYSE and SOA section and that, as appropriate, OFHEO would look to the NYSE interpretation of the NYSE rules in determining whether an Enterprise was in compliance with this section. OFHEO has determined that it is unnecessary to state this in the section and § 1710.12 is adopted as proposed.

Compensation of Board Members, Executive Officers, and Employees (§ 1710.13)

OFHEO proposed to amend § 1710.12, redesignated as § 1710.13, by adding language that would prohibit compensation in excess of what is appropriate for these government sponsored enterprises, in addition to what is reasonable (as the section currently reads) and consistent with long-term goals that are addressed in the proposed language of the section.

Two commenters objected to the word "appropriate" in that it is not contained in 12 U.S.C. 4518, the statutory provision that requires the Director to prohibit an Enterprise from providing compensation to any executive officer that is not reasonable and comparable with compensation for employment in other similar businesses. The proposed provision is not intended to implement Section 4518, which is implemented by the OFHEO executive compensation regulation at 12 CFR part 1770. Section 1710.13 addresses not only certain covered executive officers, but as well board members and employees, and has as its primary focus the Enterprises—safety and soundness. Although compensation may be reasonable from some perspectives, as in not generally excessive or extreme, it may not be appropriate or suitable under specific circumstances. Thus, OFHEO has determined not to delete the word "appropriate."

While the circumstances involved and the foundation for addressing compensation in the corporate governance regulation may differ from those found in the area of executive compensation, the standards used by OFHEO for determining unreasonable, excessive, or inappropriate compensation are the same. In looking to reasonable compensation, OFHEO must consider the totality of circumstances for an Enterprise. This includes inquiry into compensation for comparable positions at other firms, to the degree they exist, along with less formulaic items such as the unique nature of the Enterprises, the responsibilities and duties of the individual involved, and the environment and circumstances that exist when the compensation is provided to the individual. Thus a numerical comparison alone might be inadequate for OFHEO to discharge its obligations in considering compensation. Factors such as an Enterprise's conduct, business challenges, compliance with the mission of the Enterprise, compliance with law and regulation, creation of profit or loss, leadership, suitability of incentive structures, and other relevant matters would be important to making a compensation determination under either the corporate governance rules or the executive compensation rules. In both instances, safety and soundness underlies the goals of Congress expressed in the enabling statute of OFHEO and Congress has clearly indicated that compensation may represent a safety and soundness

[14] *See Report of Special Examination, supra* note 2 at 166.

[15] *See* Consent Order, *supra* note 5 at Art. II, Para. 10.

[16] *See Report of Special Examination, supra* note 2 at 166, (discussing frequency of meetings).

[17] Final NYSE rule Section 303A.04.

[18] *See* final NYSE rules Section 303A.06 and .07. The final NYSE rule Section 303A.06 requires with respect to the audit committee that listed companies must have an audit committee that satisfies the requirements of Rule 10A–3 under the Securities ExchangeAct of 1934.

problem should it provide perverse incentives.

Section 1710.13(a), as proposed, is further intended to underscore the impropriety of compensation incentives that excessively focus the attention of management and employees on an Enterprise's short-term earnings performance. Incentives focused primarily on short-term earnings may lead to improper conduct at an Enterprise, as OFHEO discovered in its investigation of Freddie Mac.[19] Financial incentives at the Enterprises should foster a management culture in which primary consideration is given to risk management, operational stability and legal and regulatory compliance.[20] As noted above, OFHEO has determined, in light of its experience with Freddie Mac, its ongoing supervision of both Enterprises, and given their Federal charters, board structure, public mission, regulatory framework and status, size and role in capital markets, that Fannie Mae and Freddie Mac should be required to adhere to certain policies that may not be applicable to other companies. The compensation requirement in no way detracts from the obligations of Enterprise board members and management to meet their responsibilities to shareholders, but reflects the special attention that needs to be paid as well to other important public mission considerations in directing the course and conduct of an Enterprise.

One commenter recommended that executive incentives should expressly include no rewards for undue reliance on the Enterprise subsidy or any activity that would enlarge it. OFHEO has determined not to adopt that recommendation.

Section 1710.13(b) proposed to require the chief executive officer and chief financial officer to reimburse the Enterprise if the Enterprise is required to prepare an accounting restatement due to the material noncompliance of the Enterprise, as a result of misconduct, with any financial reporting requirement. Reimbursement would be made in accordance with section 304 of the SOA. Section 304 of the SOA would require reimbursement of (1) any bonus or other incentive-based, equity or option-based compensation received by such person from the Enterprise during the 12-month period following the first public issuance of the financial document embodying such financial reporting requirement; and (2) any profits realized from the sale or disposition of securities of the Enterprise that such person owned or controlled during that 12-month period. The provisions of the proposed paragraph would in no manner limit the authority of OFHEO to take any other appropriate supervisory action against an Enterprise or any of its board members or executive officers pursuant to its enforcement authorities. Enforcement authorities of OFHEO include restitution that may be applied to situations involving conduct subject to reimbursement.

One commenter asked that the reimbursement requirement be clarified to apply to restatement of financial reporting under the securities laws. OFHEO has clarified the language to state so expressly and to note that this section does not limit other OFHEO remedial powers that may be brought to bear for failures to make adequate disclosures. Another commenter suggested that the reimbursement provision is not necessary in view of the broad remedial and civil money penalty powers of OFHEO. If it is retained, the commenter requested that the requirement should apply to Freddie Mac after it has returned to the timely filing of financial statements and completed the voluntary registration of its securities. OFHEO has determined to retain the reimbursement provision as proposed with certain clarifying and technical changes.[21]

Code of Conduct and Ethics (§ 1710.14)

OFHEO proposed to amend § 1710.14 by revising the section heading to read "Code of Conduct and Ethics," and by referencing the standards set forth under section 406 of the SOA. Section 406 provides that the "code of conduct and ethics" include standards as are reasonably necessary to promote (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer of the report; and (3) compliance with applicable governmental rules and regulations. In conducting its supervisory examination process, OFHEO would ensure the adequacy and appropriateness of the code of conduct and ethics of an Enterprise. In addition, OFHEO proposed that, at least every three years, an Enterprise must review the adequacy of its code of conduct and ethics to ensure that it is consistent with practices appropriate for the Enterprise.

A few commenters recommended that OFHEO should require the code of conduct and ethics to include the public mission of the Enterprises, charter compliance, and adherence to new program prior approval standards and affordable housing goals. OFHEO has determined compliance with law, regulation, and rules are appropriately addressed in other sections of the regulation.

Another commenter urged that OFHEO address situations where an Enterprise may use its unique characteristics to exact terms and conditions from service providers. That commenter also urged that the code should bar retaliation against entities for political purposes. OFHEO has determined not to adopt these recommendations. OFHEO notes that such conduct could be determined to violate existing safety and soundness rules and need not be subject to a special rule that could have unintended consequences that may result from unnecessary definition.

One commenter recommended a reference to the NYSE rules requiring a code of conduct and NASDAQ rules relating to review and approval of related party transactions; another commenter recommended express reference to regulations issued by the Commission implementing section 406 of the SOA. After considering these comments, OFHEO determined to clarify the section by adding language requiring the code of conduct and ethics to include standards that comply with applicable law, rules, and regulations, in addition to the express reference to section 406 of the SOA. OFHEO is adding language that expressly incorporates section 406 along with any amendments that may be made from time to time.

Another recommendation was that OFHEO should require more frequent reviews and that OFHEO require the codes to be revised whenever a new market practice or a substantive change in law or rule defines new standards. These recommendations are addressed by the provision, as modified, in that the code of conduct and ethics must include standards that comply with applicable law, rules, and regulations. In addition, OFHEO has clarified the language concerning review of the code to state expressly that after review of the code for consistency with practices appropriate for the Enterprise, the code

[19] *See Report of Special Examination, supra* note 2 at 164.

[20] Consent Order, *supra* note 5 at Art. II, Para. 14.

[21] Freddie Mac will be subject to the requirements of this section once it has filed documents that are covered by the reimbursement provisions of section 304 of the SOA. The final language of § 1710.13 uses the term "reimbursement" rather than "disgorgement" to be consistent with the language of section 304.

should be appropriately revised. In addition, it was recommended by one commenter that OFHEO change the language concerning review of the code of conduct and ethics from that of ensuring that the code is "consistent" with best practices to "reviewing in light of" best practices. Recognizing a range of appropriate practices may exist for a given matter, OFHEO has modified the language to clarify that the review of the code is to be for consistency with practices appropriate for the Enterprise.

Conduct and Responsibilities of Board of Directors (§ 1710.15)

Section 1710.15 of the current corporate governance regulation establishes appropriate standards for the conduct and responsibilities of the board of directors of an Enterprise. Given the special situation of the Enterprises, OFHEO proposed to amend § 1710.15 by adding a requirement with respect to the conduct and responsibilities of the board of directors. The proposal would require that the Enterprise board of directors must remain reasonably informed of the condition, activities, and operations of the Enterprise. The proposal would also describe the responsibility of the board of directors to have in place policies and procedures to assure its oversight of corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance, and corporate performance to include prudent plans for growth and allocation of adequate resources to manage operations risk, so as to promote safety and soundness.

One commenter recommended that OFHEO expressly provide that risk policy mean not only consideration of written policies and procedures but also that the Enterprises comply with such policies and that the board of directors has an affirmative duty to ensure that risk policies are enforced. OFHEO has determined not to adopt this recommendation because the focus of § 1710.15 is on policies and procedures designed to assure compliance. Risk management compliance is appropriately addressed in § 1710.19, discussed below.

Proposed § 1710.15 adds a provision expressly addressing the oversight responsibility related to extensions of credit to board members and executive officers, consistent with the proposed § 1710.16, discussed below. In conducting its supervisory examination process, OFHEO would ensure that adequate policies and procedures are in place. One commenter recommended that this provision be deleted because it is purportedly a narrower substantive obligation than the other oversight requirements and is otherwise addressed elsewhere in the regulation. OFHEO disagrees that it is inappropriate to list the board's oversight responsibility of limits on extensions of credit. Although § 1710.16 prohibits certain extensions of credit, responsibility for oversight is not addressed in that section. OFHEO has determined to adopt the provision as proposed.

Section 1710.16 Prohibition of Extensions of Credit to Board Members and Executive Officers

OFHEO proposed to add § 1710.16, which would limit extensions of credit to Enterprise board members and executive officers as provided generally by section 402 of the SOA. As adopted here, section 402 of the SOA would prohibit an Enterprise from directly or indirectly, including through any subsidiary, extending credit or arranging for the extension of credit in the form of a personal loan to or for any board member or executive officer of the Enterprise. OFHEO believes that it is appropriate to conform the OFHEO regulation to that of other financial institution regulators in addressing extensions of credit by companies they supervise, as the proposed section does.

Two commenters requested that OFHEO delete the reference to any subsidiary of an Enterprise because such reference implies that OFHEO intends that the Enterprises establish subsidiaries. OFHEO sees no such implication in the proposed language. OFHEO has determined not to adopt this recommendation; the intent of the language is to apply to the Enterprises the provisions of section 402 of the SOA.

Another commenter requested an express reference to interpretations of section 402 of the SOA by the Commission. OFHEO will look to the interpretations of the Commission but has determined that a modification of the proposed language is unnecessary; language has been added, however, to clarify that the reference to section 402 of the SOA includes amendments as made from time to time. With this technical modification, OFHEO has issued § 1710.16 as proposed.

Certification of Disclosures by Chief Executive Officer and Chief Financial Officer (§ 1710.17)

OFHEO proposed to add § 1710.17, which would require Enterprise compliance with section 302 of the SOA that mandates certain certifications of quarterly and annual reports by the chief executive officer and chief financial officer of an Enterprise. The proposed section would conform the OFHEO supervisory regime to those of other financial regulators, as OFHEO has determined is appropriate. The proposal would assure review, endorsement, and undertaking of responsibility by individuals required to certify public disclosures. It would not limit OFHEO from requiring certifications by additional parties or additional disclosures.

One commenter expressly supported the proposal. Another commenter requested that OFHEO clarify that the proposed provision would not require Freddie Mac to submit certifications under section 302 of the SOA until Freddie Mac completes the voluntary registration process. OFHEO has determined to retain the provision as proposed.[22] OFHEO has published § 1710.17 as proposed, with a technical correction and the addition of language to clarify that the reference to SOA section 302 includes amendments to that section as made from time to time.

Change of External Audit Partner and External Auditing Firm (§ 1710.18)

OFHEO proposed to add § 1710.18, which would prohibit an Enterprise from accepting audit services from an external auditor if either the lead (or coordinating) external audit partner, who has primary responsibility for the external audit of the Enterprise, or the external audit partner, who has responsibility for reviewing the external audit, has performed audit services for the Enterprise in each of the five previous fiscal years. This prohibition relates to section 203 of the SOA that makes it unlawful for a registered public accounting firm to provide audit services to a public company by such audit partners in excess of five previous fiscal years.

One commenter recommended that OFHEO incorporate section 203 of the SOA, as interpreted by the Commission, in the provision. OFHEO has determined not to adopt that recommendation at this time. OFHEO looks to its existing safety and soundness requirements and its supervisory program to assure that the Enterprises mitigate risk by the use of service vendors that meet standards for reliability and recourse.

Another commenter recommended that the provision require rotation of other audit partners involved in audits of an Enterprise after seven years. OFHEO has determined not to adopt this recommendation, but notes that in

[22] The provision would apply to documents filed by Freddie Mac that meet the certification requirements under section 302 of the SOA.

the matter of non-lead audit partners, OFHEO expects that the Enterprises engage auditing firms that comply with appropriate practices.

OFHEO also proposed a requirement that, at least every ten years, an Enterprise must change its external auditing firm. Many commenters objected to the proposed requirement to change the external auditing firm every ten years on the basis that such a change would be counterproductive because of loss of expertise and associated increased risk of error and fraud, lack of support for such a regulation in current literature or Federal statute, and impracticality in light of the existence of only four large accounting firms available for the work attendant to a government sponsored enterprise. The commenters opined that the safeguards of the SOA, in terms of audit partner rotations and the oversight and audit role of the Public Company Accounting Oversight Board, are adequate.

OFHEO disagrees with these commenters with respect to the Enterprises. In light of its special examination of Freddie Mac and its ongoing supervision of both Enterprises, OFHEO has determined to require Fannie Mae and Freddie Mac to adhere to certain standards to assure safe and sound operations, even though they may represent different standards than those generally applied to non-government sponsored companies or other large regulated companies. Created by Congress to facilitate liquidity and stability in mortgage markets and to advance affordable housing, the Enterprises receive special benefits from government sponsorship making them unlike other large companies in significant respects. The business of the Enterprises is limited by statute; their hedge accounts require intensive and complicated accounting; they have a unique mission; they must undertake specialized tasks by law; and, they are regulated apart from other companies due to their unique structure, that is, a single regulator for only two entities. Further, the Enterprises have grown to become two of the largest and highly leveraged financial companies in the world in terms of assets, controlling together a majority share of the secondary market for conforming mortgages. In addition, due to the government sponsorship, the Enterprises are not as susceptible to certain forms of market discipline. All of these differences and unique features demand full and accurate accounting, accounting that is essential for safe and sound operations and disclosures that assure access to capital markets. These distinctive characteristics would support the determination that Fannie Mae and Freddie Mac should adhere to certain policies that may not be applicable to other companies, including large regulated companies.

The existence of long term accounting relationships has been demonstrated, in the review of the Enterprises by OFHEO, to pose specific risks. The difficulty of changing auditing firms would not outweigh the finding of threatened harm that may be occasioned by certain long term audit relationships. Freddie Mac maintained the same accounting relationship for over 32 years and its accounting problems were only uncovered after it changed auditors in 2002. In 2005, Fannie Mae has announced that it will replace its auditor with which it has had a relationship for over 36 years.

A central argument of commenters was that the required change undermines the pressure on an audit firm, that is, if a firm has a contract and produces less than satisfactory work, then a termination of that contract brings the firm into the public eye. Also, the requirement to change firms, it is argued, removes the incentive to move against a firm as the requirement would change the firm at a set point. This, the argument goes, would remove positive pressures on the engaging company and the auditing firm. OFHEO disagrees with respect to the Enterprises. Further, in the case of the Enterprises, Congress saw fit to create a regulator to oversee the operations of the firms, including accounting standards and external audit relationships. OFHEO has the ability to act in the case of a poorly performing Enterprise auditor at any time, not just at the time of a planned change.

Further, it should be noted that OFHEO does not consider the existence at present of four major auditing firms to be an insurmountable impediment. With the proper safeguards, OFHEO would consider appropriate both Enterprises using the same auditing firm concurrently, thereby contributing to the options open to an Enterprise.

However, because both Enterprises have now changed audit firms, the provision is not included in this final regulation.

Compliance and Risk Management Programs (§ 1710.19(a) and (b))

Proposed § 1710.19 would require an Enterprise to establish and maintain a compliance program and a risk management program. OFHEO believes that the establishment and maintenance of compliance and risk management programs are essential for the continued safe and sound operations of the Enterprises.[23] The establishment of such programs, with a view to best practices appropriate for the Enterprises, will assist the boards of directors in managing their responsibilities to oversee the adequacy of policies and procedures for compliance and risk management.

Commenters generally supported the proposal. One commenter suggested that OFHEO consider whether there should be a direct reporting relationship to the board; others recommended more flexibility with respect to the structure and reporting scheme of the compliance and risk management programs. OFHEO has determined to retain the requirement that the chief compliance officer and chief risk officer report directly to the chief executive officer of the Enterprise, but has clarified that the regular reporting of such officers may be made to the board of directors or to an appropriate committee thereof. OFHEO has made other clarifying and technical changes to make the section easier to read.

Compliance With Other Laws (§ 1710.19(c))

OFHEO also proposed that if an Enterprise deregisters or does not register its common stock with the Commission, the Enterprise must comply with sections 301, 302, 304, 402, and 406 of the SOA, subject to such additional requirements as provided by § 1710.30.[24] It would also require that a registered Enterprise maintain its registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to certain requirements of the SOA, as provided above.

One commenter requested that OFHEO clarify that this provision would not apply to a situation in which an Enterprise deregisters its securities and that § 1710.30 should not be referenced in § 1710.19. OFHEO disagrees and has determined to adopt § 1710.19(c) as proposed, with minor clarifying and technical changes.

Modification of Certain Provisions (§ 1710.30)

OFHEO proposed to move provisions of its existing regulation and to maintain similar treatment for new provisions in § 1710.30 to make clear that OFHEO, in referencing and employing other

[23] *See Report of Special Examination,* Recommended Actions, Nos. 9 and 10, *supra* note 2 at 167–168, and Consent Order, *supra* note 5.

[24] This provision would apply to Freddie Mac as will provisions of sections 1710.13(b) and 1710.17 for reports that are filed subject to section 302 and 304 of SOA.

sources for corporate governance standards, may modify its requirements to meet its statutory responsibilities for oversight of the Enterprises. References to standards of Federal or state law (including the Revised Model Corporation Act), or NYSE rules in §§ 1710.10, 1710.11, 1710.12, 1710.17, and 1710.19 do not limit the ability of OFHEO to modify OFHEO standards as necessary to meet its statutory responsibilities.[25] The proposal would require that notice be provided to the Enterprises of any modifications.

Some commenters noted that OFHEO would be required to publish any modifications for notice and comment under the Administrative Procedure Act. OFHEO is clarifying the provision by adding language that would make clear that OFHEO would make modifications to its requirements pursuant to 5 U.S.C. 553. Section 553 requires notice and comment of a substantive regulation with certain exceptions, including where the regulation would grant or recognize an exemption or relieve a restriction, or for good cause found by the agency.

Issuance of Final Amendments to Regulation

OFHEO has determined to issue the final amendments to its corporate governance regulation at 12 CFR 1710. The final regulation incorporates provisions adopted as proposed as well as modifications that enhance clarity or craft a more workable regulation, many of the modifications result from comments that provided useful legal and operational insights. The final regulation continues to build the OFHEO supervisory infrastructure and to meet the ongoing efforts of OFHEO to operate in a transparent manner. The final regulation should provide greater certainty for the Enterprises regarding regulatory expectations. Appropriate corporate governance and appropriate corporate governance supervision help ensure the continued safe and sound operation of the Enterprises as directed by Congress.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The amendments to the corporate governance regulation are not classified as an economically significant rule under Executive Order 12866 because they would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. Nevertheless, the final amendments were submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the states, on the relationship or distribution of power between the Federal Government and the states, or on the distribution of power and responsibilities among various levels of government. The Enterprises are federally chartered corporations supervised by OFHEO. The corporate governance regulation and the amendments thereto set forth minimum corporate governance standards with which the Enterprises must comply for Federal supervisory purposes. The corporate governance regulation requires that an Enterprise elect a body of state corporate law or the Revised Model Corporation Act to follow in terms of its corporate practices and procedures. The corporate governance regulation and the amendments thereto do not affect in any manner the powers and authorities of any state with respect to the Enterprises or alter the distribution of power and responsibilities between Federal and state levels of government. Therefore, OFHEO has determined that the corporate governance regulation and the amendments thereto have no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the amendments to the corporate governance regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the corporate governance regulation and the amendments thereto are not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Government Sponsored Enterprises.

■ Accordingly, for the reasons stated in the preamble, OFHEO amends 12 CFR part 1710 to subchapter C of chapter XVII to read as follows:

PART 1710—CORPORATE GOVERNANCE

■ 1. The authority citation for part 1710 continues to read as follows:

Authority: 12 U.S.C. 4513(a) and 4513(b)(1).

§ 1710.13 [Removed]

■ 2. Remove § 1710.13.

§§ 1710.11 and 1710.12 [Redesignated as §§ 1710.12 and 1710.13]

■ 3. Redesignate §§ 1710.11 and 1710.12 as new §§ 1710.12 and 1710.13, respectively.

■ 4. Add a new § 1710.11 to read as follows:

§ 1710.11 Board of directors.

(a) *Membership*—(1) *Limits on service of board members*—(i) *General requirement.* No board member of an Enterprise may serve on the board of directors for more than 10 years or past the age of 72, whichever comes first; provided, however, a board member may serve his or her full term if he or she has served less than 10 years or is 72 years on the date of his or her election or appointment to the board.

(ii) *Waiver.* Upon written request of an Enterprise, the Director may waive, in his or her sole discretion and for good cause, the limits on the service of a board member under paragraph (a)(1)(i) of this section.

(2) *Independence of board members.* A majority of seated members of the

[25] Section 1710.10 provides generally that an Enterprise must follow the corporate governance practices and procedures of the law of the jurisdiction in which the principal office of the Enterprise is located, Delaware General Corporation Law, or the Revised Model Business Corporation Act.

board of directors of an Enterprise shall be independent board members, as defined under rules set forth by the NYSE, as amended from time to time.

(b) *Meetings, quorum and proxies, information, and annual review*—(1) *Frequency of meetings.* The board of directors of an Enterprise shall meet at least eight times a year and no less than once a calendar quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(2) *Non-management board member meetings.* Non-management directors of an Enterprise shall meet at regularly scheduled executive sessions without management participation.

(3) *Quorum of board of directors; proxies not permissible.* For the transaction of business, a quorum of the board of directors of an Enterprise is at least a majority of the seated board of directors and a board member may not vote by proxy.

(4) *Information.* Management of an Enterprise shall provide a board member of the Enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

(5) *Annual review.* At least annually, the board of directors of an Enterprise shall review, with appropriate professional assistance, the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.

■ 5. Amend newly designated § 1710.12 by revising paragraph (b) and by adding new paragraph (c) to read as follows:

§ 1710.12 Committees of board of directors.

* * * * *

(b) *Frequency of meetings.* A committee of the board of directors of an Enterprise shall meet with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(c) *Required committees.* An Enterprise shall provide for the establishment of, however styled, the following committees of the board of directors, which committees shall be in compliance with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under section 301 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (Jul. 30, 2002) (SOA), as amended from time to time, with respect to the audit committee, and under rules issued by the NYSE, as amended from time to time—

(1) Audit committee;

(2) Compensation committee; and

(3) Nominating/corporate governance committee.

■ 6. Amend newly designated § 1710.13 by revising newly designated paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 1710.13 Compensation of board members, executive officers, and employees.

(a) *General.* Compensation of board members, executive officers, and employees of an Enterprise shall not be in excess of that which is reasonable and appropriate, shall be commensurate with the duties and responsibilities of such persons, shall be consistent with the long-term goals of the Enterprise, shall not focus solely on earnings performance, but shall take into account risk management, operational stability and legal and regulatory compliance as well, and shall be undertaken in a manner that complies with applicable laws, rules, and regulations.

(b) *Reimbursement.* If an Enterprise is required to prepare an accounting restatement due to the material noncompliance of the Enterprise, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the Enterprise shall reimburse the Enterprise as provided under section 304 of the SOA, as amended from time to time. This provision does not otherwise limit the authority of OFHEO to employ remedies available to it under its enforcement authorities.

■ 7. Amend § 1710.14 by revising the section heading, revising newly designated paragraph (a) and adding new paragraph (b) to read as follows:

§ 1710.14 Code of conduct and ethics.

(a) *General.* An Enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the Enterprise to discharge their duties and responsibilities, on behalf of the Enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the SOA, as amended from time to time, and other applicable laws, rules, and regulations.

(b) *Review.* Not less than once every three years, an Enterprise shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the Enterprise and make any appropriate revisions to such code.

■ 8. Amend § 1710.15 by revising paragraph (b) to read as follows:

§ 1710.15 Conduct and responsibilities of board of directors.

* * * * *

(b) *Conduct and responsibilities.* The board of directors of an Enterprise is responsible for directing the conduct and affairs of the Enterprise in furtherance of the safe and sound operation of the Enterprise and shall remain reasonably informed of the condition, activities, and operations of the Enterprise. The responsibilities of the board of directors include having in place adequate policies and procedures to assure its oversight of, among other matters, the following:

(1) Corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance and corporate performance, including but not limited to prudent plans for growth and allocation of adequate resources to manage operations risk;

(2) Hiring and retention of qualified senior executive officers and succession planning for such senior executive officers;

(3) Compensation programs of the Enterprise;

(4) Integrity of accounting and financial reporting systems of the Enterprise, including independent audits and systems of internal control;

(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors;

(6) Extensions of credit to board members and executive officers; and

(7) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

* * * * *

■ 9. Add new § 1710.16 to read as follows:

§ 1710.16 Prohibition of extensions of credit to board members and executive officers.

An Enterprise may not directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any board member or executive officer of the Enterprise as provided by section 402 of the SOA, as amended from time to time.

■ 10. Add new § 1710.17 to read as follows:

§ 1710.17 Certification of disclosures by chief executive officer and chief financial officer.

The chief executive officer and the chief financial officer of an Enterprise

shall review each quarterly report and annual report issued by the Enterprise and such reports shall include certifications by such officers as required by section 302 of the SOA, as amended from time to time.

■ 11. Add new § 1710.18 to read as follows:

§ 1710.18 Change of audit partner.

An Enterprise may not accept audit services from an external auditing firm if the lead or coordinating audit partner who has primary responsibility for the external audit of the Enterprise, or the external audit partner who has responsibility for reviewing the external audit has performed audit services for the Enterprise in each of the five previous fiscal years.

■ 12. Add new § 1710.19 to read as follows:

§ 1710.19 Compliance and risk management programs; compliance with other laws.

(a) *Compliance program.* (1) An Enterprise shall establish and maintain a compliance program that is reasonably designed to assure that the Enterprise complies with applicable laws, rules, regulations, and internal controls.

(2) The compliance program shall be headed by a compliance officer, however styled, who reports directly to the chief executive officer of the Enterprise. The compliance officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current compliance policies and procedures of the Enterprise, and shall recommend any adjustments to such policies and procedures that he or she considers necessary and appropriate.

(b) *Risk management program.* (1) An Enterprise shall establish and maintain a risk management program that is reasonably designed to manage the risks of the operations of the Enterprise.

(2) The risk management program shall be headed by a risk management officer, however styled, who reports directly to the chief executive officer of the Enterprise. The risk management officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current risk management policies and procedures of the Enterprise, and shall recommend any adjustments to such policies and procedures that he or she considers necessary and appropriate.

(c) *Compliance with other laws.* (1) If an Enterprise deregisters or has not registered its common stock with the U.S. Securities and Exchange Commission (Commission) under the Securities Exchange Act of 1934, the Enterprise shall comply or continue to comply with sections 301, 302, 304, 402, and 406 of the SOA, as amended from time to time, subject to such requirements as provided by § 1710.30 of this part.

(2) An Enterprise that has its common stock registered with the Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of sections 301, 302, 304, 402, and 406 of the SOA, as amended from time to time, subject to such requirements as provided by § 1710.30 of this part.

■ 13. Add new subpart D to read as follows:

Subpart D—Modification of Certain Provisions

§ 1710.30 Modification of certain provisions.

In connection with standards of Federal or state law(including the Revised Model Corporation Act) or NYSE rules that are made applicable to an Enterprise by §§ 1710.10, 1710.11, 1710.12, 1710.17, and 1710.19 of this part, the Director, in his or her sole discretion, may modify the standards contained in this part in accordance with 5 U.S.C. 553 and upon written notice to the Enterprise.

Dated: March 31, 2005.

Stephen A. Blumenthal,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 05–6781 Filed 4–5–05; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18561; Directorate identifier 2004–NM–13–AD; Amendment 39–14042; AD 2005–07–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–15F Airplanes Modified In Accordance With Supplemental Type Certificate (STC) SA1993SO; and Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes in All-Cargo Configuration, Equipped With a Main-Deck Cargo Door

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for the airplanes listed above. For certain airplanes, this AD requires inspecting to determine the airplane's cargo configuration, and reporting findings to the FAA. For airplanes modified in accordance with a certain STC or with a cargo configuration that deviates from the as-delivered configuration, this AD requires revising certain manuals and manual supplements to specify certain cargo limitations. This AD also requires relocating all cargo restraints on the main cargo deck. This AD is prompted by reports that deficiencies related to the cargo loading system may exist on all McDonnell Douglas Model DC–9–15F airplanes modified in accordance with STC SA1993SO. We are issuing this AD to ensure that cargo in the main cabin is adequately restrained and to prevent failure of components of the cargo loading system, failure of the floor structure, or shifting of cargo. Any of these conditions could cause cargo to exceed load distribution limits or cause damage to the fuselage or control cables, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective May 11, 2005.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at

the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–18561; the directorate identifier for this docket is 2004–NM–13–AD.

FOR FURTHER INFORMATION CONTACT: Rany Azzi, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for McDonnell Douglas Model DC–9–15F airplanes modified in accordance with supplemental type certificate (STC) SA1993SO; and Model DC–9–11–DC–9 12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes in all-cargo configuration. For certain airplanes, that action, published in the **Federal Register** on July 8, 2004 (69 FR 41204), proposed to require inspecting to determine the airplane's cargo configuration, and reporting findings to the FAA. For airplanes modified in accordance with a certain STC or with a cargo configuration that deviates from the as-delivered configuration, that action proposed to require revising certain manuals and manual supplements to specify certain cargo limitations. That action also proposed to require relocating all cargo restraints on the main cargo deck.

Comments

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

Support for the Proposed AD

One commenter supports the intent of the proposed AD and concurs with the proposed actions.

Request To Revise Applicability Statement

One commenter, an operator, requests that we revise the applicability of the proposed AD. The commenter states that certain airplanes in its fleet were originally delivered as passenger airplanes but have been modified by various STCs to all-cargo configuration. None of these airplanes were modified in accordance with STC SA1993SO, and none has a main deck cargo door. The commenter notes that the Costs of Compliance section of the proposed AD indicates that a total of 33 airplanes worldwide (including 30 of U.S. registry) would be affected by the proposal. The commenter questions the accuracy of this number because it operates 74 airplanes in cargo configuration (including the airplanes described previously that were originally delivered as passenger airplanes).

We concur with the commenter's request to revise the applicability of this AD. Our intent was to make the requirements of this AD apply to airplanes delivered by the original equipment manufacturer (OEM) with, or modified by a third party to have, a main-deck cargo door that accommodates certain unit loading devices. Accordingly, we have revised the applicability of this AD to specify that this AD applies to Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes in all-cargo configuration, and equipped with a main-deck cargo door. We have determined that only 8 of the commenter's 74 airplanes would be in this category. This AD also continues to apply to Model DC–9–15F airplanes modified in accordance with supplemental type certificate (STC) SA1993SO.

Request To Allow Records Review or Extend Compliance Time

The same commenter requests that we revise the proposed AD to allow determining the details of the cargo configuration from airplane records without performing the inspection of the main deck cargo compartment. The commenter states that it can determine the cargo configuration of its airplanes by reviewing the airplane records. The commenter further requests that we extend the compliance time from 60 days after the effective date to 6 months or longer after the effective date if we do not agree that a records review is an acceptable method of complying with the proposed requirements. The commenter states that the proposed 60-day compliance time would be unduly burdensome.

We do not agree that a records review is an acceptable method of complying with the requirements of this AD. We proposed this AD because we are aware that some airplanes delivered by the OEM in all-cargo configuration, with a main-deck cargo door, have been modified to a configuration similar to that provided by STC SA1993SO without any documentation in the airplane records. As explained in the proposed AD, the configuration provided by STC SA1993SO and similar configurations have deficiencies including inadequate design of the cargo loading system, inadequate loading procedures, and lack of identification of loading devices and restraining methods. We find that it is necessary to require an inspection of the main deck cargo compartment to determine the exact and accurate details of the airplane's cargo configuration.

We also do not agree to extend the compliance time beyond the proposed 60 days. As we explained in the preamble of the proposed AD, in developing the compliance time for the proposed actions, we considered the degree of urgency associated with addressing the subject unsafe condition, and the time that would be necessary to accomplish the proposed requirements. Based on these factors, we find that a 60-day compliance time for completing the required inspection and report represents an appropriate period of time for affected airplanes to continue to operate without compromising safety. Specifically considering the commenter's fleet, as we stated previously, only 8 of the commenter's 74 cargo airplanes are subject to the requirements of this AD. Therefore, we find that 60 days constitutes an appropriate compliance time in which neither safety nor the commenter's operations will be adversely affected. We have not changed the final rule in this regard.

Request To Limit Applicability of Manual Revisions and Cargo Restraint Relocation

The same commenter notes that the proposed manual revisions in paragraph (h) of the proposed AD do not take into consideration the different cargo zones and loading configurations for DC–9–30 and DC–9–40 series airplanes. The commenter states that the requirements of paragraphs (h) and (i) of the proposed AD appear to target a specific configuration and series, such as a Model DC–9–15F airplane modified in accordance with STC SA1993SO. The commenter wants the FAA to first accomplish a thorough evaluation of the details of each specific STC cargo configuration before subjecting an operator to a limitation on cargo loading, or a modification to the cargo configuration. The commenter requests that we revise the proposed AD to make paragraphs (h) and (i) apply only to airplanes that have been modified by STC SA1993SO, and to specify that requirements for other airplanes will be issued after an evaluation of the configuration details submitted as

required by paragraph (f) of the proposed AD.

We do not concur. We have determined that the limitations stated in paragraph (h) and the requirements stated in paragraph (i) of this AD can be applied to most airplanes subject to this AD, regardless of model or configuration. Should an operator find that it is unable to comply with the specific requirements of this AD, that operator must request approval of an alternative method of compliance with the reporting requirements of paragraph (f) of this AD, as provided by paragraph (j) of this AD. We will determine whether or not the operator's fleet's cargo configuration exhibits the same unsafe conditions exhibited by airplanes modified in accordance with STC SA1993SO or airplanes in similar configurations. We have not changed the final rule in this regard.

Conclusion

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

Costs of Compliance

This AD affects about 3 airplanes of U.S. registry, out of 5 airplanes modified in accordance with STC SA1993SO worldwide. The following table provides the estimated costs for U.S. operators of these airplanes to comply with this AD.

ESTIMATED COSTS—AIRPLANES MODIFIED IN ACCORDANCE WITH STC SA1993SO

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Manual changes	1	$65	None	$65	$195
Relocation of cargo restraints on main deck	24	65	None	1,560	4,680

This AD also affects about 27 airplanes of U.S. registry out of 28 airplanes worldwide that are in all-cargo configuration. The following table provides the estimated costs for U.S. operators of these airplanes to comply with this AD.

ESTIMATED COSTS—AIRPLANES IN ALL-CARGO CONFIGURATION

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection/Reporting	8	$65	None	$520	$14,040

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–07–18 McDonnell Douglas: Amendment 39–14042. Docket No. FAA–2004–18561; Directorate Identifier 2004–NM–13–AD.

Effective Date

(a) This AD becomes effective May 11, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–15F airplanes modified in accordance with supplemental type certificate (STC) SA1993SO; and Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes in all-cargo configuration, equipped with a main-deck cargo door; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports that deficiencies related to the cargo loading system may exist on all McDonnell Douglas Model DC–9–15F airplanes modified in accordance with STC SA1993SO. We are

issuing this AD to ensure that cargo in the main cabin is adequately restrained and to prevent failure of components of the cargo loading system, failure of the floor structure, or shifting of cargo. Any of these conditions could cause cargo to exceed load distribution limits or cause damage to the fuselage or control cables, which could result in reduced controllability of the airplane.

Compliance

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

Airplanes Not Modified in Accordance With STC SA1993SO: Inspection and Reporting

(f) For airplanes not modified in accordance with STC SA1993SO:

Within 60 days after the effective date of this AD, perform an inspection of the main deck cargo compartment to determine the details of the airplane's cargo configuration. Within 60 days after the effective date of this AD, submit a report of the details of the airplane's cargo configuration through the FAA Principal Maintenance Inspector (PMI), or the cognizant Flight Standards District Office, as applicable, to the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The report must include the airplane serial number, inspection results, and the information specified in paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) Restraint system: Does the airplane have vertical side restraints installed on the main deck floor? How many vertical side restraints are installed per airplane side?

(2) Vertical fore/aft restraints: How many vertical fore/aft restraints are installed on each end of a pallet position?

(3) For airplanes with missing vertical side restraints: Is a bump rail installed?

(4) Unit Loading Devices (ULDs): What type/model ULDs are used for cargo carriage in affected airplanes? Obtain NAS 3610 designation from affixed data plate as required by Technical Standard Order (TSO) C90a, b, c, or designation provided by STC or other approved means. Is there a manual or document that indicates the type/model of ULDs to use? If there is such a manual or document, include the manual/document number and revision level in the report required by paragraph (f) of this AD.

Airplanes Deviating From Original Configuration: Required Action

(g) During the inspection required by paragraph (f) of this AD, if the airplane's cargo configuration deviates from the original configuration as delivered by McDonnell Douglas (including, but not limited to, missing vertical side restraints or revised fore/aft restraint configuration), accomplish paragraphs (h) and (i) of this AD.

Manual Revisions

(h) For airplanes modified in accordance with STC SA1993SO and airplanes specified in paragraph (g) of this AD: Within 90 days after the effective date of this AD, revise the Limitations section of the airplane flight manual (AFM), the AFM supplements, the Limitations section of the airplane weight and balance manual (AWBM), and the AWBM supplements to include the information specified below. This may be accomplished by inserting a copy of this AD into the affected manual or supplement. After accomplishment of these revisions, the airplane must be operated in accordance with these limitations.

"REDUCTION IN CARGO LOADS AS FOLLOWS:

- Zone 1 (most forward): Limited to a maximum of 4,000 pounds,
- Zones 2 through 7: Limited to a maximum of 5,200 pounds each,
- Zone 8 (most aft): Limited to a maximum of 2,000 pounds.

Note: The maximum total payload that can be carried on the main deck is limited to the lesser of:

- The approved cargo barrier weight limit,
- Weight permitted by the approved maximum zero-fuel weight,
- Weight permitted by the approved main deck position weights,
- Weight permitted by the approved main deck running load or distributed load limitations, or
- Approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Limitations:

Use only unit loading devices (ULDs) (containers and pallets) that are structurally compatible with the cargo loading system. One means of establishing compatibility is through compliance with the specifications of NAS 3610 for ULDs approved under Technical Standard Order (TSO) C90a, b, or c; or as provided by the appropriate instructions of a Supplemental Type Certificate or other approved means. Alternative methods of compliance can be obtained as specified in paragraph (j) of this AD.

Ensure proper restraining of the ULDs by engaging all cargo loading system restraints.

The center-of-gravity shift of each ULD must not exceed 10 percent of its base longitudinal or lateral directions.

Relocation of Cargo Restraints

(i) For airplanes modified in accordance with STC SA1993SO and airplanes specified in paragraph (g) of this AD: Within 90 days after the effective date of this AD, relocate all fore/aft cargo restraints in the main cargo deck to left and right buttock lines 22.0 and 44.5.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Atlanta ACO, 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) None.

Issued in Renton, Washington, on March 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6757 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–ANE–14–AD; Amendment 39–14043; AD 83–08–01R2]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. (Formerly TRW Hartzell Propeller) Models HC–B3TN–2, HC–B3TN–3, HC–B3TN–5, HC–B4TN–3, HC–B4TN–5, HC–B4MN–5, and HC–B5MP–3 Turbopropellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) models HC–B3TN–2, HC–B3TN–3, HC–B3TN–5, HC–B4TN–3, HC–B4TN–5, HC–B4MN–5, and HC–B5MP–3 turbopropellers. That AD requires, before further flight, that all new propellers being installed and all serviceable propellers being reinstalled, are attached using part number (P/N) B–3339 bolts and P/N A–2048–2 washers, and that the bolts are properly torqued. That AD also requires a onetime torque-check of P/N A–2047 bolts that are already installed through propellers and replacement of those bolts if necessary, with P/N B–3339 bolts and P/N A–2048–2 washers. This AD requires the same actions, and includes the use of other equivalent FAA-approved serviceable bolts and washers. This AD results from the need to make nonsubstantive wording changes and additions to clarify that terminating action is achieved by attaching propellers with P/N B–3339 bolts and P/N A–2048–2 washers or other equivalent FAA-approved serviceable bolts and washers, to the engine flange, as instructed in the compliance section of this AD. We are issuing this AD to preclude propeller attaching bolt failures or improperly secured propellers, which could lead to separation of the propeller from the airplane.

DATES: This AD becomes effective May 11, 2005.

ADDRESSES: Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for the service information referenced in this AD. You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Melissa T. Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–8110; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) models HC–B3TN–2, HC–B3TN–3, HC–B3TN–5, HC–B4TN–3, HC–B4TN–5, HC–B4MN–5, and HC–B5MP–3 turbopropellers by revising AD 83–08–01R1, Amendment 39–4633 (48 FR 17576, April 25, 1983), which is applicable to the same turbopropellers. We published the proposed AD in the **Federal Register** on October 20, 2004 (69 FR 61611). That action proposed to require the same actions as AD 83–08–01R1, except that it would not be applicable to propellers installed using P/N B–3339 bolts and P/N A–2048–2 washers, and it would not require an additional onetime torque-check of P/N A–2047 bolts. This AD results from the need to make nonsubstantive wording changes and additions to clarify that terminating action is achieved by attaching propellers with P/N B–3339 bolts and P/N A–2048–2 washers or other equivalent FAA-approved serviceable bolts and washers, to the engine flange, as instructed in the compliance section of this AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received.

Request To Add Parts Manufacturer Approval (PMA) Parts

One commenter requests that we modify the compliance section to state that PMA equivalent parts can also be used to attach the propeller. The commenter states that the proposed AD did not reference all FAA-PMA parts.

We partially agree. For clarification, we have added references to the use of other equivalent FAA-approved serviceable bolts and washers, in lieu of using only P/N B–3339 bolts and P/N A–2048–2 washers.

Correction of Petrolated Graphite Military Specification Number

We have corrected the Petrolated Graphite Military Specification number in the compliance section from MIL–T–5544 to MIL–T–83483.

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 17,000 Hartzell Propeller Inc. models HC–B3TN–2, HC–B3TN–3, HC–B3TN–5, HC–B4TN–3, HC–B4TN–5, HC–B4MN–5, and HC–B5MP–3 turbopropellers of the affected design in the worldwide fleet. We estimate that 11,900 turbopropellers installed on airplanes of U.S. registry would be affected by this AD. We also estimate that all of these propellers likely have upgraded to the P/N B–3339 bolts and P/N A–2048–2 washers, or equivalent FAA-approved serviceable bolts and washers, since issuance of the original AD. The average labor rate is $65 per work hour. Bolt and washer replacement will require about 1.5 work hours. Required parts will cost about $260 per propeller. Based on these figures, we estimate the total cost of the AD to replace the bolts and washers for all 11,900 turbopropellers, to be $4,248,300.

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 Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–4633 (48 FR 17576, April 25, 1983) and by adding a new airworthiness directive, Amendment 39–14043, to read as follows:

83–08–01R2 Hartzell Propeller Inc. (formerly TRW Hartzell Propeller): Amendment 39–14043. Docket No. 83–ANE–14–AD. Revises AD 83–08–01R1, Amendment 39–4633

Applicability

This AD is applicable to Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) models HC–B3TN–2, HC–B3TN–3, HC–B3TN–5, HC–B4TN–3, HC–B4TN–5, HC–B4MN–5, and HC–B5MP–3 turbopropellers. The HC–B()TN–2, HC–B()TN–3, and HC–B()MP–3 propellers are typically installed on

Pratt & Whitney Canada Model PT6A–() series engines. The HC–B()TN–5 and HC–B()MN–5 series propellers are typically installed on Honeywell International Inc., (formerly AlliedSignal Inc., Garrett Turbine Engine Company, and AIResearch Manufacturing Company of Arizona) TPE–331–() series engines.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD are affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To preclude propeller attaching bolt failures or improperly secured propellers, which could lead to separation of the propeller from the airplane, do the following:

(a) Install all new propellers and serviceable propellers, as follows, before further flight:

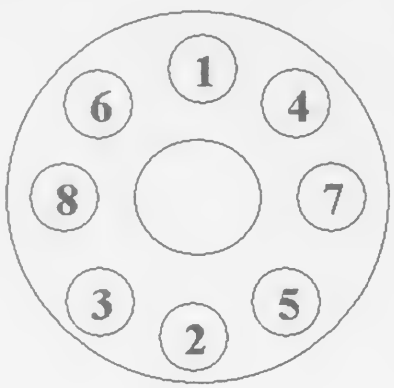
(1) Install the propeller oil seal to the engine flange after ensuring that the engine and propeller flanges are clean.

(2) Carefully install propeller on the engine flange ensuring that complete and true contact is established.

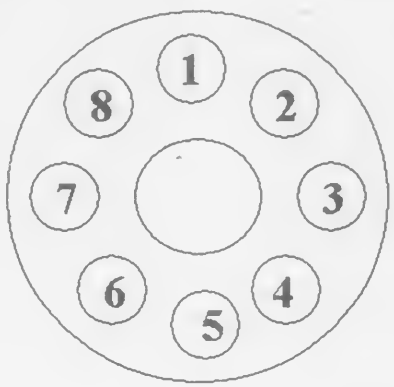
(3) Apply MIL–T–83483 Petrolated Graphite, or Hartzell Lubricant part number (P/N) A–3338, to threads of the eight P/N B–3339 attaching bolts (and remainder of bolt if desired) and to flat surfaces of the eight P/N A–2048–2 washers, or to other equivalent FAA-approved serviceable bolts and washers.

(4) Install the eight P/N B–3339 attaching bolts and eight P/N A–2048–2 washers, or other equivalent FAA-approved serviceable bolts and washers, that were prepared in paragraph (a)(3) of this AD, through the engine flange and into the propeller flange.

(5) Torque all attaching bolts with a torque wrench and an appropriate adapter, to 40 ft.-lbs., and then to 80 ft.-lbs., following sequence "A" (shown below). Final torque all attaching bolts using sequence "B" (shown below) to 100 ft.-lbs. to 105 ft.-lbs. Safety wire all attaching bolts in an FAA-approved manner.



A



B

(6) Once the propeller is installed with P/N B–3339 bolts and P/N A–2048–2 washers, or other equivalent FAA-approved serviceable bolts and washers, this AD no longer applies.

(b) Within the next 300 hours time-in-service after the effective date of this AD, do the following on all applicable turbopropellers presently installed with P/N A–2047 attaching bolts:

(1) Check the torque, with a torque wrench and an appropriate adapter, of all eight propeller attaching bolts (with washers installed). Torque should be 100 ft-lbs. to 125 ft.-lbs., with dry threads. (Caution: Do not use any lubricant with the P/N A–2047 bolts. Safety wire all bolts in an FAA-approved manner.)

(2) If the torque of any one of the bolts is found to be less than 100 ft.-lbs., remove all eight bolts and washers and replace with P/N B–3339 bolts and P/N A–2048–2 washers, or other equivalent FAA-approved serviceable bolts and washers, using paragraphs (a)(1) through (a)(5) of this AD.

(3) A P/N A–2047 bolt has the letter "H" stamped inside a triangle on the bolt. A P/N B–3339 bolt has the P/N stamped inside the cupped head.

(4) If the torque of each P/N A–2047 bolt is in compliance, then at next propeller disassembly, remove all eight bolts and washers and replace with P/N B–3339 bolts and P/N A–2048–2 washers, or other equivalent FAA-approved serviceable bolts and washers. Use paragraphs (a)(1) through (a)(5) of this AD to do the replacements.

(5) Hartzell Service Instructions No. 140A, Revision 9, dated March 30, 2005, is the latest service information that pertains to the subject of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(e) This amendment becomes effective on May 11, 2005.

Issued in Burlington, Massachusetts, on March 30, 2005.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–6778 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30441; Amdt. No. 3119]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 6, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 2005.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on March 25, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 12 May 2005*

Sylacauga, AL, Merkel Field Sylacauga Muni, NDB–A, Amdt 3
Sylacauga, AL, Merkel Field Sylacauga Muni, RNAV (GPS) RWY 9, Orig
Sylacauga, AL, Merkel Field Sylacauga Muni, RNAV (GPS) RWY 27, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, VOR RWY 31L, Orig
Lancaster, PA, Lancaster, LOC RWY 8 Orig
Lancaster, PA, Lancaster, ILS OR LOC RWY 8, Amdt 15, CANCELLED
Newport News, VA, Newport News/Williamsburg Intl, ILS OR LOC RWY 25, Orig

** * * Effective 07 July 2005*

Savannah, GA, Savannah/Hilton Head Intl, VOR/DME OR TACAN RWY 36, Orig
Savannah, GA, Savannah/Hilton Head Intl, VOR/DME OR TACAN RWY 18, Orig
Savannah, GA, Savannah/Hilton Head Intl, VOR/DME–A, Orig
Pulaski, TN, Abernathy Field, VOR/DME RWY 33, Amdt 2
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 15, Amdt 1
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 33, Amdt 1

[FR Doc. 05–6656 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Akzo Nobel Surface Chemistry AB (Azko Nobel) to Virbac AH, Inc.

DATES: This rule is effective April 6, 2005.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration,7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: Akzo Nobel, Box 851, S–44485 Stenungsund, Sweden, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 10–886 for Purina Liquid Wormer to Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137.

Following this change of sponsorship, Akzo Nobel is no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Akzo Nobel.

Purina Liquid Wormer (NADA 10–886) is labeled for use in chickens, turkeys, and swine. The drug was the subject of a National Academy of Sciences/National Research Council evaluation of effectiveness under FDA's drug efficacy study implementation (DESI) program (DESI 10–005V). The findings of the evaluation were published in the **Federal Register** of February 14, 1969 (34 FR 2213). A separate entry in part 520 (21 CFR part 520) (§ 520.1807) was created (64 FR 23017, April 29, 1999) to accommodate oral piperazine products approved for use in chickens, turkeys, and swine consistent with DESI findings and human food safety requirements (DESI finalization). However to date, NADA 10–886 has not been DESI finalized. Accordingly, § 520.1807 will not be amended to reflect the approval of NADA 10–886 until the current sponsor of that NADA submits a supplemental NADA adequate for DESI finalization.

In addition, § 520.1806 has been found to inaccurately list Akzo Nobel as the sponsor of an oral piperazine product approved for use in dogs. This error occurred during the codification of a previous change of sponsor for NADA 10–886 (59 FR 28763, June 3, 1994). Accordingly, the agency is amending the regulations in § 520.1806 to remove Akzo Nobel's drug labeler code and to reflect the current format.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Akzo Nobel Surface Chemistry AB" and in the table in paragraph (c)(2) by removing the entry for "063765".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Section 520.1806 is revised to read as follows:

§ 520.1806 Piperazine suspension.

(a) *Specifications.* Each milliliter of suspension contains piperazine monohydrochloride equivalent to 33.5 milligrams (mg) piperazine base.

(b) *Sponsor.* See No. 017135 in § 510.600(c) of this chapter.

(c) *Special considerations.* See § 500.25(c) of this chapter.

(d) *Conditions of use in dogs*—(1) *Indications for use.* For the removal of roundworms (*Toxocara canis* and *Toxascaris leonina*).

(2) *Dosage.* Administer 20 to 30 mg piperazine base per pound body weight as a single dose.

(3) *Limitations.* Administer by mixing into the animal's ration to be consumed at one feeding. For animals in heavily contaminated areas, reworm at monthly intervals. Not for use in unweaned pups or animals less than 3 weeks of age.

Dated: December 10, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–6721 Filed 4–5–05; 8:45 am]

BILLING CODE 4160–01–S

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. 2004–9 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing the royalty rates for analog television broadcast stations retransmitted by satellite carriers under the section 119 statutory license.

DATES: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Associate General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act ("SHVERA"), a part of the Consolidated Appropriations Act of 2005. Pub.L. 108–447, 118 Stat. 3394. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over–the–air television broadcast stations to their subscribers, 17 U.S.C. 119, as well as making a number of amendments to the license. One of the amendments to section 119 sets forth a process for adjusting the royalty fees paid by satellite carriers for retransmitting analog television network and superstations. 17 U.S.C. 119(c)(1). The law directs the Librarian of Congress to publish notice in the **Federal Register** requesting satellite carriers, distributors and copyright owners to submit to the Copyright Office any voluntary agreements they have negotiated as to the adjustment of the rates for analog stations. The Library published such a notice on December 30, 2004, and, pursuant to the statute, requested that any agreements be submitted no later than January 10, 2005. 69 FR 78482 (December 30, 2004).

The Office has received one agreement, submitted jointly by the satellite carriers DirecTV, Inc. and EchoStar Satellite L.L.C., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. Section 119(c)(1)(D)(ii)(II) requires the Library to "provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees." 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on January 26, 2005, to fulfill this requirement. 70 FR 3656 (January 26, 2005). No objections were received. Consequently, the Library is adopting the voluntary agreement as final.

List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

Final Regulation

■ For the reasons set forth above, the Copyright Office amends 37 CFR chapter II as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 258 is amended to read as follows:

Authority: 17 U.S.C. 119, 702, 802.

■ 2. Section 258.2 is revised to read as follows:

§ 258.2 Definitions.

(a) Commercial establishment. The term "commercial establishment" means an establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, oil rigs, retail stores, banks and financial institutions, supermarkets, auto and boat dealerships, and other establishments with common business areas; *provided* that the term "commercial establishment" shall not include a multi–unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums and prisons, all of which shall be subject to the rates applicable to private home viewing.

(b) Syndex–proof signal. A satellite retransmission of a broadcast signal shall be deemed "syndex proof" for purposes of § 258.3(b) if, during any semi–annual reporting period, the retransmission does not include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission.

(c) Per subscriber per month. The term "per subscriber per month" means each subscriber subscribing to the station in question, or to a package including such station, on the last day of a given month.

■ 3. Section 258.3 is amended by adding new paragraphs (d) through (h) to read as follows:

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

* * * * *

(d) Commencing January 1, 2005, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 20 cents per subscriber per month for distant superstations.

(ii) 17 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.

(e) Commencing January 1, 2006, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 21.5 cents per subscriber per month for distant superstations.

(ii) 20 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.

(f) Commencing January 1, 2007, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 23 cents per subscriber per month for distant superstations.

(ii) 23 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(g) Commencing January 1, 2008, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) The 2007 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(ii) The 2007 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(2) For viewing in commercial establishments, the 2007 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount

of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(h) Commencing January 1, 2009, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) The 2008 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(ii) The 2008 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(2) For viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

Dated: March 25, 2005

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 05–6840 Filed 4–5–05; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0020; FRL–7895–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Low-Emission Diesel Fuel Compliance Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final approval.

SUMMARY: The EPA is granting final approval to a revision to the Texas Low Emission Diesel (TXLED) fuel program State Implementation Plan (SIP) that applies in 110 counties in the eastern and central parts of Texas. Under section 553(d)(1) of the Administrative Procedure Act, EPA is making this action effective upon publication because it relieves a restriction.

DATES: This rule is effective April 6, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06–OAR–2005–TX–0020. All documents in the docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quailty, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665–7263; e-mail address *rennie.sandra@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?

Today we are approving the compliance date changes found in the March 9, 2005, TXLED SIP revision submitted by the State of Texas. We are approving the phased schedule for compliance which extends the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purshaser/consumer facilities, and all other affected persons.

II. What Is the Background for This Action?

We approved the original TXLED rule on November 14, 2001, (66 FR 57196) as part of the Texas SIP and also found that it was relied upon for demonstrating attainment in the Houston-Galveston Attainment Demonstration SIP. On December 15, 2004, the Texas Commission on Environmental Quality (TCEQ) Commissioners proposed to revise the TXLED rule. Among other revisions, the commission proposed to extend the compliance date from April 1, 2005 to October 1, 2005. The commission proposed this extension because of concern about product availability by the current compliance date. On February 16, 2005 the Executive Director of the TCEQ submitted a letter to EPA requesting parallel processing of the compliance date portion of the SIP revision for TXLED.

On February 24, 2005, we proposed approval, through parallel processing, of a revision to the SIP that would change the compliance date for TXLED fuel from April 1, 2005, to October 1, 2005, consistent with a proposed revision to the state rule that the state had noticed for public hearing. In addition, we proposed approval and requested comments on a refinement to the State's proposed revision that the state had subsequently indicated that it was considering. The refinement would extend the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

The commission adopted revisions to the TXLED SIP on March 9, 2005. The revision was submitted to EPA on March 23, 2005. The submitted revision is consistent with our proposal. It

extends the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

III. What Comments Were Received During the Public Comment Period, February 24, 2005, to March 28, 2005?

We received comments in support of this rulemaking from ExxonMobil Refining and Supply, and Shell Oil Products, US. No adverse comments were received.

IV. Final Action

We are granting final approval to the compliance date change in the TXLED SIP revision. The compliance dates approved are October 1, 2005 for producers and importers, November 15, 2005 for bulk plant distribution facilities, and January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, section 553(d)(1) allows a rule to take effect earlier if it relieves a restriction. We are making this action effective upon publication because it relieves a restriction.

V. 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 and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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 June 6, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 31, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7402 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under chapter 114, subchapter H, Division 2—Low Emission Diesel, section 114.319 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* * * * * * *				
Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles				
* * * * * * *				
Subchapter H—Low Emission Fuels				
* * * * * * *				
Division 2—Low Emission Diesel				
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Section 114.319	Affected Counties and Compliance Dates ...	03/09/05	04/06/05 and **Federal Register** page number].	
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[FR Doc. 05–6853 Filed 4–5–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[OPP–2005–0073; FRL–7704–4]

Bacillus thuringiensis Modified Cry3A Protein (mCry3A) and the Genetic Material Necessary for its Production in Corn; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-incorporated protectant. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary/tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn. The temporary tolerance exemption will expire on October 15, 2006.

DATES: This regulation is effective April 6, 2005. Objections and requests for hearings must be received on or before June 6, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0073. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 174 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of August 31, 2004 (69 FR 53064) (FRL–7369–8), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4G6808) by Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257. The petition requested that 40 CFR part 174 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn. This notice included a summary of the petition prepared by the petitioner Syngenta Seeds, Inc. The National Corn Growers Association submitted the only comment that was received in response to the notice of filing. They supported the establishment of a tolerance exemption based on benefits to farmers and the environment. Under the Federal, Food, Drug, and Cosmetic Act, EPA must make a finding that there is a reasonable certainty of no harm from the granting of the proposed temporary tolerance exemption. EPA is making such a finding and herein sets forth the bases for this finding.

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

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

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure mCry3A protein. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

An acute oral toxicity study was submitted for the mCry3A protein. The acute oral toxicity data submitted support the prediction that the mCry3A protein would be non-toxic to humans. Male and female mice (5 of each) were dosed with 2,377 milligrams/kilograms bodyweight (mg/kg bwt) of mCry3A protein. With the exception of one female in the test group that was euthanized on day 2 (due to adverse clinical signs consistent with a dosing injury), all other mice survived the study, gained weight, had no test material-related clinical signs, and had no test material-related findings at necropsy.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," Regulatory Toxicology and Pharmacology 15, 3–9 (1992)). Therefore, since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the mCry3A protein is not considered toxic. Further, amino acid sequence comparisons showed no similarity between the mCry3A protein to known toxic proteins available in public protein data bases.

Since mCry3A is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases; may be glycosylated; and present at high concentrations in the food.

Data have been submitted that demonstrate that the mCry3A protein is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid 1 mg/mL mCry3A test protein mixed with simulated gastric fluid (pH 1.2, containing 2 mg/mL NaCl, 14 µL 6 N HCl, and 2.7 mg/mL pepsin) resulting in 10 pepsin activity units/ µg protein (complies with 2000 US Pharmacopoeia recommendations), complete degradation of detectable mCry3A protein occurred within 2 minutes. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with mCry3A, even at the level of 8 contiguous amino acids residues. Further data demonstrate that mCry3A is not glycoslylated, is inactivated when heated to 95 °C for 30 minutes, and is present in low levels in corn tissue. Therefore, the potential for the mCry3A protein to be a food allergens is minimal. As noted above, toxic proteins typically act as acute toxins with low dose levels. Therefore, since no effects were shown to be caused by the plant-incorporated protectant, even at relatively high dose levels, the mCry3A protein is not considered toxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide

residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the mCry3A protein are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However, oral toxicity testing done at a dose in excess of 2 gm/kg showed no adverse effects. Furthermore, the expression of the modified Cry3A protein in corn kernals has been shown to be in the parts per million range, which makes the expected dietary exposure several orders of magnitude lower than the amounts of mCry3A protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would prevent no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the mCry3A protein.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity, resulting from the plant-incorporated protectant, we conclude that there are no cumulative effects for the mCry3A protein.

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

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the mCry3A protein include the characterization of the expressed mCry3A protein in corn, as well as the acute oral toxicity, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the mCry3A protein test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-incorporated protectant ingredients in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the mCry3A protein would be non-toxic to humans. As mentioned above, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," Regulatory Toxicology and Pharmacology 15, 3–9 (1992)). Since no effects were shown to be caused by mCry3A protein, even at relatively high dose levels (2,377 mg mCry3A/kg bwt), the mCry3A protein is not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

MCry3A protein residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity. However, data submitted demonstrated low levels of mCry3A in corn tissues with less than 2 micrograms mCry3A protein/gram dry weight in kernals and less than 30 micrograms mCry3A protein/gram dry weight of whole corn plant.

Since modified Cry3A is a protein, its potential allergenicity is also considered as part of the toxicity assessment. Data considered as part of the allergenicity assessment include that the modified Cry3A protein came from *Bacillus thuringiensis* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, was inactivated by heat and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that modified Cry3A protein will not be an allergen.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children); nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the mCry3A protein, as well as the minimal potential to be a food allergen demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. The genetic material (DNA, RNA), necessary for the production of mCry3A protein has been exempted under the blanket exemption for all nucleic acids (40 CFR 174.475).

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity.

In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the mCry3A protein and the genetic material necessary for their

production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the mCry3A protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed, nor any indication of allergenicity potential for the plant-incorporated protectant.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient is a protein, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of the plant-incorporated protectant at this time.

B. Analytical Method(s)

A method for extraction and ELISA analysis of mCry3A protein in corn has been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exist for the plant-incorporated protectant *Bacillus thuringiensis* mCry3A protein and the genetic material necessary for its production in corn.

VIII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0073 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before [*insert date 60 days after date of publication in the Federal Register*].

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0073, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IX. Statutory and Executive Order Reviews

This final rule establishes a temporary exemption from the requirement of a tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in*

Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the temporary exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government". This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 174

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

Dated: March 23, 2005.

James Jones,

Director, Office of Pesticide Programs.

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

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.456 is added to subpart W to read as follows:

§ 174.456 Bacillus thuringiensis Modified Cry3A Protein (mCry3A) and the Genetic Material Necessary for its Production In Corn.

Bacillus thuringiensis modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn is exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of field corn, sweet corn and popcorn. Genetic material necessary for its production means the genetic material which comprise genetic material encoding the mCry3A protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the mCry3A protein. This temporary exemption from the requirement of a tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 67979-EUP-4 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked October 15, 2006; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

[FR Doc. 05–6499 Filed 4–5–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, 74, 78 and 90

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18; RM–9498; RM–10024; FCC 04–168]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document lists Petitions for Reconsideration filed on or shortly before December 22, 2004, in the 800 MHz Public Safety Interference Proceeding, and establishes deadlines for the filing of Oppositions to the Petitions for Reconsideration and Replies to the Oppositions.

DATES: Submit Oppositions to the Petitions for Reconsideration listed below April 21, 2005. Submit Replies to Oppositions to the Petitions for Reconsideration May 2, 2005.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications

Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. One (1) courtesy copy must be delivered to Ramona Melson, Esq. at the Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, SW., Suite 3–A465, Washington, DC 20554, or via e-mail, *ramona.melson@fcc.gov*, and one (1) copy must be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.bcpiweb.com*.

FOR FURTHER INFORMATION CONTACT: Ramona Melson, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418–0680 or via the Internet at *ramona.melson@fcc.gov*.

SUPPLEMENTARY INFORMATION: In the *800 MHz Report and Order*, the Commission adopted technical and procedural rules designed to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band. A summary of the *800 MHz Report and Order* and final rules were published in the **Federal Register** on November 22, 2004 (69 FR 67823). Petitions for Reconsideration of the *800 MHz Report and Order* were due by December 22, 2004. A Notice announcing the receipt of Petitions for Reconsideration was published in the **Federal Register** on February 2, 2005 (70 FR 5449). This document lists Petitions for Reconsideration filed on or shortly before December 22, 2004, in the 800 MHz Public Safety Interference Proceeding.

On December 22, 2004, the Commission adopted a *Supplemental Order and Order on Reconsideration* in which it clarified and changed certain provisions of the *800 MHz Report and Order*. A summary of the *Supplemental Order and Order on Reconsideration* was published in the **Federal Register** on February 8, 2005 (70 FR 6758). On February 14, 2005, the Public Safety and Critical Infrastructure Division deferred the dates for the filing of oppositions and replies to the petitions for reconsideration of the *800 MHz Report and Order* in order to make these dates consistent with the dates for filing similar pleadings relative to the *Supplemental Order and Order on Reconsideration*. The Division deferred the dates to enhance the Commission's consideration of the issues in this proceeding by permitting receipt of a cohesive, informed record for the Commission's review and to promote efficiency.

Specifically, the Division deferred the date for filing oppositions to the petitions for reconsideration of the *800 MHz Report and Order* until fifteen days after **Federal Register** publication of notice of receipt of petitions for reconsideration of the *800 MHz Supplemental Order and Order on Reconsideration*, in this proceeding. The date for filing replies to an opposition to the petitions for reconsideration of the *800 MHz Report and Order* shall be within ten days after the time for filing oppositions has expired. In a companion document published in this issue, the Commission announces the receipt of Petitions for Reconsideration to the *800 MHz Supplemental Order and Order on Reconsideration*.

The following parties have filed Petitions for Reconsideration of the *800 MHz Report and Order*:

1. Thomas J. Keller, Attorney for Association of American Railroads on 12/17/04.
2. David B. Trego and Jason D. Griffith for American Electric Power Company, Inc. on 12/21/04.
3. Julian L. Shepard, Attorney for Coastal SMR Network, L.L.C./A.R.C., Inc. and Scott C. Macintyre on 12/22/04.
4. Shirley S. Fujimoto, Attorney for Entergy Corporation and Entergy Services, Inc. on 12/22/04.
5. Robert S. Foosaner for Nextel Communications, Inc. on 12/22/04.
6. William K. Keane for the National Association of Manufacturers and MRFAC, Inc. on 12/22/04.
7. Harold Mordkofsky, Attorney for Consolidated Edison Company of New York, Inc. on 12/22/04.
8. Gregory C. Staple, Attorney for TMI Communications and Company, Limited Partnership and Terrestar Networks Inc. on 12/22/04.
9. Christine M. Gill, Attorney for Southern LINC on 12/22/04.
10. Michael K. Kurtis, Attorney for Anderson Communications on 12/22/04.
11. William J. Donohue for Exelon Corporation on 12/22/04.
12. Charles D. Guskey on 12/22/04.
13. Robert J. Keller for James A. Kay, Jr. on 12/22/04.
14. Christopher Guttman-McCabe, Attorney for CTIA–The Wireless Association on 12/22/04.
15. Charles M. Austin for Preferred Communication Systems, Inc., and Kent S. Foster for Silver Palm Communications, Inc. on 12/22/04.

The Commission will not send a copy of this document pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because no adopted rules are attached. This document concerns the applicable dates for filing replies and oppositions to the petitions for reconsideration in the 800 MHz proceeding.

Federal Communications Commission.

Ramona Melson,

Chief of Staff, Public Safety and Critical Infrastructure Division, WTB.

[FR Doc. 05–6806 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–122; FCC 05–43]

Unlicensed Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document extends for one year the transition periods for unlicensed National Information Infrastructure (U–NII) equipment operating in the 5.250–5.350 GHz band. This action will allow devices to continue to obtain equipment authorizations and to be marketed under the rules in effect prior to the adoption of the *5 GHz U–NII Report and Order* pending the development of measurement procedures for evaluating such devices for compliance with the new rules.

DATES: Effective February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Priya Shrinivasan, 418–7005 or Karen Rackley, 418–2431, Policy and Rules Division, Office of Engineering & Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket No. 03–122, FCC 05–43, adopted February 18, 2005, and released February 23, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM*.

Summary of the Order

1. In the *5 GHz U–NII Report and Order*, 69 FR 2677, January 20, 2004, the Commission required that any product with the capability to operate in the new spectrum at the 5.470–5.725 GHz band, including equipment designed to operate in both the 5.250–5.350 GHz and 5.470–5.725 GHz bands, must meet all the rules, including the new dynamic frequency selection (DFS) and transmit power control (TPC) requirements, contained in the *5 GHz U–NII Report and Order* in accordance with the specified measurement procedures to obtain equipment certification. DFS is a feature that dynamically instructs a transmitter to switch to another channel whenever a particular condition (such as, for example, a threshold value of the prevailing ambient interference level on a channel) is met. Prior to initiating and during a transmission, a U–NII device's DFS feature would monitor the available spectrum in which it could operate for a radar signal. If a signal is detected, the channel associated with the radar signal would either be vacated and/or flagged as unavailable for use by the U–NII device. TPC can generally be defined as a mechanism that regulates a device's transmit power in response to an input signal or a condition (*e.g.*, a command signal is issued by a controller when the received signal falls below a predetermined threshold). In addition, the Commission required that products that operate only in the 5.250–5.350 GHz band also comply with these rules.

2. *Transition Period.* For devices operating in the 5.250–5.350 GHz band, the Commission provided for a transition period in order to minimize economic hardships on manufacturers. During the transition period, manufacturers are allowed to continue producing and selling existing equipment while modifying their products to meet the new requirements. TheCommission adopted a cut-off date of one year from the date of publication of the *5 GHz U–NII Report and Order* in the **Federal Register** (*i.e.*, January 20, 2005) for applications for equipment certification of products that operate only in the 5.250–5.350 GHz band (*i.e.*, equipment designed to operate in only the 5.250–5.350 GHz band could continue to obtain certification without having DFS and TPC, so long as the application for equipment certification was filed prior to the cut-off date of one year). After that time, all devices for which an initial application for equipment certification are filed for U–NII equipment operating in the 5.250–5.350 GHz band must meet the rules adopted in the *5 GHz U–NII Report and Order*. In addition, to prevent equipment without DFS and TPC requirements from being imported and marketed indefinitely, the Commission adopted a two-year cut-off date (*i.e.*, January 20, 2006) for the marketing and importation of equipment designed to operate in only the 5.250–5.350 GHz band. Finally, the Commission noted that users who obtained equipment prior to any of the cut-off dates would be able to continue to use that equipment indefinitely.

3. In the *Order*, the Commission noted that the cut-off date for applications for equipment certification of products without DFS and TPC that operate in only the 5.250–5.350 GHz band is January 20, 2005, one year from the date of publication of the *5 GHz U–NII Report and Order* in the **Federal Register**. However, the industry and the Federal Government have found the implementation of DFS to be more complex than originally envisioned and, as a result, measurement procedures for certifying U–NII devices containing DFS capabilities have not yet been finalized. Further, the Federal Government agencies will likely conduct tests to validate that the testing procedures respond as intended to protect radar systems. All parties are currently working together to reach an agreement and expect that remaining issues will be resolved shortly. The Commission's Laboratory will issue the updated measurement procedures for the certification of U–NII equipment containing DFS and TPC capabilities as soon as possible.

4. *New Transition Periods.* In order to allow sufficient time for an agreement on DFS implementation between the industry and the FederalGovernment to be reached and for equipment manufacturers to incorporate DFS into U–NII devices, the Commission extended by one year the cut-off date for applications for certification of U–NII equipment operating without DFS or TPC in the 5.250–5.350 GHz band. Therefore, effective January 20, 2006, all devices for which an initial application for equipment certification is filed for U–NII equipment operating in the 5.250–5.350 GHz band must meet the rules adopted in the *5 GHz U–NII Report and Order*. The Commission also extended by one year the two-year cut-off date for marketing and importation of equipment designed to operate in only the 5.250–5.350 GHz band. Therefore, U–NII equipment operating in the 5.250–5.350 GHz band that are imported or marketed on or after January 20, 2007 must comply with the DFS and TPC requirements adopted in the *5 GHz U–NII Report and Order*. The Commission noted that users who obtained equipment prior to any of these cut-off dates would be able to continue to use that equipment indefinitely. Finally, because the Commission's action temporarily relieves a restriction, *i.e.*, the cut-off dates for equipment authorizations and the marketing of U–NII equipment in the 5.250–5.350 GHz band, it made the *Order* effective upon release.

Ordering Clauses

5. The Congressional Review Act (CRA), was addressed in a Report and Order released by the Commission, November 18, 2003, in "*In the Matter of Revision of Parts 2 and 15 of the Commission's Rules to permit Unlicensed National Information Infrastructure (U–NII) devices in the 5 GHz band*" in this proceeding, FCC 03–287, 69 FR 2677, January 20, 2004. This *Order* does not change any rules, it only extends the transition period for unlicensed U–NII devices. Therefore, the CRA requirements have already been fulfilled for this rule.

6. Pursuant to sections 4(i), 303(f), and 303(r) of the CommunicationsAct of 1934, as amended, 47 U.S.C. 54(i), 303(f), and 303(r), and Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the *Order* is hereby adopted.

7. Section 15.37(l), 47 CFR *is modified*, effective upon release of this *Order*.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Change

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336 and 544A.

■ 2. Section 15.37 is amended by revising paragraph (l), to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(l) U–NII equipment operating in the 5.25–5.35 GHz band for which applications for certification are filed on

or after January 20, 2006 shall comply with the DFS and TPC requirements specified in § 15.407. U–NII equipment operating in the 5.25–5.35 GHz band that are imported or marketed on or after January 20, 2007 shall comply with the DFS and TPC requirements in § 15.407.

* * * * *

[FR Doc. 05–6813 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 05–48]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) grants petitions filed by Sprint Corporation (Sprint) and WorldCom, Inc. (MCI) seeking reconsideration of the Commission's March 14, 2003, Order on Reconsideration (*IP Relay Reconsideration Order*). This matter derives from the April 2002 IP Relay DeclaratoryRuling and Further Notice of Proposed Rulemaking (*IP Relay Declaratory Ruling & FNPRM*), which recognized IP Relay as a form of telecommunications relay service (TRS), authorized compensation for IP Relay providers from the Interstate TRS Fund, and waived certain mandatory minimum standards as they apply to the provision of IP Relay.

DATES: The petitions were granted as of March 9, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, CC Docket No. 98–67, FCC 05–48, adopted March 1, 2005, released March 9, 2005. The full text of the *Order on Reconsideration* and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *Order on Reconsideration* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160.To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The *Order on Reconsideration* can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*. On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & FNPRM*, CC Docket No. 98–67, FCC 02–121; published at 67 FR 39386, June 11, 2002 and 67 FR 39929, June 11, 2002, finding that IP Relay is a form of TRS and that on an interim basis the cost of providing all IP Relay calls could be compensated from the Interstate TRS Fund. On March 14, 2003, the Commission released the *IP Relay Order on Reconsideration*, CC Docket No. 98–67, FCC 03–46; published at 68 FR 18826, April 16, 2003, which granted an extension of the waivers granted in the *IP Relay Declaratory Ruling & FNPRM* for a period of five years. The Commission also granted the requested waiver of the requirement to provide one-line hearing carry over (HCO) for a period of five years. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* U.S.C. 3506(c)(4).

Synopsis

On April 14, 2003, Sprint filed a petition for "limited reconsideration" of the *IP Relay Reconsideration Order*, requesting that the Commission reconsider its decision not to make the waivers granted in the *IP Relay Reconsideration Order* retroactive, and therefore not to compensate providers of IP Relay (Sprint) during the time period in which they offered the service but may not have been complying with the then non-waived HCO and pay-per-call requirements.

Sprint makes numerous arguments in support of its petition. It argues that there is no legal bar to providing payment for services rendered before the grant of the HCO and pay-per-call waivers, distinguishing the cases cited by the Commission for the proposition that the retroactive application of waivers is not favored. Sprint asserts, for example, that the waivers it seeks are "merely to correct mistakes made by the Commission in the [*IP Relay Declaratory Ruling & FNPRM*] as of the date of that ruling." Sprint also argues that the *IP Relay Declaratory Ruling & FNPRM* was not "final" because of the pendency of the petitions for reconsideration, and that therefore the risk Sprint took was that the Commission might deny its petition for waiver of the 900 pay-per-call and HCO requirements on the merits (which, had that occurred, would have precluded it from reimbursement), but not that the Commission might grant the petition but disallow reimbursement.

Sprint also argues that "rigid adherence to all TRS requirements is inconsistent with other TRS precedent." Sprint asserts that the Commission has found in other contexts that TRS providers are eligible for compensation even if they do not meet every requirement of the Commission's rules, stating that "absolute compliance with each component of the rules may not always be necessary to fulfill the purposes of the statute and the policy objectives of the implementing rules, and that not every minor deviation would justify withholding funding from a legitimate TRS provider." In this regard, Sprint emphasizes that the Commission has recognized that HCO and pay-per-call services are infrequently used, and that therefore IP Relay providers, like Sprint, have substantially complied with the TRS mandatory minimum standards.

Sprint also contends that the Commission "cannot lawfully single out Sprint for non-payment" of compensation, asserting that the Commission's conclusion in the *IP Relay Reconsideration Order* that it is not technically feasible to provide HCO and pay-per-call services via IP Relay means that no IP Relay provider could have been providing these services in compliance with the rules during the period between the release of the April 2002 *IP Relay Declaratory Ruling & FNPRM* and the waiver grant in the

March 2003 *IP Relay Reconsideration Order*. Therefore, according to Sprint, it is improper to refuse to compensate Sprint for its provision of IP Relay when the Commission has compensated other providers during that period for providing the same service. (AT&T received compensation for its provision of IP Relay beginning in June 2002. MCI received compensation for its provision of IP Relay beginning in April 2002.) Sprint notes that there are two ways to cure this inequity: compensate Sprint for the service it provided during the period, or institute enforcement actions against other IP Relay providers to require them to return compensation received during the period. Sprint favors the first approach, which it argues is in the public interest.

On May 16, 2003, MCI filed a petition styled "Petition for Clarification and/or Reconsideration." *See* WorldCom, Inc. d/b/a MCI, *Petition for Clarification and/or Reconsideration*, filed May 16, 2003. MCI requests that the Commission reconsider its apparent decision to eliminate two-line HCO as a means of satisfying the HCO mandatory minimum standard, asserting that the HCO requirement "only made sense as two-line HCO," and clarify the meaning of the now-waived pay-per-call mandatory minimum standard and whether it was satisfied by attempting to have the pay-per-call service accept alternate billing information, *i.e.*, a billing method other than automatic billing to the caller's telephone bill. MCI also asserts that providers should be compensated for providing IP Relay service even if they did not meet the pay-per-call and HCO standards. Although MCI does not expressly support Sprint's position, it argues that absolute compliance with all mandatory minimum standards is not the standard the Commission has used, that the Commission in the past has issued retroactive waivers to promote the public interest, and that in the circumstances of this matter—including the fact that new technologies are involved—the public interest supports compensating the providers for the IP Relay services provided.

On May 22, 2003, Sprint's and MCI's petitions were placed on public notice. *See Petitions for Reconsideration of Action in Rulemaking Proceedings*, Public Notice, Report No. 2608, released May 22, 2003. Hamilton and consumer groups (filing jointly) filed comments, and both Sprint and MCI filed reply comments. Hamilton filed comments on both the April 28, 2003, and June 16, 2003 petitions. TDI, the National Association of the Deaf (NAD), SHHH, and the Deaf and Hard of Hearing Consumer Advocacy Network (collectively, the Joint Commenters) filed a joint comment on the Sprint petition on May 16, 2003. On July 1, 2003, Sprint and MCI filed reply comments. Hamilton asserts that the Commission was correct in denying retroactive compensation for the provision of IP Relay during the time period in which the service was offered but was not in compliance with the non-waived mandatory minimum standards and, further, that the providers that were compensated for such service should be required to return the compensation received. Hamilton had earlier filed comments on April 28, 2003, which were resubmitted on June 16, 2003. Hamilton states that the Commission's decision to deny retroactive compensation treats all IP Relay providers equally, and that all compensation paid to IP Relay providers prior to the *IP Relay Reconsideration Order* was improper because no IP Relay provider was capable of meeting the HCO and pay-per-call standards. Hamilton further argues that the public interest is best served by competition in the IP Relay market. It notes that it did not begin providing IP Relay until after the HCO and pay-per-call waivers were granted in the *IP Relay Reconsideration Order*, and asserts that only large IP Relay providers can provide service before a waiver is granted and gamble on retroactive compensation. Finally, Hamilton emphasizes that maintenance of the high quality of service demanded by TRS users, including IP Relay users, depends on enforcement of the mandatory minimum standards, and that allowing retroactive compensation would give IP Relay providers an incentive to ignore the TRS mandatory minimum standards and provide lower quality service. Hamilton cautions that reliance on the *Publix Show Cause Order* could lead to a "slippery slope" with the Commission authorizing compensation for ever-greater departures from the TRS mandatory minimum standards.

The Joint Commenters support Sprint's petition and request that the Commission compensate all providers of IP Relay service even if they did not provide HCO and 900 call services. They assert that "the unique circumstances of this case justify reimbursing Sprint and other similarly-situated carriers for the IP Relay services they rendered to deaf and hard-of-hearing individuals." They further assert that it would be unjust to penalize Sprint for not providing services that the Commission has found to be "technically infeasible to provide." Finally, they assert that in light of "these unique circumstances, where deaf and hard-of-hearing individuals benefited from a wider range of service alternatives and the FCC ultimately determined that it was technically infeasible to provide the minimum requirements at issues, the best way for the Commission to accomplish th[e] objective [of encouraging new services] and promote the future deployment of innovative TRS services is to grant Sprint's Petition."

In its reply, Sprint asserts that Hamilton's assertion that it would be harmed by allowing Sprint and others retroactive compensation is inaccurate because by not providing IP Relay service, Hamilton incurred no costs. Sprint also states that competitive harm would be more likely to occur if the Commission refuses to provide retroactive compensation, because potential providers of new TRS services will be deterred from beginning service until all uncertainties about standards are completely resolved. In its reply, MCI asserts that, in fact, it complied with the HCO and pay-per-call standards as articulated in the *IP Relay Declaratory Ruling and FNPRM* by providing two-line HCO and pay-per-call standards to the extent possible. MCI also states that retroactive waivers and compensation will benefit the public by compensating IP Relay providers for costs they actually incurred in providing service, and that the Commission supports reimbursement where the mandatory minimum standards have been substantially complied with. Finally, MCI denies that retroactive waivers will encourage rule violations, asserting that the circumstances that gave rise to the initiation of IP Relay service were unusual and unlikely to recur.

We conclude that, in the unique circumstances of this proceeding, Sprint is entitled to compensation for its provision of IP Relay prior to the March 2003 *IP Relay Reconsideration Order*. At the same time, we take this opportunity to again remind providers that, as a general matter, they must offer TRS services in compliance with all non-waived mandatory minimum standards to be eligible for compensation from the Interstate TRS Fund.

First, based on our review of this proceeding as a whole, we find that we cannot conclude that Sprint was in fact offering IP Relay service in violation of our rules. We recognize that the initial *IP Relay Declaratory Ruling & FNPRM* was not entirely clear in describing what providers had to do to meet the requirements to provide HCO and pay-per-call service. As MCI has noted, for example, the HCO requirement could

reasonably be read to mean that providers must provide 2-line HCO (given the reference to the "text leg" of the call and the need for appropriate customer premises equipment). Similarly, the discussion of the pay-per-call requirement expressly notes that the CA can make such a call by passing along the caller's credit card number. MCI maintains that it satisfied these two requirements in those ways. We do not find that that is an unreasonable interpretation of those requirements as they were spelled out in the *IP Relay Declaratory Ruling & FNPRM*. At the same time, however, Sprint asserted it could not meet those requirements based, as is now apparent, *on its interpretation* of what meeting those requirements entailed (*i.e.*, one-line HCO and providing 900 service by passing along the ANI of the calling party into the signaling stream). If, however, the HCO and pay-per-call requirements could be met by means other than those understood by Sprint, then Sprint may not, in fact, have been offering IP Relay in violation of the mandatory minimum standards. In other words, Sprint was offering the service in violation of the mandatory minimum standards, and therefore could have been ineligible for compensation on that basis, only if *its interpretation* of what the HCO and pay-per-call requirements entail was the *only* reasonable interpretation of those requirements as described in the *IP Relay Declaratory Ruling & FNPRM*.

Upon our review of the record in these proceeding as set forth above, we cannot conclude that Sprint's interpretation of the HCO and 900 call requirements is the only reasonable interpretation of those rules, and therefore we cannot conclude that Sprint was in fact offering IP Relay service in violation of the rules. Sprint's interpretation of those requirements as described in the *IP Relay Declaratory Ruling & FNPRM* is not necessarily correct because those requirements were not made sufficiently clear, and therefore that we cannot conclude that its assertions that it was offering the service in violation of our rules is necessarily true. In this regard, we note that we recently granted Sprint's petition on 711 access to pay-per-call services, stating that we "do not require that pay-per-calling be available through TRS in any particular manner or via a particular technology." We further stated that "Sprint's solution provides pay-per-call functionality to TRS users, and * * * there can be multiple ways to provide this particular functionality." Therefore, in the absence of a specific directive on how a particular functionality must be offered, we cannot conclude that a provider is violating a service requirement simply because that functionality is offered one way rather than another.

Second, as a matter of equity, the fact that all parties agree that it was not technologically feasible to provide one-line HCO and 900 service as understood by Sprint, and that for this reason the Commission ultimately waived those requirements in the *IP Relay Reconsideration Order*, supports the conclusion that Sprint should not be penalized for not offering these services in the manner it described (*i.e.*, for not doing what no one could do) prior to the *IP Relay Reconsideration Order*. We believe that it would be unfair to penalize Sprint for either its candor in acknowledging that these requirements could not be met (as it understood them), or for a mistaken belief as to what these services entailed, particularly when the discussion of these features in the initial *IP Relay Declaratory Ruling & FNPRM* is ambiguous. Further, it is implicit in the *IP Relay Reconsideration Order* that these requirements should have been waived in the initial *IP Relay Declaratory Ruling & FNPRM*.

Third, upon our complete review of the record, we believe our conclusion best comports with the public interest. Sprint provided the IP Relay service for which it now seeks compensation, and had it not handled those calls, the calls would have been handled either by other IP Relay providers or as traditional TRS calls. Further, Sprint began offering IP Relay service when it was a new service, involving, for relay, new technology that providers and consumers desired to have available as soon as possible. Consumers place great emphasis on having access to the latest TRS innovations as soon as they are technologically available in the market. For example, in response to the *2002 IP Relay Public Notice* seeking comment on MCI's petition seeking clarification that IP Relay is a form of TRS compensable from the Interstate TRS Fund, the Commission received numerous comments from individuals urging the Commission to expeditiously recognize IP Relay as a form of TRS so that the new service would quickly be available to consumers. *See IP Relay Declaratory Ruling & FNPRM* at paragraph 6, note 12. The fact that the *IP Relay Declaratory Ruling & FNPRM* waived many of the mandatory minimum standards for this service shows that as new technologies develop and are applied to relay, it is not always easy to fit them into the pre-existing regulatory regime, especially a regime developed when relay calls were made entirely over the PSTN. Therefore, there may be more uncertainty as to what pre-existing requirements mean when applied to new technology. In addition, Sprint repeatedly told the Commission that it could not, in its view, offer HCO and 900 services, and repeatedly asked that we promptly waive these requirements (and compensate it for its ongoing service). Therefore, this is not a case where a provider was "caught" violating longstanding rules (indeed, as we have noted, we have not concluded that Sprint was violating the rules at all). Finally, as MCI has noted, it is unlikely that the set of circumstances that led the Commission to first deny the waivers, then to grant them upon reconsideration, and now to have to determine what the Commission initially intended in requiring those services, will occur again.

Further, although we are not unmindful that Hamilton has likely suffered some disadvantage from its decision to delay offering the service until the HCO and pay-per-call issues were resolved, Sprint and other providers that offered IP Relay during this period did incur real costs in doing so. For example, money was paid out for the salaries of CAs and managers, for the equipment necessary to provide the service, and for other ancillary costs related to providing service. Further, any harm Hamilton might have suffered from not offering the service is not dependent on whether Sprint (and the other providers) may be compensated for the service they offered, but from the fact that they offered it at all and therefore were first to the market.

Finally, as the parties have noted, we recognize that in the context of an enforcement action against a TRS provider and in determining whether the provider complied with the standards of § 64.604 and therefore was entitled to compensation from the fund, we stated that "absolute compliance with each component of the rules may not always be necessary to fulfill the purposes of the statute * * *, and that not every minor deviation would justify withholding funding from a legitimate TRS provider." We also stated that "a TRS provider is eligible for TRS Fund reimbursement if it has substantially complied with § 64.604." We need not address, however, whether Sprint is entitled to compensation under that standard because we have concluded that Sprint did not offer the service in violation of the rules given their initial ambiguity. At the same time, we do note that the number of HCO and 900 calls handled by the providers at that time

was *de minimis* and that, as is now apparent, *no provider* could offer HCO and pay-per-call service as understood by Sprint.

Although we conclude that, in view of the unusual circumstances of this matter, payment to Sprint is warranted for the IP Relay service it provided, we caution all TRS providers, current and potential, that we expect them to offer service in compliance with all non-waived mandatory minimum standards. It bears repeating that TRS is an accommodation for persons with disabilities. As such, TRS providers are required to offer service that is functionally equivalent to voice telephone service, as defined by all non-waived mandatory minimum standards applicable to the particular form of TRS. It is therefore the consumers of TRS who suffer when the service is not provided consistent with our rules. We will remain vigilant in ensuring that providers do not offer service that short-changes the intended beneficiaries of these services. To that end, the leverage that we have is to deny compensation from the Interstate TRS Fund for the provision of service that is not in compliance with our rules. This *Order on Reconsideration*, therefore, should not be read to suggest that common carriers and others can provide regulated services in contravention of our rules, with the hope that they nevertheless will eventually be rewarded for providing service. We view the circumstances of this case to be unique, and trust that this will prove to be the case.

For the reasons set forth above, we grant Sprint's *Petition for Limited Reconsideration* and MCI's *Petition for Clarification and/or Reconsideration* to the extent they seek that Sprint be compensated for its provision of IP Relay prior to the release of the March 14, 2003, *IP Relay Reconsideration Order*. As a result, IP Relay providers who provided service between the date of the *IP Relay Declaratory Ruling & FNPRM*, released April 22, 2002, and the date of the *IP Relay Reconsideration Order*, released March 14, 2003, are entitled to receive compensation for the IP Relay service they provided during that period notwithstanding whether, or how, they offered HCO and pay-per-call 900 services.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), (the RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law Number 104–121, 110 Statute 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA)), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 605(b). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

The Commission concludes in this item that public interest is best served by compensating Sprint for its provision of IP Relay services prior to the March 2003 *IP Relay Reconsideration Order* that waived the HCO and pay-per-call requirements for IP Relay service. The Commission believes that it would be unfair to penalize Sprint and withhold compensation for the following reasons: (1) Sprint had a mistaken belief as to what constituted satisfaction of the HCO and pay-per-call requirements which may have been fostered by a discussion of the requirements in the initial *IP Relay Declaratory Ruling & FNPRM* that can be read to be ambiguous; (2) the *IP Relay Reconsideration Order* demonstrates that HCO and pay-per-call requirements should have been waived at the onset; (3) *no IP Relay provider* could offer HCO and pay-per-call services as understood by Sprint; and (4) Sprint acknowledged and repeatedly notified the Commission that based upon their interpretation of the mandatory minimum standards for TRS calls they could not meet the requirements for the provision of HCO and pay-per-call IP Relay calls.

This item affects IP Relay providers, but imposes no regulatory burden upon them. Currently, only four entities are providing IP Relay: AT&T, Hamilton, MCI, and Sprint. Moreover, this item imposes no significant economic impact on small entities, but in fact confers a benefit rather than an adverse impact on small entities by compensating an entity that provided a nascent service in good faith. Even if the compensation to Sprint could be hypothetically construed as a significant economic impact, the fact that only four entities provide the service, and that only one company is receiving compensation, means that no "substantial number of small entities" is affected.

Therefore, certification is in order since both prongs of the legal test—*i.e.*, (a) no significant economic impact; and (b) no impact upon a substantial number of small entities—are satisfied. The entity affected by the item is not a small entity; and if the entity were small, there is no significant economic impact since the result of the Order is a benefit. Finally, if the economic impact were to hypothetically be construed as a significant economic impact, there are not a substantial number of small entities affected by this *Order on Reconsideration*. Accordingly, the Commission certifies that the requirements of this *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

Report to Congress

The Commission will send a copy of this *Order on Reconsideration*, including a copy of this final certification, in a report to Congress and the General Accounting Office pursuant to the Congressional Review Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Order on Reconsideration* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Ordering Clauses

Pursuant to the authority contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, that this *Order on Reconsideration* IS ADOPTED.

The *Petition for Limited Reconsideration* filed by Sprint IS GRANTED to the extent indicated herein.

The *Petition for Clarification and/or Reconsideration* filed by MCI IS GRANTED to the extent indicated herein.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order on Reconsideration*, including a copy of this final certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6814 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67 and CG Docket No. 03–123; FCC 04–137; DA 05–728]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) approved for three years the information collection requirements contained in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, (*Order*).

DATES: 47 CFR 64.604(a)(4) published at 69 FR 53346, September 1, 2004 is effective April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2247 (voice), (202) 418–7898 (TTY); e-mail: *Dana.Jackson@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 05–728, released March 29, 2005, announcing OMB approval for three years the information collection requirements contained in the *Order*; published at 69 FR 53346, September 1, 2004. The information collections were approved by OMB on March 11, 2005. OMB Control Number 3060–1043. The Commission publishes this notice of the effective date of the rules. If you have any comments on these burden estimates, or how we can improve the collection(s) and reduce the burden(s) they cause you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number 3060–1043, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collection via the Internet, if you send them to *Leslie.Smith@fcc.gov* or call (202) 418–0217.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The notice can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Synopsis

As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507), the FCC is notifying the public that it received approval from OMB on March 11, 2005, for the collection(s) of information contained in the Commission's annual reporting requirements in 47 CFR 64.604(a)(4). The OMB Control Number is 3060–1043. The annual reporting burden for the collection(s) of information, including the time for gathering and maintaining the collection of information, is estimated to be: 7 respondents, and average of 10 hours per response per annum, for a total hour burden of 70 hours, and no annual cost. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB Control Number. The OMB Control Number is 3060–1043.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

List of Subjects in 47 CFR Part 64

Telecommunications, Individuals with disabilities, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6811 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–686, MB Docket No. 03–144, RM–10733, RM–10788, RM–10789]

Radio Broadcasting Services; Breckenridge, Crawford, Eagle, Fort Morgan, Greenwood Village, and Gunnison, CO, Laramie, WY, Loveland, Olathe and Strasburg, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document grants the Petition for Reconsideration filed by Dana J. Puopolo directed to the *Report and Order* in this proceeding by allotting Channel 299C3 at Gunnison, Colorado, as its fourth local service. *See* 69 FR 58840, published October 1, 2004. Channel 299C3 can be allotted to Gunnison, consistent with the minimum distance separation requirements of the Commission's rules provided there is a site restriction of 19.5 kilometers (12.1 miles) northeast at coordinates 38–40–48 NL and 106–46–48 WL. This site restriction will ensure full-spacing to the license site of Station KBKL on Channel 300C at Grand Junction, Colorado. This document also allots Channel 274C3 in lieu of Channel 272C2 at Crawford, as its first local service. Channel 274C3 can be allotted to Crawford in compliance with the minimum distance separation requirements of the Commission's rules provided there is a site restriction of 19.5 kilometers (12.1 miles) northeast at coordinates 38–38–09 NL and 107–34–43 WL. As a result, the Station KVLE(FM) Channel 299A substitution at Gunnison and the site relocation for vacant Channel 270C2 at Olathe is no longer necessary. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective May 2, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 03–144 adopted March 14, 2005, and released March 16, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The

complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of the *Memorandum Opinion and Order* in this proceeding in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

This document also grants the Petition for Reconsideration filed by KAGM, LLC, licensee of Station KAGM(FM), Channel 272A, Strasburg,Colorado, On-Air Family, LLC, licensee of Station KBRU–FM, Channel 268C,Fort Morgan, Colorado, Regent Broadcasting of Ft. Collins, Inc., licensee of Station KTRR(FM), Channel 273C2, Loveland, Colorado, NRC Broadcasting,Inc., licensee of Station KSMT(FM), Channel 272A, Breckenridge, Colorado and Station KTUN(FM), Channel 269C1, Eagle, Colorado, and AGM–Nevada,LLC, licensee of Station KARS–FM, Channel 275C1, Laramie, Wyoming by reallotting Channel 272A from Strasburg to Greenwood Village, Colorado, as its first local service, and modifying the license of Station KAGM(FM). Channel 272A can be allotted to Greenwood Village consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 12.5 kilometers (7.7 miles) east of the community. The reference coordinates for Channel 272A at Greenwood Village are 39–37–32 North Latitude and 104–47–47 West Longitude. To ensure continued operational local service at Strasburg, we reallot Channel 268C from Fort Morgan to Strasburg, Colorado, as its first local operational service, and modify the license of Station KBRU–FM to reflect this change. Fort Morgan will continue to receive local service from full-time AM Station KFTM. Channel 268C can be allotted to Strasburg consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 41.9 kilometers (26 miles) east of the community. The reference coordinates for Channel 268C at Strasburg are 39–51–39 North Latitude and 103–51–44 West Longitude. To accommodate the Greenwood Village reallotment, we modify the transmitter sites for Stations KSMT(FM), Channel 272A, Breckenridge, Colorado and Station KTRR(FM), Channel 237C3, Loveland, Colorado. The transmitter site for Station KSMT(FM), Channel 272A, Breckenridge, Colorado can be modified consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 8.4 kilometers (5.2 miles) southwest of the community. The modified license coordinates for Channel 272A at Breckenridge are 39–25–52 North Latitude and 106–06–17 West Longitude. The transmitter site for Station KTRR(FM), Channel 273C2, Loveland, Colorado also can be modified consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 26.1 kilometers (16.2 miles) northeast of the community. The modified license coordinates for Channel 273C2 at Loveland are 40–34–33 North Latitude and 104–52–22 West Longitude. To facilitate Station KSMT(FM) relocation, we modify the license site for Station KTUN(FM), Eagle, Colorado because the requested Channel 269C1 substitution was granted by minor change application. The transmitter site for Station KTUN(FM), Channel 269C1, Eagle, Colorado can be modified consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 12.8 kilometers (7.9 miles) northwest of the community. The modified license coordinates for Channel 269C1 at Eagle are 39–45–15 North Latitude and 106–54–13 West Longitude. Moreover, because the requested Channel 275C1 downgrade at Laramie was also granted by minor change application, we modify the licensed site for Station KARS–FM, Laramie, Wyoming to accommodate Station KTRR–FM relocation. The transmitter site for Station KARS–FM, Channel 275C1, Laramie, Wyoming also can be modified consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 47 kilometers (29.2 miles) south of the community. The modified license coordinates for Channel 275C1 at Laramie are 40–53–55 North Latitude and 105–42–31 West.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 272C2 and adding Channel 274C3 at Crawford, removing Fort Morgan, Channel 268C, adding Greenwood Village, Channel 272A, and by removing Channel 299A and adding Channel 272A and Channel 299C3 at Gunnison, removing Channel 272A and adding Channel 268C at Strasburg.

■ 3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 267C and adding Channel 267C0 at Bridgeport.

■ 4. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 275C and adding Channel 275C1 at Laramie.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–6694 Filed 4–4–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 12)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2005 Update

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Board adopts its 2005 User Fee Update and revises its fee schedule to recover the costs associated with the January 2005 Government salary increases and to reflect changes in overhead costs to the Board.

DATES: *Effective Date:* These rules are effective May 6, 2005.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan. (202) 565–1727. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3 require that the Board's user fee schedule be updated annually. The regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d).

Because Board employees received a salary increase of 3.71% in January 2005, the Board is updating its user fees to recover the increased personnel costs.

With certain exceptions, all fees, including those adopted or amended in *Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services—2002 New Fees*, STB Ex Parte No. 542 (Sub-No. 4) (STB served Mar. 29, 2004) will be updated based on the cost formula contained in 49 CFR 1002.3(d). In addition, changes to the overhead costs borne by the Board are reflected in the revised fee schedule.

The fee increases adopted here result from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update*, 4 I.C.C.2d 137 (1987). No new fees are being proposed in this proceeding. Therefore, the Board finds that notice and comment are unnecessary for this proceeding. *See Regulations Governing Fees For Services—1990 Update*, 7 I.C.C.2d 3 (1990); *Regulations Governing Fees For Services—1991 Update*, 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services—1993 Update*, 9 I.C.C.2d 855 (1993).

The Board concludes that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at *http://www.stb.dot.gov* or call the Board's Information Officer at (202) 565–1500. To purchase a copy of the decision, write to, call, e-mail, or pick up in person from ASAP Document Solutions, 9332 Annapolis Road, Suite 103 Lanham, Maryland 20706, (301) 306–4004, *asapdc@verizon.net*. [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877–8339.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: March 31, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. Section 1002.1 is amended by revising paragraphs (b), (c) and (f)(1); and the table in paragraph (g)(6) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $34.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $24.00 per hour.

* * * * *

(f) * * *

(1) A fee of $60.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(g) * * *

(6) * * *

Grade	Rate
GS–1	$10.08
GS–2	10.98
GS–3	12.37
GS–4	13.89
GS–5	15.54
GS–6	17.32
GS–7	19.25
GS–8	21.32
GS–9	23.55
GS–10	25.93
GS–11	28.49
GS–12	34.15
GS–13	40.61
GS–14	47.99
GS–15 and over	56.45

* * * * *

■ 2. In § 1002.2, paragraph (f) is revised as follows:

§ 1002.2 Filing fees.

(a) * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$3,600.
(2) (i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$1,700.
(ii) A petition for exemption under 49 U.S.C. 13541(other than a rulemaking) filed by a non-rail carriernot otherwise covered.	$2,600.
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	$2,200.
(3) An application for approval of a non-rail rate association agreement 49 U.S.C. 13703	$22,500.
(4) An application for approval of an amendment to a non- rail rate association agreement:	
(i) Significant amendment	$3,700.
(ii) Minor amendment	$80.
(5) An application for temporary authority to operate a motor carrier of passengers 49 U.S.C. 14303(i)	$400.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	$1,400.
(7)–(10) [Reserved]	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad 49 U.S.C. 10901.	$5,900.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	$1,500.
(iii) Petition for exemption under 49 U.S.C. 10502	$10,200.
(12) (i) An application involving the construction of a rail line	$60,800.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	$1,500.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	$60,80.0

Type of proceeding	Fee
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d).	$200.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii).	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	$5,100.
(ii) Notice of exemption under 49 CFR 1150.41—1150.45	$1,500.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$5,400.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24.	$1,400.
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	$18,100.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$3,000.
(iii) A petition for exemption under 49 U.S.C. 10502	$5,200.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act..	$350.
(23) Abandonments filed by bankrupt railroads	$1,500.
(24) A request for waiver of filing requirements for abandonment application proceedings	$1,400.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$1,200.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned.	$18,400.
(27) (i) A request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	$200.
(ii) A request to extend the period to negotiate a trail use agreement	$350.
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$15,400.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$8,300.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$1,216,900.
(ii) Significant transaction	$243,400.
(iii) Minor transaction	$6,300.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,400.
(v) Responsive application	$6,300.
(vi) Petition for exemption under 49 U.S.C. 10502	$7,600.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$4,500.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,216,900.
(ii) Significant transaction	$243,400.
(iii) Minor transaction	$6,300.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$1,100.
(v) Responsive application	$6,300.
(vi) Petition for exemption under 49 U.S.C. 10502	$7,600.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 118.02(a).	$4,500.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$1,216,900.
(ii) Significant transaction	$243,400.
(iii) Minor transaction	$6,300.
(iv) Notice of an exempt transaction under 49 CFR 118.02(d)	$1,000.
(v) Responsive application	$6,300.
(vi) Petition for exemption under 49 U.S.C. 10502	$7,600.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 118.02(a).	$4,500.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,216,900.
(ii) Significant transaction	$243,400.
(iii) Minor transaction	$6,300.
(iv) Notice of an exempt transaction under 49 CFR 118.02(d)	$1,100.
(v) Responsive application	$6,300.
(vi) Petition for exemption under 49 U.S.C. 10502	$5,400.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 118.02(a).	$4,500.

Type of proceeding	Fee
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 118.02(d)(5)	$2,000.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$56,900.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$10,500.
(ii) Minor amendment	$80.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$600.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$6,500.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$200.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$200.
(49)–(55) [Reserved]	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	$102,000.
(ii) A formal complaint involving rail maximum rates filed under the small rate case procedures	$150.
(iii) All other formal complaints (except competitive access complaints)	$10,100.
(iv) Competitive access complaints	$150.
(v) A request for an order compelling a rail carrier to establish a common carrier rate	$200.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	$7,200.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$5,700.
(60) Labor arbitration proceedings	$200.
(61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$200.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings.	$300.
(62) Motor carrier undercharge proceedings	$200.
(63) (i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.	$200.
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacies.	$200.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).	$450.
(65)–(75) [Reserved]	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$1,000.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements.	$100.
(78) The filing of tariffs, including supplements, or contract summaries	$1 per page. ($20 minimum charge.)
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	$50.
(ii) Applications involving over $25,000	$100.
(80) Informal complaint about rail rate applications	$450.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$50.
(ii) Petitions involving over $25,000	$100.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$200.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c).	$33 per document.
(84) Informal opinions about rate applications (all modes)	$200.
(85) A railroad accounting interpretation	$900.
(86) (i) A request for an informal opinion not otherwise covered	$1,200.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).	$4,100.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.	$400.
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(iii) Third Party Complaint	$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	$150.
(88) Basic fee for STB adjudicatory services not otherwise covered	$200.

Type of proceeding	Fee
(89)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC agent	$26 per delivery.
(97) Request for service or pleading list for proceedings	$19 per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that:	
(i) Does not require a Federal Register notice:	
(a) Set cost portion	$100.
(b) Sliding cost portion	$38 per party.
(ii) Does require a Federal Register notice:.	
(a) Set cost portion	$350.
(b) Sliding cost portion	$38 per party.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	$150.
(ii) Practitioners' Exam Information Package	$25.
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	$50.
(ii) Updated URCS PC version Phase III cost file—per year	$25 per year.
(iii) Public requests for *Source Codes* to the PC version URCS Phase III	$100.
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—per year	$250 per year.
(ii) Waybill—Surface Transportation Board or State proceedings on R–CD—per year	$500 per year.
(iii) User Guide for latest available Carload Waybill Sample	$50.
(iv) Specialized programming for Waybill requests to the Board	$90 per hour.

* * * * *

[FR Doc. 05–6817 Filed 4–5–05; 8:45 am]

BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 70, No. 65
Wednesday, April 6, 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 39

[Docket No. FAA–2005–20867; Directorate Identifier 2004–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Airplanes)

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A300–600 airplanes. This proposed AD would require an inspection for evidence of chafing between the hydraulic flexible hose and the ram air turbine (RAT) hub, and related investigative and corrective actions if necessary. This proposed AD is prompted by reports of holes in the RAT hub cover. We are proposing this AD to prevent a hole in the RAT hub cover. A hole in the RAT hub cover could allow water to enter the RAT governing mechanism, freeze during flight, and jam the governing mechanism. In addition, the metal particles that result from chafing between the hydraulic flexible hose and the RAT could mix with the lubricant grease and degrade the governing mechanism. In an emergency, a jammed or degraded RAT could result in its failure to deploy, loss of hydraulic pressure or electrical power to the airplane, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20867; the directorate identifier for this docket is 2004–NM–188–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20867; Directorate Identifier 2004–NM–188–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 airplanes). The DGAC advises that, during a maintenance inspection, an operator discovered a hole in the ram air turbine (RAT) hub. Investigation revealed that the hole resulted from chafing between the hydraulic flexible hose and RAT hub cover. Further investigation revealed that a similar finding had been reported during airplane production. The subsequent investigation revealed that, when the flexible hoses for the hydraulic system were installed, the binding had not been performed correctly. Due to the incorrect installation of the binding, a hose chafed the RAT hub and eventually wore a hole into the hub cover. A hole in the RAT hub cover could allow water to enter the RAT governing mechanism, freeze during flight, and jam the governing mechanism. In addition, the metal particles that result from chafing

between the hydraulic flexible hose and the RAT could mix with the lubricant grease and degrade the governing mechanism. In an emergency, a jammed or degraded RAT could result in failure of RAT deployment, loss of hydraulic pressure or electrical power to the airplane, and consequent reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A300–29–6054, Revision 01, including Appendix 01, dated November 4, 2004. The service bulletin describes procedures for doing a one-time detailed visual inspection for evidence of chafing between the hydraulic flexible hose and the RAT hub, and related investigative and corrective actions. The related investigative and corrective actions include:

- If any damage is found on the RAT hub, referencing the Airbus A300–600 Component Maintenance Manual (CMM) to determine if the damage is within the limits specified in the CMM.
- Replacing the RAT if any damage exceeds the limits specified in the CMM.
- Replacing a damaged hose.
- If no damage is found on the RAT hub, measuring the clearance between the hydraulic flexible hose and the RAT hub.
- If the clearance between the hydraulic flexible hose and the RAT hub is insufficient, and the hose is not damaged, reworking the binding of the hose.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–133, dated August 4, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Among the Proposed AD, French Airworthiness Directive, and Service Bulletin."

Difference Among the Proposed AD, French Airworthiness Directive, and Service Bulletin

Operators should note that, although the parallel French airworthiness directive and service bulletin include a requirement to submit inspection results to the airplane manufacturer, this proposed AD would not require that action. Furthermore, where the service bulletin specifies to return damaged RATs to the vendor or a repair station, this proposed AD would not require that action.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the Airbus service bulletin is referred to as a "detailed inspection." We have included the definition for a detailed inspection in a note in this proposed AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	None required	$65	12	$780
Rework binding	1	65	None required	65	12	780

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–20867; Directorate Identifier 2004–NM–188–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 airplanes); certificated in any category; having serial numbers 0812, 0813, 0815 through 0818 inclusive, 0821 through 0828 inclusive, and 0836 through 0838 inclusive.

Unsafe Condition

(d) This AD was prompted by reports of holes in the ram air turbine (RAT) hub. We are issuing this AD to prevent a hole in the RAT hub cover. A hole in the RAT hub cover could allow water to enter the RAT governing mechanism, freeze during flight, and jam the governing mechanism. In addition, the metal particles that result from chafing between the hydraulic flexible hose and the RAT could mix with the lubricant grease and degrade the governing mechanism. In an emergency, a jammed or degraded RAT could result in failure of RAT deployment, loss of hydraulic pressure or electrical power to the airplane, and consequent reduced controllability of the airplane.

Compliance

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

Inspection and Related Investigative/ Corrective Actions

(f) Within 2,500 flight hours after the effective date of this AD: Do a one-time detailed inspection for evidence of chafing between the hydraulic flexible hose and the RAT hub, and any applicable related investigative and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–29–6054, Revision 01, excluding Appendix 01, dated November 4, 2004. Any applicable corrective actions must be accomplished before further flight. Although the service bulletin specifies to submit certain information to the manufacturer, and to submit damaged RAMs to the vendor or a repair station, this AD does not include those requirements.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Actions Accomplished Previously

(g) Actions accomplished before the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–29–6054, excluding Appendix 01, dated June 8, 2004, are acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive F–2004–133, dated August 4, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6758 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20870; Directorate Identifier 2004–NM–180–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposed AD would require repetitive inspections for damage of the drive rod assembly of the aileron tab on each aileron actuator; repetitive measurements of the clearance between the aileron hydraulic lines and the drive rod; and related investigative and corrective actions if necessary. This proposed AD is prompted by a report of an aileron 2 fault caused by severe wear of the polyamide washer that is part of an anti-rotation bush assembly in the aileron attachment lug. We are proposing this AD to prevent excessive wear of the polyamide washer of the aileron actuator bush assembly, which could result in aileron flutter and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

For service information identified in this proposed AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20870; the directorate identifier for this docket is 2004–NM–180–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20870; Directorate Identifier 2004–NM–180–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. The CAA–NL advises that a Fokker Model F.28 0100 series airplane had an aileron 2 fault. Subsequent investigation showed severe wear of the polyamide washer that is used as part of an anti-rotation bush assembly in the aileron attachment lug. The worn washer allowed the aileron actuator to rotate inboard and caused the hydraulic unions at the actuator body to chafe through the drive rod of the aileron tab. This condition, if not corrected, could result in aileron flutter and loss of control of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–27–083, dated October 20, 2003. The service bulletin describes procedures for a one-time inspection for chafing damage of the drive rod of the aileron tab. If the drive rod shows chafing damage, the service bulletin gives procedures for corrective actions. The corrective actions include reworking the drive rod to determine the depth of the chafing damage and the straightness of the drive rod; and replacing the drive rod with a new or serviceable rod if necessary:

- For damage of less than or equal to .2 mm, no further action is required.
- For damage of greater than .2 mm but less than .5 mm, replace the drive rod within 4,000 flight hours after the inspection.
- For damage of greater than or equal to .5 mm but less than .8 mm, replace the drive rod within 500 flight hours after the inspection.
- For damage of .8 mm or greater, replace the drive rod before further flight.

The service bulletin also describes procedures for a one-time measurement for clearance between the aileron tab drive rod and the hydraulic lines of the aileron actuator. If the clearance is 4 mm or greater, the service bulletin states that no further action is required. If the clearance is less than 4 mm, the service bulletin gives procedures for one of two corrective actions: Replacing the polyamide washer with a new washer, or replacing the complete bush assembly with a new bush assembly.

After the polyamide washer or bush assembly is replaced, the service bulletin gives procedures for the related investigative action of re-measuring the clearance between the aileron tab drive rod and the aileron actuator hydraulic line. If the measurement is 4 mm or greater, the service bulletin states that no further action is required. If the measurement is less than 4 mm, the corrective action is replacing the aileron actuator with a serviceable aileron at an applicable interval, depending on the clearance:

- For clearance of 1 mm or less, replace the actuator before further flight.
- For clearance more than 1 mm, but 2 mm or less, replace the actuator within 500 flight hours after the measurement.
- For clearance of more than 2 mm to less than 4 mm, replace the actuator within 1,000 flight hours after the measurement.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive 2003–141, dated November 28, 2003, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

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

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

Clarification of Inspection Type

The service bulletin and the Dutch airworthiness directive do not specify the type of inspection to perform; we refer to the inspection as a "detailed" inspection. Note 1 of this proposed AD defines a detailed inspection.

Difference Between the Proposed AD and the Dutch Airworthiness Directive

The Dutch airworthiness directive does not include intervals for repeating the inspections of the drive rod assembly of the aileron tab, and the measurement of the clearance between the hydraulic line and the aileron tab drive rod. Instead, the Dutch airworthiness directive states that the repetitive intervals will be introduced separately in updates of the Fokker 70/100 Maintenance Review Board (MRB) document and the Aircraft Maintenance Manual (AMM). The CAA–NL requires operators in The Netherlands to use the information, including repetitive intervals, in the latest revision of the MRB and the AMM. However, since the MRB and AMM are not mandatory in the U.S., this proposed AD would mandate that operators repeat the inspections and measurement at intervals not to exceed 4,000 flight hours. We have determined that this repetitive interval would mandate the equivalent intervals specified in the MRB and AMM, and would address the unsafe condition in the same manner.

This difference has been coordinated with the CAA–NL.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	No. of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	None	$65	2	$130, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2005–20870; Directorate Identifier 2004–NM–180–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of an aileron 2 fault caused by severe wear of the polyamide washer that is part of an anti-rotation bush assembly in the aileron attachment lug. We are issuing this AD to prevent excessive wear of the polyamide washer of the aileron actuator bush assembly, which could result in aileron flutter and loss of control of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–083, dated October 20, 2003.

Repetitive Inspections and Measurements

(g) Within 24 months or 4,000 flight hours after the effective date of this AD, whichever occurs earlier: Do the actions in paragraphs (g)(1) and (g)(2) of this AD in accordance with the service bulletin. Repeat the actions thereafter at intervals not to exceed 4,000 flight hours.

(1) Do a detailed inspection for chafing damage of the aileron tab drive rod assembly on each aileron actuator.

(2) Measure the clearance between the hydraulic line and the aileron tab drive rod.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Corrective Action for Chafing Damage

(h) If any chafing damage that is greater than .2 mm is found during any inspection required by paragraph (g)(1) of this AD, replace the drive rod in accordance with the service bulletin, at the applicable threshold limits defined in the service bulletin.

Corrective Action for Discrepant Clearance Measurements

(i) If any clearance measurement that is outside the limits defined in the service bulletin is found during the action required by paragraph (g)(2) of this AD, do the actions in paragraphs (i)(1) and (i)(2) of this AD. Do all actions in accordance with the service bulletin at the applicable threshold limits defined in the service bulletin.

(1) Replace the polyamide washer or replace the bush assembly.

(2) Do all applicable related investigative and corrective actions after the replacement in paragraph (i)(1) of this AD, including replacing the aileron actuator with a serviceable aileron actuator as applicable.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in

accordance with the procedures found in 14 CFR 39.19.

Related Information

(k) Dutch airworthiness directive 2003–141, dated November 28, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on March 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6759 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20871; Directorate Identifier 2004–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposed AD would require a detailed inspection to determine the presence of incorrectly installed bushings in the attachment holes of the reinforcing strap of the left- and right-hand wings' lower skin, and corrective actions if necessary. This proposed AD is prompted by a report that bushings were installed in accordance with improper procedures in the structural repair manual. We are proposing this AD to detect and correct improperly installed bushings, which could result in reduced tensile strength of the reinforcing strap of the wing's lower skin, and consequently a reduction of the structural capability of the wing and possible wing failure.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

For service information identified in this proposed AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20871; the directorate identifier for this docket is 2004–NM–212–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20871; Directorate Identifier 2004–NM–212–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The CAA–NL advises that an operator found worn attachment holes in the reinforcing strap of a wing's lower skin at wing station (WS) 2635. Subsequent investigation found that the repair bushings were improperly installed (with the bushings running completely through the wing skin and reinforcing strap) in a number of holes during the accomplishment of (optional) Fokker Service Bulletin F28/57–77. That service bulletin refers to the Structural Repair Manual (SRM) chapter 57–02–02, repair No. 3, for restoration of close tolerance holes by oversizing the holes or by installing bushings. The SRM has been updated and Fokker has issued Manual Change Notification—Maintenance F28–027 to correct the flawed SRM procedure. Although a joint with improperly installed bushings may still have adequate shear strength, its tensile strength is considerably reduced. For this reason, the applied repair is considered to be inadequate. Improperly installed bushings, if not detected and corrected, could result in reduced tensile strength of the reinforcing strap of the wing's lower skin, and consequently a reduction of the structural capability of the wing and possible wing failure.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F28/57–93, dated December 22, 2003. The service bulletin describes procedures for an inspection to determine the presence of incorrectly installed bushings in the attachment holes of the reinforcing strap of the left- and right-hand wings' lower skin at WS 2635, and the repair of bushings, if necessary.

Fokker Services B.V. has issued Fokker Service Bulletin F28/57–96, dated December 22, 2003. The service bulletin describes procedures for corrective action if the inspection reveals the presence of incorrectly installed bushings. The corrective action includes replacement of the reinforcing straps of the left- and right-hand wings' lower skin at WS 2635 with new reinforcing straps.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive 2004–021, dated February 27, 2004, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Differences Between the Proposed AD and the Dutch Airworthiness Directive

Unlike the compliance times mandated in the Dutch airworthiness directive, this proposed AD would not permit further flight after incorrectly installed bushings or loose bolts in the attachment holes of the reinforcing strap are detected. This proposed AD would require corrective action before further flight. We find that, to achieve an adequate level of safety for the affected fleet, the corrective actions must be completed prior to further flight. Thus, we adjusted the compliance time for the corrective action, extending the initial inspection compliance time from the earlier of 6 months or 1,500 flight cycles after the effective date of the AD, as specified in the Dutch airworthiness directive, to the earlier of 12 months or 3,000 flight cycles after the effective date of the AD, as specified in this proposed AD. These differences have been coordinated with the CAA–NL.

Clarification of Inspection Terminology

In this proposed AD, the "inspection'" specified in the Fokker service bulletins is referred to as a "detailed inspection." We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	8	$65	$0	$520	12	6,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2005–20871; Directorate Identifier 2004–NM–212–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that bushings were installed in accordance with improper procedures in the structural repair manual. We are issuing this AD to detect and correct improperly installed bushings which could result in reduced tensile strength of the reinforcing strap of the wing's lower skin, and consequently a reduction of the structural capability of the wing and possible wing failure.

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 and Corrective Actions

(f) Within 12 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, do a detailed inspection of the reinforcing strap of the left- and right-hand wings' lower skin at WS 2635 for improperly installed bushings in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/57–93, dated December 22, 2003.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

(1) If no improperly installed bushing is found, no further action is required by this AD.

(2) If any improperly installed bushing is found, before further flight:

(i) Repair the bushing in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/57–93, dated December 22, 2003; and

(ii) Replace the reinforcing strap with a new reinforcing strap in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/57–96, dated December 22, 2003.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) Dutch airworthiness directive 2004–021, dated February 27, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6760 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20861; Directorate Identifier 2005–NM–020–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A300 B2 and B4 series airplanes. This proposed AD would require modifying the wiring of the autopilot pitch torque limiter switch. This proposed AD is prompted by several reports of pitch trim disconnect caused by insufficient length in the wiring to the pitch torque limiter lever. We are proposing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

For service information identified in this proposed AD, contact Jacques Leborgne, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax (+33) 5 61 93 36 14.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20861; the directorate identifier for this docket is 2005–NM–020–AD.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20861; Directorate Identifier 2005–NM–020–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France,

notified us that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes. The DGAC advises of several reports of pitch trim disconnect caused by insufficient length in the wiring to the pitch torque limiter lever. The DGAC also advises of possible trim loss when the flightcrew tries to override the autopilot pitch control. Possible trim loss, if not corrected, could result in uncontrolled flight of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A300–22–0117, dated September 7, 2004. The service bulletin describes procedures for modifying the wiring of the autopilot pitch torque limiter switch. For certain airplanes, modification includes installing new clamps and harnesses. For certain other airplanes, modification includes the following:

- Modifying the equipment and wiring in the left-hand electronics rack 80VU.
- Modifying the equipment and wiring in relay box 103VU.
- Modifying the wiring between the left-hand rack 80VU and relay box 103VU.
- Modifying the wiring between the rudder and the upper half of the fuselage.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–186, dated November 24, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 20 airplanes of U.S. registry. The proposed actions would take about between 8 and 11 work hours per airplane, depending on airplane configuration, at an average labor rate of $65 per work hour. Required parts would cost about $1,840 and $4,280 per airplane, depending on airplane configuration. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $47,200 and $99,900, or between $2,360 and $4,995 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–20861; Directorate Identifier 2005–NM–020–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2 and B4 series airplanes, certificated in any category; as identified in Airbus Service Bulletin A300–22–0117, dated September 7, 2004.

Unsafe Condition

(d) This AD was prompted by several reports of pitch trim disconnect caused by insufficient length in the wiring to the pitch torque limiter lever. We are issuing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

Compliance

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

Modification

(f) Within 20 months after the effective date of this AD, modify the wiring of the autopilot pitch torque limiter switch, by doing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–0117, dated September 7, 2004.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) French airworthiness directive F–2004–186, dated November 24, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 30, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6768 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20872; Directorate Identifier 2004–NM–271–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A), and 36 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A), and 36 airplanes. This proposed AD would require a one-time inspection of the center ball of the aileron control cable or cables for a defective swage, and corrective actions if necessary. This proposed AD is prompted by a report indicating that an aileron cable failed on one affected airplane when the cable underwent a tension check. We are proposing this AD to prevent severe weakening of the aileron cable, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 23, 2005.

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

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

For service information identified in this proposed AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20872; the directorate identifier for this docket is 2004–NM–271–AD.

FOR FURTHER INFORMATION CONTACT: David Hirt, 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) 946–4156; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20872; Directorate Identifier 2004–NM–271–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that an aileron cable failed on a Learjet Model 35A (C–21A) airplane when the cable underwent a tension check while being installed. Further investigation showed that an over-sized ball was swaged onto the cable during manufacture. Swaging an over-sized ball onto a cable allows excess material into the swaging die, which causes the ball to over-swage and then sever the cable strands. This condition, if not corrected, could result in severe weakening of the aileron cable, and consequent reduced controllability of the airplane.

The subject area on Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, and 36 airplanes is identical to those on the affected Model 35A (C–21A) airplane. Therefore, all these airplanes may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed the Learjet service bulletins in the following table.

LEARJET SERVICE BULLETINS

Alert service bulletin	Date	Model
A23/24/25–27–17	December 23, 2002	23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F.
A28/29–27–24	December 23, 2002	28 and 29.

LEARJET SERVICE BULLETINS—Continued

Alert service bulletin	Date	Model
A31–27–25	December 23, 2002	31 and 31A.
A35/36–27–42	December 23, 2002	35, 35A (C–21A), and 36.

These service bulletins describe procedures for visually inspecting the center ball of the aileron control cable or cables for a defective swage, which includes an extruded shoulder and/or face deformation. If the inspection shows a defective swage, the service bulletins describe procedures for, among other actions, replacing the aileron cable with a new cable. The service bulletins also request that operators send to the manufacturer all defective parts, and a report indicating compliance with the applicable service bulletin. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletins."

Differences Between the Proposed AD and the Service Bulletins

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a report showing compliance with the service bulletin and for returning any discrepant parts to the manufacturer, this proposed AD would not require those actions.

The service bulletins recommend that operators accomplish the actions "as soon as possible" within 10 flight hours after receiving the applicable service bulletin. This proposed AD would require that operators accomplish the actions within 100 flight hours, or 90 days after the effective date of the proposed AD, whichever occurs first. We find that the proposed compliance time addresses the unsafe condition soon enough to maintain an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD we considered the degree of urgency associated with addressing the unsafe condition, and the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety.

Clarification of Inspection Language

The service bulletins describe procedures for "visually inspecting" the center ball of the aileron control cable or cables. In this proposed AD we refer to this inspection as a "detailed inspection." Note 1 of this proposed AD defines this inspection.

Costs of Compliance

There are about 1,704 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 1,136 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $73,840, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet: Docket No. FAA–2005–20872; Directorate Identifier 2004–NM–271–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A), and 36 airplanes; certificated in any category; as identified in the Learjet alert service bulletins in Table 1 of this AD.

TABLE 1.—LEARJET SERVICE BULLETINS

Alert service bulletin	Date	Model
A23/24/25–27–17	December 23, 2002	23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F.
A28/29–27–24	December 23, 2002	28 and 29.
A31–27–25	December 23, 2002	31 and 31A.
A35/36–27–42	December 23, 2002	35, 35A (C–21A), and 36.

Unsafe Condition

(d) This AD was prompted by a report indicating that an aileron cable failed on one affected airplane when the cable underwent a tension check. We are issuing this AD to prevent severe weakening of the aileron cable, and consequent reduced controllability of the airplane.

Compliance

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

Inspection and Corrective Action

(f) Within 100 flight hours, or 90 days after the effective date of this AD, whichever occurs first: Do a detailed inspection of the center ball of the aileron control cable or cables for a defective swage, and before further flight replace any damaged or defective cable with a new cable. Unless otherwise specified in this AD, do all actions in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 1 of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane an aileron control cable unless it has been inspected in accordance with paragraph (f) of this AD.

No Reporting or Parts Return Requirement

(h) Although the service bulletins in Table 1 of this AD have procedures for submitting a report showing compliance with the applicable service bulletin and for returning any discrepant parts to the manufacturer, this AD does not include those requirements.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on March 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6767 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20874; Directorate Identifier 2004–NM–279–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 series airplanes. This proposed AD would require modifying the parking brake system to automatically restore the normal parking brake if the parking brake pressure decreases below a certain threshold. This proposed AD is prompted by a report of failure of the parking brake while the airplane was on the holding point of the runway before takeoff, leading to a runway departure. We are proposing this AD to ensure normal braking is available to prevent possible runway departure in the event of failure of the parking brake.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20874; the directorate identifier for this docket is 2004–NM–279–AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20874; Directorate Identifier 2004–NM–279–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the

comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that one operator reported failure of the parking brake while the airplane was on the holding point of the runway before takeoff, leading to a runway departure. The flight crew tried to stop the airplane with the brake pedals, but were unsuccessful. Additional reports were received from other operators of incidents of braking difficulty after the parking brake was selected. Analysis showed that the airplane is designed so that normal braking is inhibited when the parking brake is selected. In the case of parking brake loss, a flight crew operations manual (FCOM) procedure recommends immediately releasing the parking brake handle to restore braking through the pedals; however, excess pilot workload can preclude using that procedure. When the parking brake lever is selected to the ON position, the parking brake selector valve sends a signal to the braking and steering control unit, which inhibits the normal braking system. These conditions, if not corrected, could result in possible runway departure in the event of failure of the parking brake.

Relevant Service Information

Airbus has issued Service Bulletin A320–32–1201, Revision 01, dated May 29, 2002. The service bulletin describes procedures for modifying the parking brake system (including installing placards) to automatically restore the normal parking brake if the parking brake pressure decreases below a certain threshold. The service bulletin also describes procedures for performing operational tests after accomplishing the modification. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–137, dated November 10, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 357 airplanes of U.S. registry. The proposed modification would take about 23 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $5,600 per airplane. Based on these figures, the estimated cost of the proposed modification for U.S. operators is $2,532,915, or $7,095 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–20874; Directorate Identifier 2004–NM–279–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319, A320, and A321 series airplanes; certificated in any category; except those modified in production by Airbus Modification 30062.

Unsafe Condition

(d) This AD was prompted by a report of failure of the parking brake while the airplane was on the holding point of the runway before takeoff, leading to a runway departure. We are issuing this AD to ensure normal braking is available to prevent possible runway departure in the event of failure of the parking brake.

Compliance

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

Modification

(f) Within 52 months after the effective date of this AD: Modify the parking brake system by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–32–1201, Revision 01, dated May 29, 2002.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) French airworthiness directive F–2004–137, dated November 10, 2004, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6766 Filed 4–5–05; 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]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This proposed AD would require repetitively replacing and testing a certain relay of the passenger oxygen release system in the forward cabin. This proposed AD is prompted by reports of a failed relay of the passenger oxygen release system. We are proposing 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: We must receive comments on this proposed AD by May 23, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20873; the directorate identifier for this docket is 2005–NM–026–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:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20873; Directorate Identifier 2005–NM–026–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received two reports indicating the detection of a failed relay of the passenger oxygen release system on certain McDonnell Douglas Model 717–200 airplanes. The failures were detected after a popped circuit breaker on the electrical power center was found during inspection. Investigation revealed that the failures were caused by an out-of-phase power transfer between two 115-volt alternating current power sources. This condition, if not corrected, 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.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 717–35A0003, dated November 19, 2004. The service bulletin

describes procedures for repetitively replacing a certain relay of the passenger oxygen release system in the forward cabin with a new relay, and repetitive operational tests of that relay. The subject relay, item number R2–5152, is located in the aft electrical power center at station Y=160.000.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Interim Action

We consider this proposed 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 proposed AD would affect about 92 airplanes of U.S. registry. The proposed replacement and test would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the estimated cost of the proposed replacement and test for U.S. operators is $11,960, or $130 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 401113, 44701.

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2005–20873; Directorate Identifier 2005–NM–026–AD.

Comments Due Date

(a) The Federal Aviation Administrator (FAA) must receive comments on this AD action by May 23, 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, dated November 19, 2004.

Unsafe Condition

(d) This AD was prompted by reports of a failed reply of 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 of 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 Boeing Alert Service Bulletin 717–35A0003, dated November 19, 2004; 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.

Alternative Methods of Compliance (AMOCs)

(g) 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.

Issued in Renton, Washington, on March 30, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6765 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20860; Directorate Identifier 2005–NM–043–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400, –401, and –402 airplanes. This proposed AD would require revising the

Airworthiness Limitation section of the Instructions for Continued Airworthiness of the Dash 8 400 Series (Bombardier) Maintenance Requirements Manual to reduce the life limits of the main landing gear (MLG) orifice support tube, upper bearing, and piston plug; and to reduce the threshold for initiating repetitive detailed inspections for cracking of the engine isolator brackets. This proposed AD is prompted by the discovery of fatigue failures, during type certification fatigue testing, at the engine isolator bracket and at the orifice support tube, upper bearing, and piston plug in the shock strut assembly of the MLG, which are principal structural elements. We are proposing this AD to prevent the development of cracks in these principal structural elements, which could reduce the structural integrity of the engine installation and the MLG. Reduced structural integrity of the engine installation could result in separation of the engine from the airplane, and reduced structural integrity of the MLG could result in collapse of the MLG.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20860; the directorate identifier for this docket is 2005–NM–043–AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20860; Directorate Identifier 2005–NM–043–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–400, –401, and –402 airplanes. TCAA advises that, during type certification fatigue testing, fatigue failures were discovered at the engine isolator bracket and at the orifice support tube, upper bearing, and piston plug in the shock strut assembly of the main landing gear (MLG), which are principal structural elements. The development of cracks in these principal structural elements, if not prevented, could reduce the structural integrity of the engine installation and MLG. Reduced structural integrity of the engine installation could result in separation of the engine from the airplane, and reduced structural integrity of the MLG could result in collapse of the MLG.

Relevant Service Information

Bombardier has issued the following temporary revisions (TRs) to the Dash 8 Series 400 (Bombardier) Maintenance Requirements Manual, PSM 1–84–7:

- Dash 8 Series 400 (Bombardier) TR ALI–28, dated December 11, 2003; and
- Dash 8 Series 400 (Bombardier) TR ALI–37, dated March 30, 2004

TR ALI–28 describes procedures for reducing the life limits of the MLG orifice support tube having part number (P/N) 46117–1, upper bearing having P/N 46114–1, and piston plug having P/N 46137–1. TR ALI–37 describes procedures for incorporating certain structural inspection tasks to reduce the threshold for initiating repetitive detailed inspections for cracking of the engine isolator brackets. The TCAA mandated the TRs and issued Canadian airworthiness directive CF–2004–19, dated September 21, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require revising the Airworthiness Limitation section of the Instructions for Continued Airworthiness of the Dash 8 Series 400 (Bombardier) Maintenance Requirements Manual, PSM 1–84–7, to reduce the life limits of the MLG orifice

support tube, upper bearing, and piston plug; and to reduce the threshold for initiating repetitive detailed inspections for cracking of the engine isolator brackets. This AD would require accomplishing the actions specified in the TRs described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Costs of Compliance

There are about 93 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 21 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,365, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–20860; Directorate Identifier 2005–NM–043–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 and 4003 through 4094 inclusive.

Note 1: This AD requires revision to a certain operator maintenance document to include a new replacement time. Compliance with this replacement time is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this replacement time, the operator may not be able to accomplish the replacement described in the revision. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required replacement time that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD was prompted by the discovery of fatigue failures, during type certification fatigue testing, at the engine isolator bracket and at the orifice support tube, upper bearing, and piston plug in the shock strut assembly of the main landing gear (MLG), which are principal structural elements. We are issuing this AD to prevent the development of cracks in these principal structural elements, which could reduce the structural integrity of the engine installation and MLG. Reduced structural integrity of the engine installation could result in separation of the engine from the airplane, and reduced structural integrity of the MLG could result in collapse of the MLG.

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.

Revisions to Airworthiness Limitation (AWL) Section

(f) Within 30 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness of the Dash 8 Series 400 (Bombardier) Maintenance Requirements Manual, PSM 1–84–7, by doing the actions specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Reduce the life limits of the MLG orifice support tube having part number (P/N) 46117–1, upper bearing having P/N 46114–1, and piston plug having P/N 46137–1, by inserting a copy of the Dash 8 Series 400 (Bombardier) Temporary Revision ALI–28, dated December 11, 2003, into the AWL section. Thereafter, except as provided in paragraph (g) of this AD, no alternative life limits may be approved for the MLG orifice support tube, upper bearing, or piston plug.

(2) Incorporate structural inspection tasks 712001F102 and 712003F102 to reduce the threshold for initiating repetitive detailed inspections for cracking of the engine isolator brackets by inserting a copy of the Dash 8 Series 400 (Bombardier) Temporary Revision ALI–37, dated March 30, 2004, into the AWL section. Thereafter, except as provided in paragraph (g) of this AD, no alternative structural inspection threshold may be approved.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Canadian airworthiness directive CF–2004–19, dated September 21, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 30, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6764 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20866; Directorate Identifier 2004–NM–258–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Dornier Model 328–100 and –300 series airplanes. This proposed AD would require a pressure test and detailed inspection of each fuselage drain line to determine if there is a blockage, and related investigative/corrective actions if necessary. This proposed AD is prompted by a report of leakage at one of the drain lines in the fuselage. We are proposing this AD to prevent blockage within the drain lines, causing fluids to collect. These fluids may freeze and expand, damaging the drain lines, and allowing fuel to leak into the cabin and fuel vapors to come into contact with ignition sources, which could result in consequent fire in the cabin.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

For service information identified in this proposed AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20866; the directorate identifier for this docket is 2004–NM–258–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20866; Directorate Identifier 2004–NM–258–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified us that an unsafe condition may exist on certain Dornier Model 328–100 and –300 series airplanes. The LBA advises that, during maintenance, an operator detected leakage at one of the drain lines in the fuselage. Investigation revealed that blockages within the drain line caused the leakage. The blockages allowed fluids to collect, which froze and expanded, and damaged the drain line. A damaged drain line allows fuel to leak into the cabin and fuel vapors to come into contact with ignition sources, which could result in consequent fire in the cabin.

Relevant Service Information

Dornier has issued Service Bulletins SB–328–53–462, Revision 1, dated July 15, 2004 (for Model 328–100 series airplanes); and SB–328J–53–214, Revision 1, dated July 15, 2004 (for Model 328–300 series airplanes). The service bulletins describe procedures for performing a pressure test and detailed inspection of each fuselage drain line to determine if there is a blockage, and related investigative/corrective actions. The service bulletins specify that, if a drain line fails the initial pressure test, the detailed inspection must be done before further flight; otherwise, the inspection may be delayed until the next C-check. If a drain line fails the initial detailed inspection, the corrective actions include repairing that drain line or replacing it with a new drain line, and repeating the pressure test. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The LBA mandated the service information and issued German airworthiness directives D–2004–448 and D–2004–449, both effective October 14, 2004, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. We have examined the LBA's findings, evaluated all pertinent information, and determined that we

need to issue an AD for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Compliance Time for Detailed Inspection

Operators should note that the service bulletins specify that the detailed inspection of the drain lines for blockages can be done immediately after the initial pressure test, or at a later time, but not later than "the next scheduled C-check." The German airworthiness directives specify that the compliance time for accomplishing the detailed inspection is "not later than the next planned C-check." Since C-check schedules vary among operators, such a nonspecific compliance time would provide no assurance that operators would do this inspection before safe flight is compromised. This proposed AD would require accomplishment of that inspection within 24 months after the effective date of this AD. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, we find a compliance time of 24 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

We estimate that this AD affects about 53 Model 328–100 series airplanes and 57 Model 328–300 series airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S. -registered airplanes	Fleet cost
Pressure test	2	$65	None	$130	110	$14,300
Detailed inspection	5	65	None	325	110	35,750

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Docket No. FAA–2005–20866; Directorate Identifier 2004–NM–258–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dornier Model 328–100 series airplanes without option 033F003 "Extended Range" installed, and Dornier Model 328–300 series airplanes having serial numbers 3005 through 3119 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of leakage at one of the drain lines in the fuselage. We are issuing this AD to prevent blockage within the drain lines, causing fluids to collect. These fluids may freeze and expand, damaging the drain lines, and allowing fuel to leak into the cabin and fuel vapors to come into contact with ignition sources, which could result in consequent fire in the cabin.

Compliance

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

Initial Pressure Test

(f) Within 4 months after the effective date of this AD: Perform an initial pressure test and any applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–53–462, Revision 1, dated July 15, 2004 (for Model 328–100 series

airplanes); or SB–328J–53–214, Revision 1, dated July 15, 2004 (for Model 328–300 series airplanes); as applicable. Do any applicable related investigative or corrective action before further flight.

Detailed Inspection

(g) After doing the pressure test required by paragraph (f) of this AD, but not later than 24 months after the effective date of this AD: Perform a detailed inspection and related investigative and corrective actions, in accordance with Part 2 of the Accomplishment Instructions of Dornier Service Bulletin SB–328–53–462, Revision 1, dated July 15, 2004; or SB–328J–53–214, Revision 1, dated July 15, 2004; as applicable.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) German airworthiness directives D–2004–448 and D–2004–449, effective October 14, 2004, also address the subject of this AD.

Issued in Renton, Washington, on March 30, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6761 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20856; Directorate Identifier 2004–NE–25–AD]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GmbH Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers with serial numbers (SNs) below 95000, which have not been overhauled since April 1994. This proposed AD would require you to perform initial and repetitive visual inspections of those propeller blades. Further, this proposed AD would require you to remove all propeller blades from service with damaged erosion sheath bonding or loose erosion sheaths and to install any missing or damaged polyurethane protective strips. This proposed AD results from reports of stainless steel leading edge erosion sheaths separating from propeller blades and reports of propeller blades missing or without polyurethane protective strips due to insufficient inspection procedures in older MT-Propeller Entwicklung GmbH Operation & Installation Manuals. We are proposing this AD to prevent erosion sheath separation leading to damage of the airplane.

DATES: We must receive any comments on this proposed AD by June 6, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact MT-Propeller USA, Inc., 1180 Airport Terminal Drive, Deland, FL 32724; telephone (386) 736–7762, fax (386) 736–7696 or visit *http://www.mt-propeller.com* for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20856; Directorate Identifier 2004–NE–25–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the aviation authority for Germany, notified us that an unsafe condition may exist on certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers. The LBA advises of reports of stainless steel leading edge erosion sheaths separating from propeller blades and reports of propeller blades with damaged or missing polyurethane protective strips (PU-protection tape) due to insufficient inspection procedures in older MT-Propeller Entwicklung GmbH Operation & Installation Manuals.

Relevant Service Information

We have reviewed and approved the technical contents of MT-Propeller Service Bulletin (SB) No. 8A, dated July 4, 2003, which describes the visual

inspections, removals, and installations proposed by this AD. The LBA classified this SB as mandatory and issued airworthiness directive 1994–098–2, dated September 24, 2003, in order to ensure the airworthiness of these MT-Propeller Entwicklung GmbH propellers in Germany.

FAA's Determination and Requirements of the Proposed AD

These propeller models, manufactured in Germany, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the LBA kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. We are proposing this AD, which would require you to:

- Visually inspect certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers with SNs below 95000.
- Remove from service, certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers with SNs below 95000 if the propeller blades have damaged erosion sheath bonding or loose erosion sheaths.
- Install polyurethane protective strips onto propeller blades that are missing these strips or have damaged strips.

Costs of Compliance

We estimate that 103 of these MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers installed on aircraft of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 2 work hours to inspect and install the polyurethane protective strip of each affected propeller and 4 work hours to remove each affected propeller, and that the average labor rate is $65 per work hour. Required parts to inspect and install the polyurethane protective strip of each affected propeller would cost about $20. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $15,780.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MT-Propeller Entwicklung GmbH: Docket No. FAA–2005–20856; Directorate Identifier 2004–NE–25–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by June 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to MT–Propeller Entwicklung GmbH, models MT, MTV–1, MTV–2, MTV–3, MTV–5, MTV–6, MTV–7, MTV–9, MTV–10, MTV–11, MTV–12, MTV–14, MTV–15, MTV–17, MTV–18, MTV–20, MTV–21, MTV–22, MTV–24, and MTV–25 propellers with serial numbers (SNs) below 95000, which have not been overhauled since April 1994. These propellers may be installed on but not limited to, Sukhoi SU–26, SU–29, SU–31; Yakovlev YAK–52, YAK–54, YAK–55; and Technoavia SM–92 airplanes.

Unsafe Condition

(d) This AD results from reports of stainless steel leading edge erosion sheaths separating from propeller blades and reports of propeller blades with damaged or missing polyurethane protective strips (PU-protection tape) due to insufficient inspection procedures in older MT-Propeller Entwicklung GmbH Operation & Installation Manuals. We are issuing this AD to prevent erosion sheath separation leading to damage 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.

Note 1: Information about inspection procedures and acceptable limits can be found in Table 1 of this AD.

Initial Visual Inspection of the Propeller Blade

(f) During the next preflight inspection or 100-hour inspection, whichever occurs first, after the effective date of this AD, inspect all MT and MTV propellers listed in paragraph (c) of this AD, by doing the following:

(1) Determine if the erosion sheath of any propeller blade is cracked or loose; and

(2) Determine if any propeller blade has other damage out of acceptable limits.

(3) Before the next flight, remove from service those propeller blades with a cracked or loose erosion sheath, or other damage affecting airworthiness.

TABLE 1.—SERVICE INFORMATION

For propeller model . . .	See operation and installation manual . . .
(1) MT	No. E–112, issued Nov. 1993 or later.
(2) MTV–1, MTV–7, MTV–10, MTV–17, MTV–18, MTV–20	No. E–118, issued March 1994 or later.
(3) MTV–5, MTV–6, MTV–9, MTV–11, MTV–12, MTV–14, MTV–15, No. MTV–21, MTV–22, MTV–25.	No. E–124, issued March 1994 or later.
(4) MTV–2, MTV–3	No. E–148, issued March 1994 or later.
(5) MTV–24	No. E–309, issued March 1994 or later.

Initial Visual Inspection of the Propeller Blade Polyurethane Strip

(g) During the next pilot's preflight inspection after the effective date of this AD, if the polyurethane protective strip on the leading edge of the inner portion of the blade is found to be damaged or missing, the polyurethane protective strip must be replaced or installed within 10-flight hours. If electrical de-icing boots are installed, no polyurethane protective strips are required.

Repetitive Visual Inspection of the Propeller Blade

(h) If after the effective date of this AD, any propeller blade erosion sheath found to be cracked or loose during the pilot's preflight inspection, or 100-hour inspection, or annual inspection, must be repaired, replaced, or overhauled before the next flight.

Repetitive Visual Inspection of the Propeller Blade Polyurethane Strip

(i) If after the effective date of this AD, any propeller blade polyurethane protective strip found to be damaged or missing during the pilot's preflight inspection, or 100-hour inspection, or annual inspection, must be replaced or installed within 10-flight hours. If electrical de-icing boots are installed, polyurethane protective strips are not required.

Overhaul of Blades

(j) Overhaul all affected blades by December 31, 2005.

Alternative Methods of Compliance

(k) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(l) Special flight permits are prohibited.

Related Information

(m) MT-Propeller Entwicklung GmbH, Service Bulletin No. 8A, dated July 4, 2003, pertains to the subject of this AD. LBA airworthiness directive 1994–098/2, dated September 24, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on March 29, 2005.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–6777 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20847; Directorate Identifier 2004–NE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Goodrich De-icing and Specialty Systems "FASTprop" Propeller De-icers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Goodrich De-icing and Specialty Systems "FASTprop" propeller de-icers, part numbers P4E1188 series, P4E1601 series, P4E2200 series, P4E2271–10, P4E2575–7, P4E2575–10, P4E2598–10, P5855BSW, P6199SW, P6592SW, P6662SW, and P6975–11, installed. This proposed AD would require inspection, repair, or replacement of those "FASTprop" propeller de-icers that fail visual checks before the first flight each day. This proposed AD results from reports of Goodrich "FASTprop" propeller de-icers becoming loose or debonded, and detaching from propeller blades during operation. We are proposing this AD to prevent Goodrich "FASTprop" propeller de-icers from detaching from the propeller blade, resulting in damage to the airplane and possible injury to the passengers and crewmembers.

DATES: We must receive any comments on this proposed AD by May 6, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Goodrich De-icing and Specialty Systems, 219 Stringtown Road, Union, West Virginia 24983, telephone (330) 374–3743, for the service information referenced in this proposed AD.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa T. Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–8110; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20847; Directorate Identifier 2004–NE–35–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

In September of 2004, we became aware of reports of about 200 Goodrich De-icing and Specialty Systems "FASTprop" propeller de-icers found debonded, loose, or detached from propeller blades during operation. The manufacturer is still investigating to determine the exact cause of this potential unsafe condition. This condition, if not corrected, could result in propeller de-icers detaching from propeller blades, resulting in damage to the airplane and possible injury to the passengers and crewmembers.

Relevant Service Information

We have reviewed and approved the technical contents of Goodrich De-icing and Specialty Systems Alert Service Bulletin No. 30–60–00–1, dated November 15, 2004, that describes procedures for visual checks of "FASTprop" propeller de-icers before the first flight each day, and inspection, repair, or replacement of those propeller de-icers if necessary.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require inspection, repair, or replacement before further flight, of Goodrich "FASTprop" propeller de-icers if they fail the visual check before the first flight each day. The proposed AD would require you to use the service information described previously to perform these actions.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that 3,400 Goodrich propeller de-icers are installed on airplanes of U.S. registry and would be affected by this proposed AD. We also estimate that it would take about 2 minutes per propeller blade to perform the proposed preflight visual check, about 5 minutes per propeller blade to perform the proposed inspection of de-icers that fail the visual check, and about 0.5 work hour to replace a propeller de-icer. The average labor rate is $65 per work hour. Required parts would cost about $110.00 per replacement propeller de-icer. The manufacturer has advised us that replacement de-icers will be provided at no cost to the operators. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $510,240.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Goodrich De-icing and Specialty Systems: Docket No. FAA–2005–20847; Directorate Identifier 2004–NE–35–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Goodrich De-icing and Specialty Systems "FASTprop" propeller de-icers, part numbers (P/Ns) P4E1188 series, P4E1601 series, P4E2200 series, P4E2271–10, P4E2575–7, P4E2575–10, P4E2598–10, P5855BSW, P6199SW, P6592SW, P6662SW, and P6975–11, installed. These propeller de-icers are installed on, but not limited to, the airplanes listed in Table 1 of this AD.

TABLE 1.—GOODRICH "FASTPROP" PROPELLER DE-ICERS

De-icer P/N:	Installed on, but not limited to:
P4E1188–2	Metal propellers operated up to 2,900 rpm on:

TABLE 1.—GOODRICH "FAST PROP" PROPELLER DE-ICERS—Continued

De-icer P/N:	Installed on, but not limited to:
	Cessna 210E, 210F, 210G, 210H, 210J, 210K, 210L, T210F, T210G, T210H, T210J, T210K, and T210L.
	With Supplemental Type Certificate (STC) SA1–502 on Raytheon (Beech) D18C, D18S, E18S, G18S, H18, C45G, C45H, TC45G, and TC45H.
P4E1188–3	Metal propellers operated up to 2,900 rpm on:.
	Raytheon (Beech) D18C, D18S, E18S, E18S–9700, G18S, H18, C–45G, C–45H, C–45J, TC–45G. TC–45H, TC–45J (SNB–5), and JRB–6.
	With STC SA1–503 on Raytheon (Beech), E50, F50, G50, H50, J50, and 65.
	With STC SA15EA on Raytheon.(Beech) E50, F50, G50, H50, J50, 65, and 65–80.
	Raytheon (Beech) 55, B55, D55, D55A, E55, 95–C55, 95–C55A, 58, 95–55, 95–A55, 95–B55, 56TC, 60, 65, 65–80, 65–90, 65–A90, B90, C90, 99, 99A, A99, A99A, 100, and A100.
	With STC SA1–506 on Cessna 310.
	With McCauley props on Cessna 310, 320, 340, 401, 402, 411, 414, and 421.
	With STC SA2424WE on Cessna 402.
	With STC SA132EA on Twin Commander (Gulfstream) 560A, 560E, 680, 680E, and 720.
	With STC SA179EA on Twin Commander (Gulfstream) 560F, 680FL, 680FL(P), and 680–F.
	With STC SA1–520 on Twin Commander (Gulfstream) 560A, 560E 680, 680E, and 720.
	On the following models equipped with 90-amp generator: Twin Commander (Gulfstream) 500B, 500S, and 500U.
	With STC SA1–607 on Twin Commander (Gulfstream) 500A.
	With STC SA2478SW on Twin Commander (Gulfstream) 500.
	With STC SA2891WE or STC SA2691WE on Twin Commander (Gulfstream) 680F, 680FP, and 680FL(P).
	Twin Commander (Gulfstream) 680V, 680T, 680W, and 681.
	Mitsubishi Heavy Industries MU–2 series.
	With STC SA195EA on Piper PA–23–250, E23–250 (serial number (SN) 27–2505 up).
	Piper PA–31 (SN 31–5 up), PA–31–300 (SN 31–5 up), PA–31–325 (SN 31–5 up), and PA–31–350 (SN 31–5001 up).
P4E1188–4	Metal propellers operated up to 2,900 rpm on:
	B–N Group Ltd. (Britten Norman) BN–2, BN–2A, and BN–2A Mark III series, Vulcanair (Partenavia) P–68, Piper Aerostar 600, 601, and 601P.
	On the following models equipped with 3-blade props:
	Short Brothers SC7 series 3, M7 Aerospace (Fairchild) SA26–T, SA26–AT, SA226–T, SA226–AT, and SA226–TC.
	The following models equipped with 70-amp alternators and Hartzell HC–A3XK props: Twin Commander (Gulfstream) 500B, 500S, and 500U.
	The following models equipped with 70-amp alternator and Hartzell HC–C3YR–2 props: Twin Commander (Gulfstream) 500S and 500U.
	The following model with 70- or 100-amp alternators and Hartzell HC–C3YR–R props: Twin Commander (Gulfstream) 500S (SN 3115 up).
	With STC SA2478SW on model Twin Commander (Gulfstream) 500.
	With STC SA2691WE or SA2891WE on the following models: Twin Commander (Gulfstream) 680F, 680FL, and 680FLP.
P4E1188–5	Metal propellers operated up to 2,900 rpm on:
	With Hartzell HC–B3TN–3 props on Raytheon (Beech) D18C, D18S, E18S, E18S–9700, G18S, H18, C45G, C45H, TC45G, TC45H, C45J, TC45J (SN B–5), JRB–6, 99, 99A, A99, A99A, 99B, B99, 100, A100, A100A, A100C, and B100.
	With Hartzell HC–B3TN–3 props on Raytheon (Beech) 65–90, 65–A90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, B90, C90, E90, and H90.
	With Hartzell HC–B3TN–3 props on Bombardier (deHavilland) DHC–6–300, Israel Aircraft Industries 101 Arava, Mitsubishi Heavy Industries MU–2B–10, –15, –20, –25, –26, –30, –35, –36, MU–2 Series, Pilatus PC–6, Piper PA–31T (SN 31T–7400002 up), and PA31T1.
	With STC SA2293SW on British Aerospace (Scotland) Handley Page Jetstream 137 Mark I.
	AeroSpace Technologies of Australia (Government Aircraft Factories) N22B.
	Short Brothers SC7 series 3 equipped with 4-blade props.
P4E1188–6	Metal propellers operated up to 2,900 rpm on:
	With Hartzell HC–B3TN–5() props on Cessna 425 and 441.
	Embraer EMB–110P1 and 110P2.
	Short Brothers SC7 series 3 equipped with 3-blade props.
	M7 Aerospace (Fairchild) SA226–T, SA226–AT, and SA226–TC.
P4E1188–7	Metal propellers operated up to 2,900 rpm on:
	Mitsubishi Heavy Industries MU–2B, MU–2B–26A, MU–2B–36A, MU–2B–40, and MU–2B–60.
P4E1601–3	Metal propellers operated up to 2,900 rpm on:
	Piper PA31 (SN 5 up), PA31–300 (SN 5 up), PA31–325 (SN 5 up), PA31P (SN 31P–3 up), and PA31–350 (SN 31–5001 up).
P4E1601–4	Metal propellers operated up to 2,900 rpm on:
	Raytheon (Beech) 65–88.
P4E1601–5	Metal propellers operated up to 2,900 rpm on:
	Casa C212CB.
	Twin Commander (Gulfstream) 690 and 690A.
P4E1601–7	Metal propellers operated up to 2,900 rpm on:
	Raytheon (Beech) B55, E55, 56TC, 58P, and 60.
	With STC SA2369SW on Nord 262A.

TABLE 1.—GOODRICH "FAST PROP" PROPELLER DE-ICERS—Continued

De-icer P/N:	Installed on, but not limited to:
	The following models equipped with 70- or 100-amp alternator and Hartzell HC–C3YR–2 props: Twin Commander (Gulfstream) 500S (SN 3115 up) and Twin Commander (Gulfstream) 685.
	Short Brothers SD3–30.
P4E1601–10	Metal propellers operated up to 2,900 rpm on:
	Raytheon (Beech) B55, E55, 56TC, 58P, and 60.
	Twin Commander (Gulfstream) 690C and 695.
	M7 Aerospace (Fairchild) SA–226–TB, SA227–AC, SA227–TT, and SA227–AT.
P4E2200–2	Metal propellers operated up to 2,900 rpm on:
	With STC SA00719LA on Raytheon (Beech) A36.
	With STC SA00718LA on Raytheon (Beech) B36TC.
	Raytheon (Beech) V35 equipped with 2- or 3-blade McCauley props.
P4E2200–3	Metal propellers operated up to 2,900 rpm on:
	Raytheon (Beech) E50, F50, G50, H50, and J50.
	Cessna E310J, T310P, 310, 310E, 310J, 310K, 310L, 310N, 320, 320D, 320F, 40, 402A, 402B, 411, 411A, 414, 421, 421A, and 421B.
	Piper PA23–250.
P4E2200–4	Metal propellers operated up to 2,900 rpm on:
	B–N Group Ltd. (Britten Norman) BN–2A Mark III, BN–2, BN–2A.
	Piper 600, 601, 601P.
P4E2200–10	Metal propellers operated up to 2,900 rpm on:
	With Volpar Turboliner conversion on the following models: Raytheon (Beech) D18C and D18S.
	Raytheon (Beech) 56TC, A56TC, 65–90, 65–A90, B90, C90, E90, H90, 99, A99, 99A, B99, 99B, 100, A100, A100A, A100C, B100, and 200.
	Embraer EMB 110P1 and 110P2.
	Mitsubishi Heavy Industries MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–30, and MU–2B–35.
	Pilatus PC–6.
	Piper PA31–350 (SN 5001 up) and PA31P (SN 31P–3 up).
	M7 Aerospace (Fairchild) SA26–T, SA26–AT, SA226–T, SA226TC, and SA226AT.
	Twin Commander (Gulfstream) 500B, 500U, 560F, 680F, 680FP, 680FL, and 680FLP.
P4E2200–21	Metal propellers operated up to 2,900 rpm with STC SA812NE on the following models:
	Raytheon (Beech) 65–90 series, B90, C90, E90, F90, H90, 99 A99 series, C99, 100, A100 series, B100, and 200.
	Embraer EMB110 series.
	M7 Aerospace (Fairchild) SA226–AT, SA226–T, and SA–226TC.
	Mitsubishi Heavy Industries MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, and MU–2B–36.
	Pilatus PC–6, PC–6B–H2, PC–6B1–H2, PC–6C–H2, PC–6C1–H2, and PC–7.
	Piper PA–31T, PA–31T1, PA–31T1A, PA–31T2A, PA–31T3, and PA–31T–1040.
P4E2271–10	Metal propellers operated up to 2,900 rpm on:
	B–N Group Ltd. (Britten-Norman) BN–2, BN–2A series, and BN–2A Mark III.
	With Volpar Turboliner conversion on the following models: Raytheon (Beech) D18C, and D18S.
	The following models equipped with 2- or 3-blade props: S35, V35, V35A, V35B, 35–C33A, F33A, F33C, and A36.
	Raytheon (Beech) E50, F50, G50, H50, J50, E55, E55A, 56TC, A56TC, 58, 58A, 60, A60, B60, 65–90, 65–A90, B90, C90, E90, H90, 95–B55, 95–B55A, 99, A99, A99A, 99A, 100, A100, A100A, A100C, B100, and 200.
	With STC SA00966CH on Raytheon (Beech) C90B.
	With STC SA3593NM on Raytheon (Beech) E90.
	With STC SA4131NM on Raytheon (Beech) F90.
	With STC SA2698NM on the following models: Raytheon (Beech) 200 and B200. pCessna 310, 310J, 310K, 310L, 310N, E310J, T310P, 320D, 320E, 320F, 340, 401A, 401B, 402A, 402B, 411, 411A, 414A, 414B, 421A, and 421B.
	With STC SA3532NM on Bombardier (deHavilland) DHC–6.
	With STC SA2369SW on Nord 262A.
	Mitsubishi Heavy Industries MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36A, MU–2B–40, and MU–2B–60.
	Piper PA23, PA23–160, PA23–250, PA–E23–250 (SN 27–2505 UP), PA31 (SN 31–5 up), PA31–300 (SN 31–5 up), PA31–325 (SN 31–5 up), PA31–350 (SN 5001 up) PA34–200, PA34–200T, PA600, PA601, and PA601P.
	Pilatus PC–6.
	Short Brothers SD–3–30.
	M7 Aerospace (Fairchild) SA26–T, SA26–AT, SA226–T, SA226–AT, SA226TB, and SA226–TC.
	Twin Commander (Gulfstream) 500B, and 500U.
P4E2575–7	Metal propellers operated up to 1,700 rpm on Raytheon (Beech) 300.
P4E2575–10	Metal propellers operated up to 1,700 rpm on Raytheon (Beech) 300.
P4E2598–10	Metal propellers operated up to 1,591 rpm on:
	AvCraft (Dornier) 228, M7 Aerospace (Fairchild) SA227–TT (SN 421–541), SA227–AT (SN 423–549), and SA227–AC (SN 420–545).
P5855BSW	Metal propellers on: Cessna T310Q, T310R, 340, 340A, 402B, 402C, 414, 414A, 421A, and 421B.

TABLE 1.—GOODRICH "FAST PROP" PROPELLER DE-ICERS—Continued

De-icer P/N:	Installed on, but not limited to:
P6199SW	Metal propellers operated up to 2,900 rpm on: The following models equipped with McCauley D3A34C401 or D3A34C402 props: Cessna 210L, 210M, 210N, P210N, T210L, T210M, and T210N.
P6592SW	Metal propellers operated up to 2,900 rpm on: Various aircraft models equipped with McCauley 3AF32C504, 3AF32C505, 3AF32C506, or 3AF32C507 props.
P6662SW	Metal propellers operated up to 2,900 rpm on: Various aircraft models equipped with McCauley 3AF32C512/G–82NEA–5.
P6975–11	Metal propellers operated up to 2,900 rpm on: With STC SA812EA and equipped with Hartzell HC–B3TN–3D, HC–B3TN–5C, or HC–B3TN–5M props: Air Tractor, AT–302 and AT–400. With STC SA812EA and equipped with Hartzell HC–B3TN–3C or HC–B3TN–3D props: Quality Aerospace (Ayres) S2R–T11. With STC SA2204WE and equipped with Hartzell HC–B3TN–5C props: Raytheon (Beech) D18C, D18S, E18S–9700, C45G, C45H, TC–45G, TC–45H, and TC–45J. Raytheon (Beech) T–34C equipped with Hartzell HC–B3TN–3H props. The following models equipped with Hartzell HC–B3TN–2B, HC–B3TN–3B, or HC–B3TN–3M props: Raytheon (Beech) 65–90, 65–A–90, 65–A90–1, 65–A90–2, 65–A90–3, and 65–A90–4. The following models equipped with Hartzell HC–B3TN–3B or HC–B3TN–3M props: Raytheon (Beech) B90, C90, E90, and H90. Raytheon (Beech) F90 equipped with Hartzell HC–B4TN–3A or HC–B4TN–3B props. The following models equipped with Hartzell HC–B3TN–3B props: Raytheon (Beech) 99, 99A, A99, and A99A. The following models equipped with Hartzell HC–B3TN–3B or HC–B3TN–3M props: Raytheon (Beech) C99, and 100. The following models equipped with Hartzell HC–B4TN–3 or HC–4TN–3A props: Raytheon (Beech) A100, A100A, and A100–1. Raytheon (Beech) B100 equipped with Hartzell HC–B4TN–5C or HC–B4TN–5F props. The following models equipped with Hartzell HC–B3TN–3G or HC–B3TN–3N props: Raytheon (Beech) 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200CT, and B200T. Raytheon (Beech) JRB–6 with STC SA1171WE equipped with Hartzell HC–B3TN–5C props. British Aerospace HP.137MK.1 with STC SA2293WE equipped with Hartzell HC–B3TN–3D props: CASA C212–100 Aviocar equipped with Hartzell HC–B4TN–5EL props. Cessna 441 equipped with Hartzell HC–B3TN–5E or HC–B3TN–5M props. Bombardier (deHavilland) DHC–2MK.III equipped with HC–B3TN–3, HC–B3TN–3B, or HC–B3TN–3BY props. Bombardier (deHavilland) DHC–6–300 equipped with Hartzell HC–B3TN–3(D)(Y) props. Embraer EMB–110P1/2 equipped with Hartzell HC–B3TN–3C or HC–B3TN–3D props. The following models equipped with Hartzell HC–B3TN–5( ) props: M7 Aerospace (Fairchild) SA226–AT, and SA226T. M7 Aerospace (Fairchild) SA226–TC equipped with Hartzell HC–B4TN–5( ) props. M7 Aerospace (Fairchild) SA226–TC with STC SA344GL equipped with Hartzell HC–B3TN–5( ) props. M7 Aerospace (Fairchild) SA226–TC with STC SA344GI. The following models equipped with Hartzell HC–A3VF–7 or HC–3VH–7B props: AeroSpace Technologies of Australia (Government Aircraft Factories) N22B and N24A. The following models equipped with Hartzell HC–B3TN–3D props: IAI Arava 101 and 101B. The following models equipped with Hartzell HC–B3TN–3DY props: McKinnon (Grumman) G–21E and G–21G. The following models equipped with HC–B3TN–5( ) props: Mitsubishi Heavy Industries MU–2B, and MU–2B–10. The following models equipped with Hartzell HC–B3TN–5 props: Mitsubishi Heavy Industries MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, and MU–2B–36. The following models equipped with Hartzell HC–B3TN–3C props: Pilatus PC–6, PC–6/B–H2, PC–6/B1–H2, PC–6/C–H2, PC–6/C1–H2. The following models equipped with Hartzell HC–B3TN–3B props: Piper PA–31T and PA31T1. The following models equipped with Hartzell HC–B3TN–3B or HC–B3TN–3K props: Piper PA42 and PA42–720. The following model equipped with Hartzell HC–B3TN–5( ) props: Short Brothers SC–7 series 3 Variant 200. With STC SA02059AK on the following model equipped with HC–B4TN–5 props: Short Brothers SC–7 series 3 Variant 200. The following models equipped with Hartzell HC–B3TN–5( ) props: Twin Commander (Gulfstream) 690, 690A, and 690B.

Unsafe Condition

(d) This AD results from reports of Goodrich "FASTprop" propeller de-icers becoming loose or debonded, and detaching from propeller blades during operation. We are issuing this AD to prevent Goodrich "FASTprop" propeller de-icers from detaching from the propeller blade, resulting in damage to the airplane, and possible injury to passengers and crewmembers.

Compliance

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

Initial Visual Inspection of "FASTprop" Propeller De-icers

(f) During the next preflight or 100-hour inspection, whichever occurs first, after the effective date of this AD, visually check the "FASTprop" propeller de-icers. If any "FASTprop" propeller de-icer fails the visual check, then the "FASTprop" de-icer must be inspected, repaired, or replaced as necessary before the next flight. Use paragraph 2.A of the Accomplishment Instructions of Goodrich De-icing and Specialty Systems Alert Service Bulletin (ASB) No. 30–60–00–1, dated November 15, 2004 to do these actions.

Repetitive Visual Inspections of "FASTprop" Propeller De-icers

(g) If after the effective date of this AD, any "FASTprop" propeller de-icer found to have lifting, looseness, trapped air (bubbles) under the de-icer, debonding, or deteriorated edge sealer during the pilot's first preflight inspection of the day must be inspected, repaired, or replaced as necessary before the next flight. Use paragraph 2.A of the Accomplishment Instructions of Goodrich De-icing and Specialty Systems Alert Service Bulletin (ASB) No. 30–60–00–1, dated November 15, 2004 to do these actions.

Alternative Methods of Compliance

(h) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(i) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by requiring that any propeller found with a loose or debonded "FASTprop" de-icer must have all de-icers removed before the flight, to maintain a balanced propeller. Information on removing de-icers can be found in paragraph 1.K.(1) of Goodrich De-icing and Specialty Systems ASB No. 30–60–00–1, dated November 15, 2004.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on March 30, 2005.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–6776 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20850; Directorate Identifier 2005–NE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors GTSIO–520 Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Teledyne Continental Motors (TCM) GTSIO–520 series reciprocating engines. This proposed AD would require initial and repetitive visual inspections of the starter adapter assembly and crankshaft gear. This proposed AD would also require unscheduled visual inspections of the starter adapter assembly and crankshaft gear due to a rough-running engine. This proposed AD would also require replacement of the starter adapter shaft gear needle bearing with a certain bushing. Also, this proposed AD would require installation of a certain TCM service kit at the next engine overhaul, or at the next starter adapter replacement, whichever occurs first. Also, this proposed AD would require adding a certain placard to the instrument panel before further flight. This proposed AD results from six service difficulty reports and one fatal accident report received related to failed starter adapter assemblies. We are proposing this AD to prevent failure of the starter adapter assembly and or crankshaft gear, resulting in failure of the engine and possible forced landing.

DATES: We must receive any comments on this proposed AD by June 6, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Teledyne Continental Motors, Inc., PO Box 90, Mobile, AL 36601; telephone (251) 438–3411.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Senior Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703–6096, fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20850; Directorate Identifier 2005–NE–05–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in

ADDRESSES. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Between January 1980 and January 2001, we received one loss of airplane report and 34 service difficulty reports related to failure of the starter adapter assembly or crankshaft gear or both, on TCM GTSIO–520 series reciprocating engines. On March 2, 2001, we issued Special Airworthiness Information Bulletin (SAIB) No. NE–01–17. That SAIB states the following:

- Engine failure may occur if the starter adapter viscous damper becomes inoperative, due to overheating, or other causes.
- Continued operation of an engine with an overheated viscous damper may lead to failure of the starter adapter assembly and or crankshaft gear.
- Overheating of the viscous damper may be caused by exhaust gas leakage in the nacelle area, and in particular, the engine accessory section of the engine nacelle.
- A rough-running engine such as one with a misfiring ignition system, will cause overheating of the viscous damper.
- Recommendation to perform visual inspections and parts replacement as necessary, as described in TCM Critical Service Bulletin (CSB) No. CSB94–4D.

After we issued that SAIB, we received six service difficulty reports and one fatal accident report related to failed starter adapter assemblies. The fatal accident event indicates that the airplane may not have been in compliance with TCM CSB No. CSB94–4D. This condition, if not corrected, could result in failure of the starter adapter assembly and or crankshaft gear, resulting in failure of the engine, and possible forced landing.

Relevant Service Information

We have reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. MSB94–4E, dated January 24, 2005, that describes procedures for visual inspections of the starter adapter assembly and crankshaft gear and replacement of components as necessary. That MSB also describes procedures for replacement of the starter adapter shaft gear needle bearing with a bushing. That MSB also describes procedures for installation of TCM service kit, part number (P/N) EQ6642R, at next engine overhaul, or next starter adapter replacement, whichever occurs first.

Differences Between the Proposed AD and the Manufacturer's Service Information

Although TCM MSB No. MSB94–4E, dated January 24, 2005, is applicable to GIO–550 and GTSIO–520 series reciprocating engines, this proposed AD is only applicable to GTSIO–520 series reciprocating engines. Also, although that MSB mandates in Part 1, that magnetos must be overhauled and periodically inspected at specified times, this proposed AD does not mandate those actions.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

- Before further flight, adding a placard to the instrument panel within view of the pilot that states, in ¼ inch-high or higher characters, "In accordance with AD (number to be provided), the pilot must report a rough-running engine that cannot be cleared by adjustment of the engine controls; particularly the fuel mixture setting, to maintenance personnel, immediately after landing."
- Initial and repetitive visual inspections of the starter adapter assembly and crankshaft gear, and replacement of components as necessary.
- Unscheduled visual inspections of the starter adapter assembly and crankshaft gear due to a rough-running engine, and replacement of components as necessary.
- Replacement of the starter adapter shaft gear needle bearing, P/N 537721 with bushing, P/N 654472.
- Installation of TCM service kit, P/N EQ6642R, at next engine overhaul, or at next starter adapter replacement, whichever occurs first.

The proposed AD would require you to use the service information described previously to perform the inspections and replacements.

Costs of Compliance

There are about 5,300 TCM GTSIO–520 series reciprocating engines of the affected design in the worldwide fleet. We estimate that 4,240 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about one work hour per engine to perform one of the proposed inspections, and about one work hour per engine to perform the proposed bushing installation. We also estimate that it will take about six work hours per engine to install TCM service kit, P/N EQ6642R. The average labor rate is $65 per work hour. We estimate that about 25% (1,060) of the engines will require an unscheduled (rough-running engine) inspection. We also estimate that each engine will have eight 100-hour inspections per year, and two 400-hour inspections per year. We also estimate that about 50% (2,120) of the engines will require the bushing installed and TCM service kit, P/N EQ6642R installed. Required bushings would cost about $16 per engine and required service kits would cost about $800 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $5,518,932.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Teledyne Continental Motors: Docket No. FAA–2005–20850; Directorate Identifier 2005–NE–05–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Teledyne Continental Motors (TCM) GTSIO–520 series reciprocating engines. These engines are installed on, but not limited to, Twin Commander (formerly Aero Commander) model 685, Cessna model 404, 411 series, and 421 series, British Aerospace, Aircraft Group, Scottish Division model B.206 series 2 and Aeronautica Macchi, model AM–3 airplanes.

Unsafe Condition

(d) This AD results from six service difficulty reports and one fatal accident report received related to failed starter adapter assemblies. We are issuing this AD to prevent failure of the starter adapter assembly and or crankshaft gear, resulting in failure of the engine and possible forced landing.

Compliance

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

Aircraft Placard Installation and Compliance

(f) Before further flight, install a placard to the instrument panel in ¼ inch-high or higher characters, within plain view of the pilot that states: "In accordance with AD (number to be provided), the pilot must report a rough-running engine that cannot be cleared by adjustment of the engine controls; particularly the fuel mixture setting, to maintenance personnel, immediately after landing."

Starter Adapter Shaft Gear Needle Bearing Replacement

(g) If, during an inspection required by paragraph (h), (i), (j), or (k) of this AD, you find needle bearing, part number (P/N) 537721, installed in the crankcase, replace it with bushing, P/N 654472, before reassembling components. Use the bushing installation procedure specified in Part 4 of TCM Mandatory Service Bulletin (MSB) No. MSB94–4E, dated January 24, 2005.

Unscheduled Inspections for Rough-Running Engines

(h) For any engine that experiences rough running conditions regardless of time-in-service (TIS), do the following:

(1) Before further flight, perform the inspection procedures specified in Part 1 and Part 3 of TCM MSB No. MSB94–4E, dated January 24, 2005, and replace components as necessary.

(2) An engine is considered rough-running if there is a sudden increase in the perceived vibration levels that cannot be cleared by adjustment of the engine controls; particularly the fuel mixture setting. Information on a rough running engine can be found in the aircraft manufacturer's Airplane Flight Manual, Pilot's Operating Handbook, or Aircraft Owners Manual.

100-Hour and Annual Inspections

(i) For any engine, at the next 100-hour or annual inspection, whichever occurs first, do the following:

(1) Perform the inspection procedures specified in Part 2 of TCM MSB No. MSB94–4E, dated January 24, 2005, and replace components as necessary.

(2) Thereafter, at each 100-hour inspection, (plus or minus 10 hours), and annual inspection, perform repetitive inspections and component replacements as specified in paragraph (h)(1) of this AD.

Starter Adapters With 400 Hours or More Time-In-Service (TIS) or Unknown TIS

(j) For any starter adapter with 400 hours or more TIS or unknown TIS on the effective date of this AD, do the following:

(1) Within 25 hours TIS, perform the inspection procedures specified in Part 3 of TCM MSB No. MSB94–4E, dated January 24, 2005, and replace components as necessary.

(2) Thereafter, at 400-hour TIS intervals, (plus or minus 10 hours), perform repetitive inspections and component replacements as specified in Part 3 of TCM MSB No. MSB94–4E, dated January 24, 2005, and replace components as necessary.

Starter Adapters With Fewer Than 400 Hours TIS

(k) For any starter adapter with fewer than 400 hours TIS on the effective date of this AD, do the following:

(1) Upon accumulation of 400 hours TIS, (plus or minus 10 hours), perform the inspection procedures specified in Part 3 of TCM MSB No. MSB94–4E, dated January 24, 2005, and replace components as necessary.

(2) Thereafter, at 400-hour TIS intervals, (plus or minus 10 hours), perform repetitive inspections and component replacements, as specified in Part 3 of TCM MSB No. MSB94–4E, dated January 24, 2005, and replace components as necessary.

Installation of TCM Service Kit, EQ6642R

(l) At the next engine overhaul or starter adapter replacement after the effective date of this AD, whichever occurs first, do the following:

(1) Install TCM service kit, P/N EQ6642R. Use the service kit installation procedures specified in Part 5 of TCM MSB No. MSB94–4E, dated January 24, 2005.

(2) Continue performing the inspections and component replacements specified in paragraphs (i), (j), and (k) of this AD.

Prohibition of Special Flight Permits for Rough-Running Engines

(m) Special flight permits are prohibited for rough-running engines described in paragraph (h)(2) of this AD.

Alternative Methods of Compliance

(n) The Manager, Atlanta Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(o) European Aviation Safety Agency AD 2004–0006, dated December 15, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on March 30, 2005.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–6775 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20849; Directorate Identifier 2005–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Turbomeca Artouste III series turboshaft engines. This proposed AD would require modification of the engine air intake assembly. This proposed AD results from a report of an in-flight

shutdown and subsequent loss of control of the helicopter due to ice ingestion into the engine. We are proposing this AD to prevent ice ingestion into the engine, which could lead to an in-flight shutdown and subsequent loss of control of the helicopter.

DATES: We must receive any comments on this proposed AD by June 6, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20849; Directorate Identifier 2005–NE–04–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Turbomeca Artouste III B, B1, and D turboshaft engines. The DGAC advises that an Artouste III B1 turboshaft engine installed in an Aerospatiale (Eurocopter—France) SA–315B LAMA helicopter, ingested a block of ice, causing an in-flight shutdown and subsequent loss of control of the helicopter. Turbomeca believes the block of ice formed at the rear of the engine air intake assembly while the helicopter was not running and parked on sloping ground.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Artouste III Service Bulletin (SB) No 218 72 0104, dated December 24, 2003, that describes procedures for adding two additional water drain holes in the engine air intake assembly. The DGAC classified this SB as mandatory and issued AD F–2003–455, dated December 24, 2003, in order to assure the airworthiness of these Turbomeca Artouste III series engines in France.

FAA's Determination and Requirements of the Proposed AD

These Turbomeca Artouste III series turboshaft engines, manufactured in France, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the DGAC kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. For this reason, we are proposing this AD, which would require adding two additional water drain holes to the engine air intake assembly. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 1,062 engines of the affected design in the worldwide fleet. We estimate that this proposed AD would affect 59 engines installed on helicopters of U.S. registry. We also estimate that it would take about two work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $7,670.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Turbomeca: Docket No. FAA–2005–20849; Directorate Identifier 2005–NE–04–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Artouste III B, B1, and D turboshaft engines. These engines are installed on, but not limited to, Aerospatiale (Eurocopter—France) SA–315B LAMA, and Alouette III SA3160, SA–316B, and SA–316C helicopters.

Unsafe Condition

(d) This AD results from a report of an in-flight shutdown and subsequent loss of control of the helicopter, due to ice ingestion into the engine. We are issuing this AD to prevent ice ingestion into the engine, which could lead to an in-flight shutdown and subsequent loss of control of the helicopter.

Compliance

(e) You are responsible for having the actions required by this AD performed within nine months after the effective date of this AD, unless the actions have already been done.

Addition of Water Drain Holes (Turbomeca Modification TU 171A)

(f) Within nine months from the effective date of this AD, drill an additional water drain hole in each engine air intake assembly half-cover, using paragraphs 2.B.(1) through 2.B.(5) of Turbomeca Artouste III Service Bulletin (SB) No. 218 72 0104, dated December 24, 2003.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) DGAC airworthiness directive F–2003–455, dated December 24, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on March 30, 2005.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–6774 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20869; Directorate Identifier 2004–NM–09–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Dornier Model 328–100 and -300 series airplanes. This proposed AD would require operators to install colored identification strips on the pulley brackets, fairlead bracket assemblies, operational assemblies, and flight control cables. This proposed AD is prompted by a report that the flight control systems do not have elements that are distinctively identified. We are proposing this AD to prevent the incorrect re-assembly of the flight control system during maintenance, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

For service information identified in this proposed AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20869; the directorate identifier for this docket is 2004–NM–09–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20869; Directorate Identifier 2004-NM–09-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified us that an unsafe condition may exist on certain Dornier Model 328–100 and -300 series airplanes. The LBA advises that the flight control systems on these airplane models do not have elements that are distinctively identified. Therefore, we have determined that these systems do not currently comply with Federal Aviation Regulation (FAR) 25.671 (b). FAR 25.671 (b) specifies that "each element of each flight control system must be designed, or distinctively and permanently marked, to minimize the probability of incorrect assembly that could result in the malfunctioning of the system." Service experience with other airplane models has shown that if the elements of the flight control system are not distinctively and permanently marked, they could be re-assembled incorrectly during maintenance. Incorrect re-assembly of the flight control system during maintenance could result in reduced controllability of the airplane.

Relevant Service Information

Dornier has issued Service Bulletin SB–328J–27–176, Revision 1, dated April 15, 2003, for Dornier Model 328–300 series airplanes; and Service Bulletin SB–328–27–436, Revision 1, dated April 15, 2003, for Dornier Model 328–100 series airplanes.

These service bulletins describe procedures for installing colored identification strips on the pulley brackets, fairlead bracket assemblies, operational assemblies, and flight control cables. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The LBA mandated the service information and issued German airworthiness directives 2003–376 and 2003–377, both dated November 11, 2003, to ensure the continued airworthiness of these airplanes in Germany.

Concurrent Requirements

The actions in the service bulletins in the following table must be accomplished before, or concurrently with, the actions in the Dornier Service Bulletin SB–328J–27–176, and Dornier Service Bulletin SB–328–27–436.

CONCURRENT REQUIREMENTS

Dornier service bulletin	Concurrent Dornier service bulletins	Action
SB–328J–27–176, for Dornier Model 328–300 series airplanes.	SB–328J–27–035, dated April 25, 2000	Relocate the auto-pilot rudder servo.
	SB–328J–27–036, dated April 25, 2000	Relocate the auto-pilot elevator servo.
	SB–328J–27–037, dated April 25, 2000	Relocate the auto-pilot aileron servo.
SB–328–27–436, for Dornier Model 328–100 series airplanes.	SB–328–27–290, Revision 1, dated December 8, 2000.	Relocate the auto-pilot rudder servo.
	SB–328–27–291, Revision 1, dated December 8, 2000.	Relocate the auto-pilot aileron servo.
	SB–328–27–292, Revision 1, dated December 8, 2000.	Relocate the auto-pilot elevator servo.

FAA's Determination and Requirements of the Proposed AD

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

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

Difference Between the Proposed AD and the German Airworthiness Directives

The German airworthiness directives recommend that operators install the colored identification strips when the flight control cable is replaced, if that replacement comes before the next scheduled "C-Check or its equivalent." This proposed AD does not require operators to install the colored identification strips when the flight control cable is replaced, although we recommend that operators do so if the replacement comes before the 24-month compliance time of this proposed AD.

Clarification of Compliance Time

The German airworthiness directives mandate, and the Dornier service bulletins recommend, compliance at the next scheduled "C-check or equivalent." Because "C-check" schedules vary among operators, this proposed AD would require compliance within 24 months after the effective date of this AD. We find that 24 months correspond to normal scheduled maintenance for most affected operators and that this compliance time is appropriate for the affected airplanes to continue to operate without compromising safety.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation	16	$65	$291	$1,331	112	$149,072

The following table provides the estimated costs for airplanes subject to the concurrent requirements described previously.

ESTIMATED COSTS—CONCURRENT REQUIREMENTS

Concurrent service bulletin	Work hours	Average labor rate per hour	Parts	Cost per airplane
SB–328–27–290	5	$65	(1)	$325
SB–328–27–291	5	65	(1)	325
SB–328–27–292	5	65	(1)	325
SB–328J–27–035	5	65	$462	787
SB–328J–036	5	65	578	903
SB–328J–037	5	65	(1)	325

[1] Operator supplied.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Docket No. FAA–2005–20869; Directorate Identifier 2004–NM–09–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dornier Model 328–100 and –300 series airplanes, certificated in any category; as identified in Dornier Service Bulletin SB–328J–27–176, Revision 1, dated April 15, 2003; and Dornier Service Bulletin SB–328–27–436, Revision 1, dated April 15, 2003; as applicable.

Unsafe Condition

(d) This AD was prompted by a report that the flight control systems do not have elements that are distinctively identified. We are issuing this AD to prevent the incorrect re-assembly of the flight control system during maintenance, which could result in reduced controllability of the airplane.

Compliance

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

Installation

(f) Within 24 months after the effective date of this AD, install colored identification strips on the pulley brackets, fairlead bracket assemblies, operational assemblies, and flight control cables, in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328J–27–176, Revision 1, dated April 15, 2003; or Dornier Service Bulletin SB–328–27–436, Revision 1, dated April 15, 2003; as applicable.

Prior or Concurrent Requirements

(g) Prior to or concurrently with the accomplishment of the actions in paragraph (f) of this AD, accomplish the actions in the applicable service bulletins listed in Table 1 of this AD.

TABLE 1.—PRIOR OR CONCURRENT REQUIREMENTS

Model	Dornier service bulletin	Revision	Date	Action
328–100	SB–328–27–290	1	December 8, 2000	Relocate the auto-pilot rudder servo.
	SB–328–27–291	1	December 8, 2000	Relocate the auto-pilot aileron servo.
	SB–328–27–292	1	December 8, 2000	Relocate the auto- pilot elevator servo.
328–300	SB–328J–27–035	Original	April 25, 2000	Relocate the auto-pilot rudder servo.
	SB–328J–27–036	Original	April 25, 2000	Relocate the auto-pilot elevator servo.
	SB–328J–27–037	Original	April 25, 2000	Relocate the auto-pilot aileron servo.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) German airworthiness directive 2003–376, dated November 11, 2003; and German airworthiness directive 2003–377, dated November 11, 2003; also address the subject of this AD.

Issued in Renton, Washington, on March 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6773 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20865; Directorate Identifier 2003–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposed AD would require the overhaul of certain auxiliary components installed on the main landing gear (MLG) and nose landing gear (NLG). This proposed AD is prompted by manufacturer determination that overhaul limits need to be imposed for certain auxiliary components of the MLG and NLG. Components that exceed the established overhaul limits could fail due to fatigue, wear, and age. We are proposing this AD to prevent failure of the MLG or NLG, and consequent damage to the airplane and injury to flightcrew and passengers.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20865; the directorate identifier for this docket is 2003–NM–103–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20865; Directorate Identifier 2003–NM–103–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also

post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA received a report of manufacturer determination that overhaul limits need to be imposed for certain auxiliary components of the MLG and NLG. Components that exceed the established overhaul limits could fail due to fatigue, wear, and age. This condition, if not corrected, could result in failure of the MLG or NLG, and consequent damage to the airplane and injury to flightcrew and passengers.

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–32–081, dated August 6, 2002. The service bulletin describes procedures for the overhaul of certain auxiliary components installed on the MLG and NLG. Auxiliary components are the MLG shock struts, the NLG shock strut, the MLG retract actuators, the NLG retract actuator, the MLG drag braces/actuators, the MLG uplocks/actuators, the NLG downlock/actuator, the NLG uplock/actuator, and the steering selector valve.

Service Bulletin J41–32–081 refers to BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 2, dated March 15, 2002, as an additional source of service information for calculating estimated usage of affected auxiliary components.

The CAA mandated the service information and issued British airworthiness directive 006–08–2002 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require the overhaul of certain auxiliary components installed on the MLG and NLG, except as discussed under "Differences Between the Proposed AD and Referenced Service Bulletin."

Differences Between the Proposed AD and Referenced Service Bulletin

BAE Systems (Operations) Limited Service Bulletin J42–32–081 describes procedures for notifying the manufacturer of the accomplishment of the service bulletin; however, this proposed AD would not require this notification.

BAE Systems (Operations) Limited Service Bulletin J42–32–081 specifies that certain affected components must be overhauled on or before July 31, 2004; however, this proposed AD would specify that certain affected components must be overhauled within 18 months after the effective date of this proposed AD. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition and the average utilization of the affected fleet. In light of all of these factors, we find that a compliance time of 18 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This compliance time has been coordinated with the CAA.

Costs of Compliance

This proposed AD would affect about 57 airplanes of U.S. registry. The following table, using an average labor rate of $65 per hour, provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Replacement	Work hours	Parts cost	Cost per airplane	Fleet cost
MLG shock strut (left and right)	6	[1] $25,000	$50,390	$2,872,230
NLG shock strut	3	30,000	30,195	1,721,115
MLG retract actuator (left and right)	6	[1] 6,300	12,990	740,430
NLG retract actuator	3	4,100	4,295	244,815
MLG drag brace/actuator (left and right)	6	[1] 9,500	19,390	1,105,230
MLG uplock/actuator (left and right)	6	[1] 5,600	11,590	660,630
NLG downlock/actuator	3	3,200	3,395	193,515
NLG uplock/actuator	3	2,800	2,995	170,715
Steering selector valve	3	6,800	6,995	398,715
Total	39	139,700	142,235	8,107,395

[1] Per side.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–20865; Directorate Identifier 2003–NM–103–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft) Model Jetstream 4101 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by manufacturer determination that overhaul limits need to be imposed for certain auxiliary components of the MLG and NLG. Components that exceed the established overhaul limits could fail due to fatigue, wear, and age. We are issuing this AD to prevent failure of the MLG or NLG, and consequent damage to the airplane and injury to flightcrew and passengers.

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.

Overhaul of Landing Gear

(f) Within 18 months after the effective date of this AD, overhaul auxiliary components installed on the MLG and NLG in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–081, dated August 6, 2002, except as provided by paragraph (g) of this AD; and thereafter as specified in the "Overhaul Period" column of Table 1 of the Accomplishment Instructions of the service bulletin.

Note 1: BAE Systems (Operations) Limited Service Bulletin J41–32–081 refers to BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 2, dated March 15, 2002, as an additional source of service information for calculating estimated usage of affected auxiliary components.

No Reporting Requirement

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

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) British airworthiness directive 006–08–2002 also addresses the subject of this AD.

Issued in Renton, Washington, on March 30, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6772 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20868; Directorate Identifier 2004–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0100 series airplanes. This proposed AD would require an inspection to determine the part number of the passenger service unit (PSU) panels for the PSU modification status, and corrective actions if applicable. This proposed AD is prompted by reported incidents of smoke in the passenger compartment during flight. One of those incidents also included a burning smell and consequently led to emergency evacuation of the airplane. We are proposing this AD to prevent overheating of the PSU panel due to moisture ingress, which could result in smoke or fire in the passenger cabin.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20868; the directorate identifier for this docket is 2004–NM–162–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20868; Directorate Identifier 2004–NM–162–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on certain Fokker Model F.28 Mark 0100 series airplanes, equipped with Grimes Aerospace passenger service unit (PSU) panels having part number (P/N) 10–1178–( ) or 10–1571–( ). The CAA–NL advises that operators have reported incidents of smoke in the passenger compartment during flight. One of those incidents also included a burning smell during flight and consequently led to the airplane's return to the airport and emergency evacuation. Investigation revealed that water leaking onto the electrical connector of the PSU panel could cause overheating of the PSU panel. This condition, if not corrected, could result in smoke or fire in the passenger cabin.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–25–097, dated December 30, 2003. The service bulletin describes procedures for inspecting to determine the part number of the PSU panels for the PSU modification status, and corrective actions if applicable. The corrective actions include the following:

• For Grimes Aerospace PSU panels having P/N 10–1178–() or 10–1571–() that have been reidentified as "REV AE" or "REV C," as applicable: Sealing the PSU panel/airplane interface connector if necessary, and cleaning the plug and receptacle of the PSU panel/airplane interface connector.

• For Grimes Aerospace PSU panels having P/N 10–1178–() or 10–1571–() that have not been reidentified as "REV AE" or "REV C," as applicable: Modifying the PSU panel, sealing the PSU panel/airplane interface connector if necessary, and cleaning the plug and receptacle of the PSU panel/airplane interface connector.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive 2004–022, dated February 27, 2004, to ensure the continued airworthiness of these airplanes in the Netherlands.

The Fokker service bulletin refers to Grimes Aerospace Service Bulletin 10–1178–33–0040 (for PSU panel P/N 10–1178–()), Revision 1, dated March 25, 1996; and Service Bulletin 10–1571–33–0041 (for PSU panel P/N 10–1571–()), dated October 15, 1993; as additional sources of service information for modifying the PSU panel.

FAA's Determination and Requirements of the Proposed AD

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

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

Differences Between the Proposed AD and Dutch Airworthiness Directive

The Dutch airworthiness directive only requires an inspection to determine the modification status of the PSU panels. This proposed AD, however, would require an inspection to determine whether Grimes Aerospace PSU panels having P/N 10–1178–( ) or 10–1571–( ) are installed and the modification status of the PSU panels. Since the PSU panels are a rotatable part, this inspection is necessary to determine whether an airplane is affected by the unsafe condition of this AD.

Costs of Compliance

This proposed AD would affect about 61 airplanes of U.S. registry. The proposed actions would take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $6 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $20,191, or $331 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2005–20868; Directorate Identifier 2004–NM–162–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0100 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reported incidents of smoke in the passenger compartment during flight. One of those incidents also included a burning smell and consequently led to emergency evacuation of the airplane. We are issuing this AD to prevent overheating of the PSU panel due to moisture ingress, which could result in smoke or fire in the passenger cabin.

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 and Corrective Actions If Applicable

(f) Within 36 months after the effective date of this AD, inspect to determine if Grimes Aerospace PSU panels having part number (P/N) 10–1178–( ) or 10–1571–( ) are installed and the PSU modification status if applicable, and do any corrective actions if applicable, by doing all of the actions specified in the Accomplishment Instructions of Fokker Service Bulletin SBF100–25–097, dated December 30, 2003.

Note 1: Fokker Service Bulletin SBF100–25–097, dated December 30, 2003, refers to Grimes Aerospace Service Bulletin 10–1178–33–0040 (for PSU panel P/N 10–1178–( )), Revision 1, dated March 25, 1996; and Service Bulletin 10–1571–33–0041 (for PSU panel P/N 10–1571–( )), dated October 15, 1993, as additional sources of service information for modifying the PSU panel.

Parts Installation

(g) As of the effective date of this AD, no person may install a PSU panel, P/Ns 10–1178–( ) and 10–1571–( ), on any airplane, unless it has been inspected and any corrective actions if applicable have been done in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) Dutch airworthiness directive 2004–022, dated February 27, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 28, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6771 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20852; Directorate Identifier 2004–NM–240–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposed AD would require revising the airworthiness limitations section of the Instructions for Continued Airworthiness by incorporating new and revised structural inspection procedures and new and revised inspection intervals for the longitudinal skin joints in the fuselage pressure shell. This proposed AD would also require phase-in inspections and repair of any crack found during any phase-in inspection. This proposed AD is prompted by a report indicating that visual inspections were not adequate for detecting fatigue cracking in portions of the longitudinal skin joints in the fuselage pressure shell. We are proposing this AD to detect and correct fatigue cracking of the longitudinal skin joints in the fuselage pressure shell, which could affect the structural integrity of the airplane, and result in loss of cabin pressurization during flight.

DATES: We must receive comments on this proposed AD by May 6, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20852; the directorate identifier for this docket is 2004–NM–240–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20852; Directorate Identifier 2004–NM–240–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. TCCA advises that the existing visual inspections in the airworthiness limitations section of the Instructions for Continued Airworthiness were not adequate for detecting fatigue cracking in portions of the longitudinal skin joints in the fuselage pressure shell. Those areas were hidden by other structures. Fatigue cracking of the fuselage longitudinal skin joints, if not detected and corrected, could affect the structural integrity of the airplane, and result in loss of cabin pressurization during flight.

Explanation of Canadian Airworthiness Directive and Relevant Service Information

TCCA has issued Canadian airworthiness directive CF–2004–16, dated September 7, 2004, to ensure the continued airworthiness of these airplanes in Canada. The Canadian airworthiness directive requires revising the Transport Canada-approved maintenance program by incorporating new and revised structural inspection procedures and new and revised inspections intervals for the longitudinal skin joints in the fuselage pressure shell, as introduced in the temporary revisions (TR) to the applicable Bombardier DHC–8 Maintenance Program Manual, listed in the following tables. The TRs to the maintenance task cards (MTC) describe new and revised structural inspections. The TRs to the airworthiness limitations (AWL) describe new structural inspection intervals.

TABLE—TEMPORARY REVISIONS TO MTCS

DHC–8 model	Maintenance program manual/program support manual (PSM)	Temporary revision number	Task no.	Date
–102, –103, –106 airplanes	PSM 1–8–7TC	MTC–45	5310/29E	November 28, 2003.
		MTC–46	5310/30A	November 28, 2003.
–201, –202 airplanes	PSM 1–82–7TC	MTC 2–45	5310/29E	November 28, 2003.
		MTC 2–46	5310/30A	November 28, 2003.
–301, –311, –315 airplanes	PSM 1–83–7TC	MTC 3–47	5310/29E	November 28, 2003.
		MTC 3–48	5310/30A	November 28, 2003.

TABLE—TEMPORARY REVISIONS TO AWL

DHC–8 model	Maintenance program manual	Temporary revision no.	Date
–102, –103, –106 airplanes	PSM 1–8–7TC	AWL–92	June 28, 2004.
–102, –103, –106 airplanes	PSM 1–8–7TC	AWL–93	June 28, 2004.
–201, –202 airplanes	PSM 1–82–7TC	AWL 2–31	June 28, 2004.
–201, –202 airplanes	PSM 1–82–7TC	AWL 2–32	June 28, 2004.
–301, –311, –315 airplanes	PSM 1–83–7TC	AWL 3–98	June 28, 2004.
–301, –311, –315 airplanes	PSM 1–83–7TC	AWL 3–99	June 28, 2004.

TABLE—RECOMMENDED COMPLIANCE TIMES IN TEMPORARY REVISIONS TO AWL

de Havilland, Inc., TR	DHC–8 model airplanes	Action	Threshold/ initial inspection (flight cycles)	Initial repetitive inspection (flight cycles)	Phase-in threshold/ new inspections (flight cycles)	Repetitive intervals for new inspections (flight cycles)
AWL–92	–102 and –103	Detailed inspection	40,000	Not applicable	40,000	37,000
AWL–92	–106	Detailed inspection	40,000	Not applicable	40,000	36,240
AWL–93	–102 and –103	Above floor detailed inspection.	40,000	40,000	80,000	16,475
		Below floor detailed inspection.	40,000	40,000	80,000	10,980
AWL–93	–106	Above floor detailed inspection.	40,000	40,000	80,000	9,350
		Below floor detailed inspection.	40,000	20,346	60,346	6,230
AWL 2–31	–201 and –202	Detailed inspection	40,000	Not applicable	40,000	36,240
AWL 2–32	–201 and –202	Above floor detailed inspection.	40,000	40,000	80,000	9,350
		Below floor detailed inspection.	40,000	20,346	60,346	6,230
AWL 3–98	–301, –311, and –315	Detailed inspection	40,000	Not applicable	40,000	36,240
AWL 3–99	–301	Above floor detailed inspection.	40,000	Not applicable	40,000	40,000
		Below floor detailed inspection.	40,000	Not applicable	40,000	30,920
AWL 3–99	–311 and –315	Above floor detailed inspection.	40,000	Not applicable	40,000	40,000
		Below floor detailed inspection.	40,000	Not applicable	40,000	33,933

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require revising the airworthiness limitations section of the Instructions for Continued Airworthiness by incorporating new and revised structural inspection procedures and new and revised inspection intervals for the longitudinal skin joints in the fuselage pressure shell, except as discussed under "Differences Between the Proposed AD, Canadian Airworthiness Directive, and Service Information" This proposed AD would also require phase-in inspections and repair of any crack found during any phase-in inspection.

Differences Among the Proposed AD, Canadian Airworthiness Directive, and Service Information

The MTCs specify that you may contact the manufacturer for instructions on how to repair cracks in the longitudinal skin joints in the fuselage pressure shell, but this proposed AD would require you to repair those cracks using a method that we or TCCA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or TCCA approve would be acceptable for compliance with this proposed AD.

Although the Canadian airworthiness directive includes Bombardier Model DHC–8–314 airplanes, the applicability of this proposed AD does not include that airplane model. That airplane model is not included on the most recent type certificate data sheet for the affected models.

TCCA is aware of these differences.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the Bombardier temporary revision is referred to as a "detailed inspection." We have included the definition for a detailed inspection in Note 1 of this proposed AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AWL revision	1	$65	N/A	$65	177	$11,505
Phase-in inspections	25	65	N/A	1,625	177	287,625

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–20852; Directorate Identifier 2004–NM–240–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

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

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD was prompted by a report indicating that visual inspections were not adequate for detecting fatigue cracking in portions of the longitudinal skin joints in the fuselage pressure shell. We are issuing this AD to detect and correct fatigue cracking of the longitudinal skin joints in the fuselage pressure shell, which could affect the structural integrity of the airplane, and result in loss of cabin pressurization during flight.

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.

Revision of Airworthiness Limitation (AWL) Section

(f) Within 30 days after the effective date of this AD: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating the contents of the applicable de Havilland, Inc., temporary revision (TR) listed in Table 1 of this AD into the AWL section of the applicable Bombardier DHC–8 Maintenance Program Support Manual.

Thereafter, except as provided by paragraphs (g) and (l) of this AD, no alternative structural inspection intervals may be approved for the longitudinal skin joints in the fuselage pressure shell.

TABLE 1.—TEMPORARY REVISIONS TO AWL

DHC–8 model	de Havilland, Inc., TR	Dated	For maintenance program support manual (PSM)
–102, –103, and –106 airplanes	AWL–92	June 28, 2004	PSM 1–8–7TC

TABLE 1.—TEMPORARY REVISIONS TO AWL—Continued

DHC–8 model	de Havilland, Inc., TR	Dated	For maintenance program support manual (PSM)
	AWL–93	June 28, 2004	
–201 and –202 airplanes	AWL 2–31	June 28, 2004	PSM 1–82–7TC
	AWL 2–32	June 28, 2004	
–301, –311, and –315 airplanes	AWL 3–98	June 28, 2004	PSM 1–83–7TC
	AWL 3–99	June 28, 2004	

Incorporation of TRs Into General Revisions

(g) When the information in the applicable de Havilland, Inc., TR identified in Table 1 of this AD has been included in the general revisions of the applicable PSM identified in Table 1 of this AD, the general revisions may be inserted in the PSM, and the applicable TR may be removed from the AWL section of the Instruction for Continued Airworthiness.

Phase-In Inspections

(h) At the times specified in paragraph (i) of this AD, perform the detailed and eddy current inspections, as applicable, of the longitudinal skin joints in the fuselage pressure shell specified in the TR for the applicable Dash 8 (de Havilland, Inc.,) maintenance task card (MTC) listed in Table 2 of this AD.

TABLE 2.—TEMPORARY REVISIONS TO MTCS

DHC–8 model	de Havilland, Inc., TR	Dated	Task No.	For maintenance program support manual (PSM)
–102, –103, and –106 airplanes	MTC–45	November 28, 2003	5310/29E	PSM 1–8–7TC
	MTC–46	November 28, 2003	5310/30A	
–201 and –202 airplanes	MTC 2–45	November 28, 2003	5310/29E	PSM 1–82–7TC
	MTC 2–46	November 28, 2003	5310/30A	
–301, –311, and –315 airplanes	MTC 3–47	November 28, 2003	5310/29E	PSM 1–83–7TC
	MTC 3–48	November 28, 2003	5310/30A	

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Compliance Times

(i) Perform the inspections required by paragraph (h) of this AD at the applicable time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) For all airplanes with 40,000 total flight cycles or less as of the effective date of this AD: At the times specified in the applicable temporary revision to the Airworthiness Limitations (AWL) listed in Table 1 of this AD.

(2) For airplanes with more than 40,000 total flight cycles but less than 57,500 total flight cycles as of the effective date of this AD:

(i) For Model –102, –103, –301, –311, and –315 airplanes: Within 5,000 flight hours after the effective date of this AD or prior to the accumulation of 60,000 total flight cycles, whichever is first.

(ii) For Model –106, –201, and –202 airplanes: Within 5,000 flight hours after the effective date of this AD or prior to the accumulation of 60,346 total flight cycles, whichever is first.

(3) For all airplanes with 57,500 total flight cycles or more as of the effective date of this AD: Within 12 months or 2,500 flight cycles after the effective date of this AD, whichever is first.

(j) Repeat the inspections required by paragraph (h) of this AD thereafter at the intervals specified in the applicable temporary revision to the AWL required by paragraph (f) of this AD.

Repair

(k) If a crack is found in a longitudinal skin joint during any phase-in inspection required by paragraph (h) of this AD, and the MTC specifies contacting Bombardier for repair information: Before further flight, repair the affected longitudinal skin joint in accordance with a method approved by either the Manager, New York ACO; or Transport Canada Civil Aviation (or its delegated agent).

AMOCs

(l) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(m) Canadian airworthiness directive CF–2004–16, dated September 7, 2004, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6770 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–704; MB Docket No. 05–109, RM–11192; MB Docket No. 05–110, RM–11193; and MB Docket No. 05–111, RM–11200]

Radio Broadcasting Services; Cumberland Head, NY; Mojave and Trona, CA; and Haileyville and Stringtown, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth three proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Dana J. Puopolo. Petitioner proposes the allotment of Channel 255A at Mojave, California, as a third local service. Channel 255A can be allotted at Mojave in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 km (6.4 miles) northeast of Mojave. The proposed coordinates for Channel 255A at Mojave are 35–06–07 North Latitude and 118–04–41 West Longitude. In addition, in order to accommodate the allotment of Channel 255A at Mojave, Petitioner

further proposes to substitute Channel 247A for vacant Channel 255A at Trona, California, and to change the FM Table of allotments at Trona, California, by deleting Channel 255A and adding Channel 247A. The proposed coordinates for Channel 247A at Trona, California, are 35–45–46 NL and 117–22–19 WL. The allotment can be allotted at center city reference coordinates without site restriction. *See* Supplementary Information *infra*.

DATES: Comments must be filed on or before May 9, 2005, and reply comments on or before May 24, 2005.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90495; Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 05–109, 05–110, and 05–111, adopted March 16, 2005, and released March 18, 2005. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission further requests comment on a petition filed by Charles Crawford. Petitioner proposes the allotment of Channel 290A at Stringtown, Oklahoma, as a first local service. Channel 290A can be allotted at Stringtown in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.0 km (6.2 miles) southwest of Stringtown. The proposed coordinates for Channel 290A at Stringtown are 34–23–04 North Latitude and 96–05–51 West Longitude. In addition, in order to accommodate the allotment of Channel 290A at Stringtown, Petitioner further proposes to substitute Channel 252A for vacant Channel 290A at Haileyville, Oklahoma, and to change the FM Table of allotments at Haileyville by deleting Channel 290A and adding Channel 252A. The proposed coordinates for Channel 252A at Haileyville, Oklahoma, are 34–45–18 NL and 95–38–24 WL. The allotment requires a site restriction of 12.2 km (7.6 miles) southwest of Haileyville.

The Commission further requests comment on a petition filed by Dana J. Puopolo. Petitioner proposes the allotment of Channel 264A at Cumberland Head, New York, as a first local service. Channel 264A can be allotted at Cumberland in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 km (4.1 miles) east of Cumberland Head. The proposed coordinates for Channel 264A at Cumberland are 44–43–12 North Latitude and 73–19–12 West Longitude. Concurrence in a specially negotiated allotment by the Government of Canada is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border and would be short-spaced to Station CBF(FM), Channel 264C1, Montreal, Quebec, Canada.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 255A at Mojave, by removing Channel 255A and by adding Channel 247A at Trona.

3. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Cumberland Head, Channel 264A.

4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 290A and adding Channel 252A at Haileyville and by adding Stringtown, Channel 290A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–6552 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–712; MB Docket No. 05–107; RM–11199]

Radio Broadcasting Services; Islamorada, Marathon, and Sugarloaf Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division seeks comment on a petition filed by LSM Radio Partners LLC, licensee of Station WWWK(FM), Channel 288C2, Marathon, Florida, proposing the allotment of Channel 289A to Sugarloaf Key, Florida, as its first local service. To accommodate this allotment, this document also requests the reallotment of Channel 288C2 from Marathon to Islamorada, Florida, as its second local service and modification of the Station WWWK license accordingly. Channel 289A can be allotted to Sugarloaf Key in conformity with the Commission's rules, provided there is a site restriction of 3.6 kilometers (2.2 miles) southwest at coordinates 24–37–30 NL and 81–32–30 WL. Channel 288C2 can be reallotted to Islamorada, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction of 15.5 kilometers (9.6 miles) northeast at coordinates 25–01–23 NL and 80–30–06 WL. In accordance with the provisions of Section 1.420(i) of the Commission's rules, we shall not accept competing expressions of interest

pertaining to the use of Channel 288C2 at Islamorada.

DATES: Comments must be filed on or before May 9, 2005, and reply comments on or before, May 24, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: David G. O'Neil, Esq., Counsel, LSM Radio Partners LLC, Rini Coran, PC, 1501 M Street, NW., Suite 1150, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–107, adopted March 16, 2005, and released March 18, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 288C2 at Islamorada, removing Channel 288C2 at Marathon, and by adding Sugarloaf Key, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–6555 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–709; MB Docket No. 05–115; RM–11202]

Radio Broadcasting Services; High Point and Liberty, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Capstar TX Limited Partnership to reallot, downgrade, and modify its liceense for Station WVBZ(FM) from Channel 262C at High Point, North Carolina, to Chanel 262C0 at Liberty, North Carolina, as a first local service. Pursuant to Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest pertaining to the use of Channel 262C0 at Liberty. Channel 262C0 can be allotted to Liberty with a site restriction of 17.6 kilometers northeast at reference coordinates of 35–58–57 and 79–27–29.

DATES: Comments must be filed on or before May 9, 2005, and reply comments on or before May 24, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Marissa G. Repp, Esq., Tarah S. Grant, Esq., Hogan & Hartson LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109 (Counsel for Capstar TX Limited Partnership).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–115, adopted March 16, 2005, and released March 18, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Liberty, Channel 262C0, and by removing Channel 262C at High Point.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–6565 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–705; MB Docket No. 05–114, RM–11190]

Radio Broadcasting Services; Hale Center, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Charles Crawford, requesting the allotment of Channel 236C1 at Hale Center, Texas, as a first local aural service. Channel 236C1 can be allotted to Hale Center in compliance with the Commission's minimum distance separation requirements with a site restriction of 30.6 kilometers northeast at reference coordinates of 34–13–00 NL and 101–34–00 WL.

DATES: Comments must be filed on or before May 9, 2005, and reply comments on or before May 24, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Ave., Dallas, Texas 75205; and Gene A. Bechtel, Esq., Law Office of Gene Bechtel, Suite 600, 1050 17th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–114, adopted March 16, 2005 and released March 18, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Hale Center, Channel 236C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–6566 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–715; MB Docket No. 05–123, RM–11191]

Radio Broadcasting Services; Alturas, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Audio Division requests comment on a petition filed by George S. Flinn, Jr., proposing to allot Channel 277C as the community's fourth local aural broadcast service. The proposed coordinates for Channel 277C at Alturas, California, are 41–31–30 NL and 120–19–45 WL. The allotment will require a site restriction of 18.2 km (11.3 miles) east of Alturas.

DATES: Comments must be filed on or before May 9, 2005, and reply comments on or before May 24, 2005.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Stephen C. Simpson, Esq., 1090 Vermont Avenue, NW., Suite 800, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–123; adopted March 16, 2005, and released March 18, 2005. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for

rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 277C at Alturas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–6569 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

[Docket No. PHMSA–01–10292 (HM–206E)]

RIN 2137–AD50

Hazardous Materials: Hazardous Waste Manifest Requirements; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration—the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA)—and the Environmental Protection Agency (EPA) issued final rules in 1980 requiring that a manifest accompany each shipment of hazardous waste during transportation. In 49 CFR 172.205, PHMSA provided that the uniform manifest "may be used as the shipping paper required by" the Hazardous Materials Regulations, so long as it contained all the required information. On May 22, 2001, EPA published a notice of proposed rulemaking (NPRM) to revise the hazardous waste manifest system. One of EPA's proposed changes would have allowed the uniform manifest to be prepared and transmitted electronically from the generator to the disposal facility, rather than requiring it to accompany the shipment. EPA is deferring final action on the electronic manifest pending further analysis, outreach, and possible supplemental proposals. Therefore, PHMSA is withdrawing an NPRM published on August 8, 2001, that would have amended the Hazardous Materials Regulations on the use of the Uniform Hazardous Waste Manifest for shipments of hazardous wastes. The changes proposed in that NPRM would have accommodated changes proposed by EPA. PHMSA proposed to require that, if the generator of a hazardous waste prepares an electronic manifest, either a physical copy of the electronic manifest or another document containing the information required for a shipping paper must accompany the hazardous waste in transportation.

FOR FURTHER INFORMATION CONTACT: Mr. Darral Relerford, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, 202–366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901, *et seq.*) and regulations of the Environmental Protection Agency (EPA) at 40 CFR parts 262–264, hazardous wastes are tracked from their producer (generator) to their final disposal sites. The central tracking element of this system is the Uniform Hazardous Waste Manifest (uniform manifest), which accompanies a hazardous waste shipment from its point of origin to its destination. In 42 U.S.C. 6923, RCRA directs EPA to consult with DOT and issue regulations on the transportation of hazardous wastes that are "consistent with" requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180).

In 1980, EPA and PHMSA issued final rules requiring that a manifest accompany each shipment of hazardous waste during transportation. *See* 45 FR 12272 (Feb. 26, 1980) (EPA), 34560 (May 22, 1980) (PHMSA). In 49 CFR 172.205, PHMSA provided that the uniform manifest "may be used as the shipping paper required by" the HMR, so long as it contained all the required information.

On March 20, 1984, 49 FR 10490 (EPA), 10507 (PHMSA), EPA and PHMSA concurrently amended their regulations to adopt the current uniform manifest form in order to address the problems resulting from "a proliferation of manifests as States decided to develop and print their own forms." Under the current regulations, a generator may use the uniform manifest form for wastes regulated solely by a State, but a State may not "impose enforcement sanctions on a transporter during transportation of the shipment for failure of the form to include preprinted information or optional State information items," 40 CFR 271.10(h)(2).

On May 22, 2001, EPA published a notice of proposed rulemaking (NPRM) to revise the hazardous waste manifest system (66 FR 28240). One of EPA's proposed changes would have allowed the uniform manifest to be prepared and transmitted electronically from the generator to the disposal facility, rather than requiring it to accompany the shipment. EPA received 64 comments in response to the May 22, 2001, proposed rule from hazardous waste generators, transporters, waste management firms, consultants, an information technology vendor and ten state hazardous waste agencies. The revisions proposed in May 2001 aimed to reduce the manifest system's paperwork burden on users, while enhancing the effectiveness of the manifest as a tool to track hazardous waste shipments that are shipped from the site of generation to treatment, storage, or disposal facilities (TSDFs).

On August 8, 2001, PHMSA published a notice of proposed rulemaking (NPRM) (66 FR 41490). PHMSA proposed to revise its regulations on the use of the Uniform Hazardous Waste Manifest for shipments of hazardous wastes to accommodate the changes proposed by the Environmental Protection Agency (EPA). The intended effect of this proposed rule was to maintain consistency between EPA's and PHMSA's requirements. PHMSA proposed to modify 49 CFR 172.205 to provide that, when an electronic manifest is used, the hazardous waste must be accompanied by a physical shipping paper that can be either (1) a print-out (paper copy) of the electronic manifest or (2) a separate shipping paper that meets all of the shipping paper requirements in 49 CFR, subpart C of part 172. In addition, to prevent confusion by enforcement officials, if an electronic manifest is being used in the transportation of a hazardous waste, the shipping paper or copy of the electronic manifest must indicate on the document

that an electronic manifest is being used. Because § 172.204(d)(2) allows for a shipping paper to be "signed manually, by typewriter, or by other mechanical means," no change to the HMR is needed when a paper copy of the electronic manifest is used as the shipping paper accompanying hazardous waste during transportation. The signature of the generator on the electronic manifest, as printed out on a physical copy, would satisfy the requirement in § 172.204 (d).

More than 18 commenters submitted written comments in response to the NPRM, including representatives of waste treatment and disposal facilities, emergency responders, suppliers of industrial gases and related equipment and selected chemicals, shippers, carriers, federal and state governmental agencies and private citizens. Many commenters agreed that an electronic manifest would not provide emergency responders with the information as to the nature and hazards of materials in a transport vehicle or freight container if an electronic translator would not be available during an incident in transport.

II. Proposal To Be Withdrawn

In a final rulemaking published on March 4, 2005 (70 FR 10776), EPA indicates that the comments addressing the electronic manifest ("e-manifest") proposal raise significant substantive issues that merit further analysis and stakeholder outreach prior to adopting a final approach.

EPA stated the key electronic manifest issues that must be resolved include: (1) Whether the e-manifest should be decentralized as proposed and hosted by multiple private systems, centrally by EPA or by another party; (2) if a decentralized approach were to be adopted, how EPA's standards should address interoperability of private systems; (3) whether the final e-manifest approach should be integrated with biennial reporting or other functions supported by EPA, the states or other agencies; (4) what electronic signature methods should be included in the final rule; and, (5) the technical rigor and detail necessary in EPA's final standards to ensure a workable approach to the electronic manifest.

Therefore, EPA has decided to separate the electronic manifest from the form revisions portion of the final rulemaking. EPA is deferring final action on the electronic manifest pending further analysis, outreach, and possible supplemental proposals. In a future rulemaking PHMSA and EPA may reconsider proposals to allow the use of an electronic manifest for hazardous waste shipments. Accordingly, we are withdrawing the NPRM and terminating Docket No. PHMSA–01–10292 (HM–206E).

Issued in Washington, DC on March 31, 2005, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 05–6805 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 050323081–5081–01; I.D. 031505C]

RIN 0648–AT02

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for Southern Distinct Population Segment of North American Green Sturgeon

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, the NMFS, have completed an update of an Endangered Species Act (ESA) status review for the North American green sturgeon (*Acipenser medirostris*; hereafter "green sturgeon"). After reviewing new and updated information on the status of green sturgeon and considering whether green sturgeon is in danger of extinction throughout all or a significant portion of its range, or is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, we confirm our earlier determination that the species is comprised of two distinct population segments (DPSs) that qualify as species under the ESA, the Northern and Southern DPSs. We reaffirm our earlier determination that the Northern DPS does not warrant listing as threatened or endangered at this time, and we will maintain the DPS on the Species of Concern List due to remaining uncertainties about its status and threats. We revise our previous "not warranted" finding for the Southern DPS and propose to list it as threatened. This revision is based on: new information showing that the majority of spawning adults are concentrated into one spawning river (i.e., Sacramento River), thus increasing the risk of extirpation due to catastrophic events; threats that have remained severe since the last status review and have not been adequately addressed by conservation measures currently in place; fishery-independent data exhibiting a negative trend in juvenile green sturgeon abundance; and new information showing evidence of lost spawning habitat in the upper Sacramento and Feather Rivers. We will reevaluate the status of the Northern DPS in 5 years. If the proposed listing is finalized, a recovery plan will be prepared and implemented for the Southern DPS. Protective regulations under ESA section 4(d) and critical habitat will be proposed in a subsequent **Federal Register** notice.

DATES: Comments on this proposal must be received by July 5, 2005. A public hearing will be held promptly if any person so requests by May 23, 2005. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

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

- E-Mail: *GreenSturgeon.Comments@noaa.gov*
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Submit written comments to Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213.

The updated green sturgeon status review and other reference materials regarding this determination can be obtained via the Internet at: *http://www.nmfs.noaa.gov* or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or the Assistant Regional Administrator, Protected Resources Division, Northwest Region, NMFS, 1201 NE Lloyd Avenue, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980–4115; Scott Rumsey, NMFS, Northwest Region (503) 872–2791; or Lisa Manning, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2001, we received a petition from the Environmental Protection Information Center, Center

for Biological Diversity, and WaterKeepers Northern California requesting that we list the green sturgeon as threatened or endangered under the ESA and that critical habitat be designated for the species concurrently with any listing determination. On December 14, 2001, we provided notice of our determination that the petition presented substantial scientific information indicating that the petitioned action may be warranted and requested information to assist with a status review to determine if green sturgeon warranted listing under the ESA (66 FR 64793). To assist in the status review, we formed a Biological Review Team (BRT) comprised of scientists from our Northwest and Southwest Fisheries Science Centers and from the United States Geological Survey (USGS). We also requested technical information and comments from State and Tribal co-managers in California, Oregon, and Washington, as well as from scientists and individuals having research or management expertise pertaining to green sturgeon from California and the Pacific Northwest. The BRT considered the best available scientific and commercial information, including information presented in the petition and in response to our request for information concerning the status of and efforts being made to protect the species (66 FR 64793; December 14, 2001). The BRT presented its findings in a final status review report for North American green sturgeon (Adams *et al.*, 2002). Under the ESA, a listing determination may address a species, subspecies, or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). On February 7, 1996, the U.S. Fish and Wildlife Service (FWS) and NMFS adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). The joint DPS policy identified two elements that must be considered when making DPS determinations: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. After conducting the status review, we determined that green sturgeon is comprised of two DPSs that qualify as species under the ESA: (1) a northern DPS consisting of populations in coastal watersheds northward of and including the Eel River ("Northern DPS"); and (2) a southern DPS consisting of coastal and Central Valley populations south of the Eel River, with the only known population in the Sacramento River ("Southern DPS").

The BRT considered the following information in order to assess risk factors for each green sturgeon DPS: (1) abundance trends from fisheries data; (2) the effects of fishing bycatch; (3) the possible loss of spawning habitat in rivers where spawning is reported to have occurred historically, but apparently no longer does; (4) concentration of spawning in the Klamath and Sacramento River systems; (5) lack of adequate population abundance data; (6) potentially lethal water temperatures and adverse effects of contaminants; (7) entrainment (defined here as loss of green sturgeon due to water diversion) by water projects; and (8) adverse effects of non-native species. Based on the 2002 risk assessment, we determined on January 23, 2003, that neither DPS warranted listing as threatened or endangered (68 FR 4433). Uncertainties in the structure and status of both DPSs led us to add them to the Species of Concern List (formerly the candidate species list; 69 FR 19975; April 15, 2004). Along with the finding, we announced that we would reevaluate the status of green sturgeon in 5 years.

On April 7, 2003, the Environmental Protection Information Center (and other Plaintiffs) challenged our "not warranted" finding for green sturgeon. The U.S. District Court for the Northern District of California issued an order on March 2, 2004, which set aside our "not warranted" finding and remanded the matter to us for redetermination of whether green sturgeon is in danger of extinction throughout all or a significant portion of its range, or is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The U.S. District Court's March 2004 remand was issued because the Court was not satisfied with our examination of whether purported lost spawning habitat constituted a significant portion of either DPS' range. We reestablished the BRT in the early summer of 2004 and added a new member from USGS who possessed considerable knowledge of green sturgeon. The BRT was asked to consider recent scientific and commercial information available regarding the biological status of green sturgeon and to assist us in assessing the viability of the species throughout all or a significant portion of its range. We published a notice on June 18, 2004, soliciting information from the public to assist us in updating our status review and making a new listing determination (69 FR 34135).

In addition to the information solicited during the first status review, we solicited any new information beyond that considered in the 2002 green sturgeon status review or the January 2003 1–year "not warranted" finding on the following topics for the Northern and Southern DPSs of green sturgeon: (1) new genetic, morphological, physiological, or ecological information relevant to DPS identification; (2) current or historic information documenting the geographic extent (e.g., area, river mile distance) and magnitude (e.g., abundance of spawning females, reproductive output) of spawning in particular river systems (e.g., Fraser River, Umpqua River, South Fork Trinity River, Eel River, Feather River, and San Joaquin River); (3) information documenting the current geographic extent and magnitude of spawning in areas other than where it is known to presently occur (i.e., areas other than the Sacramento River, Klamath River and Rogue River); (4) the legitimacy of references used to support information regarding current or historic spawning in the systems mentioned above in (2) and (3), particularly citations by Houston (1988) for the Fraser River; Lauman *et al.* (1972) and the Oregon Department of Fish and Wildlife (ODFW) (2002) for the Umpqua River; Moyle *et al.* (1992) and references therein for the South Fork Trinity River; Puckett (1976), Moyle *et al.* (1992) and references therein for the Eel River; Wang (1986) and FWS (1995) for the Feather River; and Moyle *et al.* (1992) and references therein for the San Joaquin River; (5) historic, current or future factors that may be responsible for the reported loss of spawning habitat and associated spawning populations; and (6) fishery-dependent and -independent abundance data for analysis of population trends.

The public comment period closed on August 17, 2004. The BRT convened to draft an updated status review in November 2004.

On January 27, 2005, we distributed the updated status review to co-managers (i.e., States of Washington, Oregon and California, Yurok and Hoopa Tribes, FWS, and the California Bay-Delta Program) for review. The final updated status review for green sturgeon was completed by the BRT on February 22, 2005, and submitted to NMFS Regional Offices for further consideration prior to the publication of this notice.

Biology and Life History of Green Sturgeon

A thorough account of green sturgeon biology and life history may be found in the previous 1–year finding (68 FR 4433; January 23, 2003) and the updated status review (Adams *et al.*, 2005), which are incorporated here by reference. The following is a summary of that information.

Adult Distribution and Feeding

The green sturgeon is the most widely distributed member of the sturgeon family Acipenseridae. Like all sturgeon species it is anadromous, but it is also the most marine-oriented of the sturgeon species. Green sturgeon are known to range in nearshore marine waters from Mexico to the Bering Sea and are commonly observed in bays and estuaries along the western coast of North America, with particularly large concentrations entering the Columbia River estuary, Willapa Bay, and Grays Harbor during the late summer (Moyle *et al.*, 1992). The reasons for these concentrations are unclear, but do not appear to be related to spawning or feeding (Beamesderfer, 2000).

Little is known about adult green sturgeon feeding. Adults in the Sacramento-San Joaquin Delta are reported to feed on benthic invertebrates including shrimp, mollusks, amphipods, and even small fish (Moyle *et al.*, 1992). One hundred and twenty-one green sturgeon stomach samples from the Columbia River gillnet fishery were empty with the exception of one fish, while all white sturgeon stomachs contained digested material (ODFW 2002).

Spawning

Adult green sturgeon are thought to spawn every 3 to 5 years (Tracy, 1990), but new information suggests that spawning could occur as frequently as every 2 years (Lindley and Moser, pers. comm., 2004). Adults typically migrate into fresh water beginning in late February (Moyle *et al.*, 1995); spawning occurs from March July, with peak activity from April June (Moyle *et al.*, 1995). Confirmed spawning populations in North America are in the Rogue (Erickson *et al.*, 2001, Rien *et al.*, 2001), Klamath, and Sacramento Rivers (Moyle *et al.*, 1992; CDFG, 2002). Green sturgeon females produce 60,000 - 140,000 eggs (Moyle *et al.*, 1992), and they are the largest eggs (diameter 4.34mm) of any sturgeon species (Cech *et al.*, 2000). Spawning occurs in deep turbulent river mainstems. Klamath and Rogue River populations appear to spawn within 100 miles (161 km) of the ocean, while the Sacramento spawning run may travel over 200 miles (322 km). Specific spawning habitat preferences are unclear, but eggs likely are broadcast over large cobble where they settle into the cracks (Moyle *et al.*, 1995). Optimum flow and temperature requirements for spawning and incubation are unclear, but spawning success in most sturgeons is related to these factors (Dettlaff et al.,1993). Temperatures above 68 F (20°C) were lethal to embryos in laboratory experiments (Cech et al., 2000).

Early Life History and Maturation

Green sturgeon larvae first feed at 10 days post hatch and grow quickly reaching a length of 66mm and a weight of 1.8 g in 3 weeks of exogenous feeding. Metamorphosis to the juvenile stage is complete at 45 days. Juveniles continue to grow rapidly, reaching 300mm in 1 year and over 600mm within 2 3 years for the Klamath River (Nakamoto *et al.*, 1995). Juveniles spend from 1 4 years in fresh and estuarine waters and disperse into salt water at lengths of 300–750mm. The little that is known regarding juvenile green sturgeon feeding habits comes from a study conducted in the Sacramento-San Joaquin Delta, where juveniles fed on opossum shrimp and amphipods (Radtke, 1966).

Green sturgeon disperse widely in the ocean after their out-migration from freshwater (Moyle *et al.*, 1992). Tagged green sturgeon from the Sacramento and Columbia Rivers are primarily captured to the north in coastal and estuarine waters, with some fish tagged in the Columbia River being recaptured as far north as British Columbia (WDFW, 2002a). While there is some bias associated with recovery of tagged fish through commercial fishing, the pattern of a northern migration is supported by the large concentration of green sturgeon in the Columbia River estuary, Willapa Bay, and Grays Harbor, which peaks in August. These fish tend to be immature; however, mature fish and at least one ripe fish have been found in the lower Columbia River (WDFW, 2002a). Genetic evidence suggests that Columbia River green sturgeon are a mixture of fish from at least the Sacramento, Klamath, and Rogue Rivers (Israel *et al.*, 2002). Mature males range from 139 199cm in fork length (FL) and 15 to 30 years of age (VanEenennaam, 2002). Mature females range from 157 223cm FL and 17 to 40 years of age. Maximum ages of adult green sturgeon are likely to range from 60–70 years (Moyle, 2002).

Summary of New Information

Consideration as a "Species" Under the ESA

The ESA defines species as "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature" 16 U.S.C. 1532(16). This definition allows for the recognition of DPSs at levels below taxonomically recognized species or subspecies. On February 7, 1996, the FWS and NMFS published a joint policy to clarify the phrase "distinct population segment" for the purposes of listing, delisting and reclassifying species under the ESA (61 FR 4722). This policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

New genetic information in combination with the tendency of sturgeon to exhibit high spawning site fidelity confirms the conclusions drawn during the previous 1–year "not warranted" finding (68 FR 4433; January 29, 2003) that the northern and southern populations of green sturgeon are "discrete" and "significant" as defined in the DPS policy. (For a complete discussion of the discreteness and significance of the U.S. population of green sturgeon see 68 FR at 4437).

Genetic Information

Updated analyses of green sturgeon genetic structure were made available from University of California - Davis (J. Israel and B. May, pers. comm., 2004). These results incorporated a greater number of samples including new adult samples from the Umpqua River, new juvenile samples from the Sacramento River, and an increase in microsatellite DNA loci to nine over the six reported in the previous status review and discussed in Israel *et. al.* (2004). Green sturgeon samples demonstrate a strong division between a grouping of the Rogue, Klamath, and Umpqua Rivers versus a grouping of the Sacramento and Columbia Rivers and San Pablo Bay samples. The northern group included mixed stock green sturgeon samples from the Umpqua River as well as single stock samples from the Rogue and Klamath Rivers and the southern group included mixed stock samples from the Columbia River, samples from San Pablo Bay that may be either mixed or single stock, and single stock samples from the Sacramento River.

Oceanic Distribution and Behavior

New oceanic distribution and behavior information came from pop-off archival tags (7 fish), Oregon trawl logbook analysis, and acoustic tags (168 fish). These data indicated that green sturgeon generally make northward migrations, to points as far north as northwest Vancouver Island, Canada, upon returning to the ocean. During oceanic migrations, archival tagged fish occupied depths of 40–70 m and remained exclusively inside the 110 m contour. These results are confirmed by Oregon trawl logbook records (Erickson and Hightower, 2004). Fish marked in spawning areas (Rogue and Klamath Rivers and San Pablo Bay) and in mixed stock areas (Columbia River and Willapa Bay) with acoustic tags in 2002, 2003, and 2004 sustained migrations of 100 km per day. Several fish tagged in 2002 returned to the Rogue River in 2004, suggesting a minimal spawning periodicity of 2 years if it is assumed that these fish were ripe and returning to the River to spawn (S. Lindley and M. Moser, pers. comm., 2004).

Freshwater Distribution Information

We requested new historic and/or current information for particular river systems where historic and current spawning status is uncertain (e.g., Fraser River, Umpqua River, South Fork Trinity River, Eel River, Feather River, and San Joaquin River; 69 FR 34135). New information was received for the Chehalis, Umpqua, Rogue, and Eel Rivers within the Northern DPS and the Sacramento, Feather, and San Joaquin Rivers within the Southern DPS.

Northern DPS

Washington Department of Fish and Wildlife (WDFW) investigated the Chehalis River as potential green sturgeon habitat, and while it appears to possess suitable habitat features for green and white sturgeon spawning, there has not been evidence of spawning occurring in this basin (WDFW, 2004). Data summarized from catch record cards suggest that a few green sturgeon were caught in sport fisheries as far upriver as 60 kilometers during July 2002, March 2003, and December 2003, but these may be misidentifications of white sturgeon, which are much more common within the basin. Sport anglers have reported small green sturgeon in Grays Harbor; however, these fish were most likely of a post-migratory size and therefore were not fish rearing in the estuary. Green and white sturgeon eggs and larvae have not been observed in the Chehalis River or Grays Harbor.

There are two confirmed records of green sturgeon captured above tidal influence in the Umpqua River (T. Rien, pers. comm., 2004). In July 2000, two juvenile green sturgeon (each approximately 10–cm long) were regurgitated from two smallmouth bass caught at river kilometer (rkm) 134 on the Umpqua River. The ODFW interviewed the local angling guide, and the one available regurgitated fish was positively identified as a green sturgeon. The other regurgitated sturgeon was not available to examine. In April 1979, a 1.8 m green sturgeon was caught at rkm 164 on the Umpqua River. A picture of the fish was published in the Roseburg News Review (May 3, 1979) and it was visually identified as a green sturgeon by ODFW. ODFW has sampled the Umpqua River in 2002, 2003, and 2004 using gill nets, beach seines, snorkeling, and underwater video, and their sampling efforts did not capture any green sturgeon above tidal influence in the Umpqua River.

A putative green juvenile sturgeon was captured at Big Butte Creek (rkm 254) near Lost Creek Dam on the Rogue River (R. Reisenbichler, pers. comm., 2004). This is unusual because it is very high in the system and above two major dams with fish ladders (Savage Rapids and Gold Ray) and several smaller dams.

Adult green sturgeon were sighted on the mainstem Eel River near Fort Seward, California (rkm 101) during snorkel surveys in 1995 and 1996 (S. Downie, pers. comm., 2004). Three sturgeon were sighted each year at a place locally known as "The Sturgeon Hole." Two juvenile green sturgeon were captured in the Eel River estuary in 1994 by trawl (S. Cannata, pers. comm., 2004). The first one was 282mm FL and the second was 510mm. This is in addition to the previously reported capture of 26 juvenile green sturgeon near Fort Seward in 1967 and 1968 (Pluckett, 1976).

Southern DPS

Recent habitat evaluations conducted in the upper Sacramento and Feather Rivers for salmonid recovery planning suggest that significant potential green sturgeon spawning habitat was made inaccessible or altered by dams (historical habitat characteristics, temperature, and geology summarized in Lindley *et al.*, 2004). This spawning habitat may have extended up into the three major branches of the Sacramento River, the Little Sacramento River, the Pit River system, and the McCloud River.

Green and white sturgeon adults have been observed periodically in small numbers in the Feather River (Beamesderfer *et al.*, 2004). There are at least two confirmed records of adult green sturgeon in 2004. There are no records of larval or juvenile sturgeon of either species, even prior to the 1960's when Oroville Dam was built. There are reports that green sturgeon may reproduce in the Feather River during high flow years (CDFG, 2002), but these are not specific and are unconfirmed.

Small fisheries for sturgeon occur in spring on the San Joaquin River between Mossdale and the Merced River (Kohlhorst, 1976). Though sturgeon are known to migrate into the San Joaquin River, no efforts have been made to document sturgeon reproduction (FWS, 1995). In addition, data are not regularly collected at diversions on the San Joaquin River, and when sturgeon have been collected, species differentiation rarely occurred. Information exists through interviews with biologists, wardens, and anglers regarding the presence and potential spawning of white sturgeon on the San Joaquin River (FWS, 1995). Two juvenile white sturgeon caught at Woodbridge on the Mokelumne River (rkm 63) in 2003 are the first confirmation of white sturgeon reproduction in the San Joaquin River system (Beamesderfer *et al.*, 2004). Though no green sturgeon have ever been documented in the San Joaquin River upstream of the Delta or in the Stanislaus, Tuolumne, and Merced Rivers (CDFG, 2002; Beamesderfer *et al.*, 2004), the San Joaquin River and its tributaries have been heavily modified in ways that reduce suitability for sturgeon since the 1940s, so the lack of contemporary information cannot be considered evidence of historical green sturgeon absence. Moreover, species with a similar dependence on historic deep cool waters of the San Joaquin for spawning (i.e., spring-run Chinook salmon; Yoshiyama *et al.*, 2001; and white sturgeon, FWS, 1995) are either extirpated or nearly so on the San Joaquin River, indicating that a once self-sustaining green sturgeon population on the San Joaquin River may have been possible.

Catch Information

The coastwide bycatch of green sturgeon continues to be reduced over time as noted in the previous status review (Adams et al., 2002). Based on updated and corrected bycatch numbers, green sturgeon take has been reduced from a high of 9,065 in 1986 to 862 in 2001, the last year in the previous status review, to 512 in 2003. The greatest reductions in bycatch (direct and indirect) were for the commercial fisheries in the Northern

DPS, specifically the Columbia River, Willapa Bay, and Grays Harbor. This reduction has occurred due to regulatory changes summarized in Adams *et al.* (2002), Appendix 1 Table 2. Yurok and Hoopa tribal green sturgeon fisheries have remained constant, with relatively constant effort, and together account for 59 percent of the coastwide green sturgeon catch in 2003.

Historic Spawning Status

Information presented in the first status review (Adams *et al.*, 2002) and new information presented here regarding the historic and current spawning status of green sturgeon were analyzed.

Conclusions from New Information

In earlier technical memos and **Federal Register** publications (66 FR 64793, December 14, 2001; 68 FR 4433, January 23, 2003), we reported the loss of green sturgeon spawning habitat in the Umpqua, Fraser, South Fork Trinity, Eel (Northern DPS), Upper Sacramento, Feather, and possibly San Joaquin Rivers (Southern DPS) based on information presented in the petition. These claims prompted us to report that green sturgeon experienced a significant reduction in spawning area. New analysis of existing information and the submission of new information to us in August 2004 (69 FR 34135) leads us to revise these earlier judgments in the following ways.

Northern DPS

There is no evidence of historic or current spawning in the Fraser or Chehalis Rivers (D. Lane, pers. comm., 2004; WDFW, 2004). Based on the lack of data, we cannot conclude that there has been a loss of spawning habitat over time in these systems.

Known historic and current spawning, based primarily on the presence of juvenile green sturgeon, occurs in the Umpqua, Rogue, Klamath and Trinity Rivers, and, therefore, we conclude that populations have not been extirpated from these systems (T. Rein, pers. comm., 2004; Erickson *et al.*, 2002; Moyle, 2002; Sheiff *et al.*, 2001). We are uncertain as to whether spawning habitat has been lost in the Umpqua River. A significant reduction in spawning habitat is not likely to have occurred in the Rogue River because there are no impassable barriers along green sturgeon migration routes. Although the Klamath River has undergone human alteration, data suggest that the geographic extent of spawning in the system has not been reduced over time. A paucity of data for the Trinity River limits our ability to comment on the magnitude of loss of spawning habitat in this system.

There is evidence to suggest that green sturgeon spawned in the South Fork Trinity River and continue to spawn there to some degree, based on the presence of adults in freshwater areas above tidal influence (CDFG, 1978; Moyle *et al.*, 1992). We suspect that spawning habitat still exists in this system, but have no evidence to comment on whether spawning habitat has been reduced over time.

The Eel River is the only system in the Northern DPS where the status of spawning since historic times is believed to have changed. Spawning is known to have occurred in the past based on the presence of juveniles (Plunkett, 1976), but recently, only adults have been present in the River (S. Downie, pers. comm., 2004) and one juvenile, whose natal stream origin is uncertain, was collected in the estuary. Despite Moyle *et al.*'s (2002) claim that green sturgeon have been extirpated from the Eel River, we determined that our ability to make a conclusion regarding extirpation is limited by: (1) low sampling effort in recent times (see Status of Green Sturgeon DPSs: Northern DPS); and (2) our inability to determine how much spawning habitat or reproductive potential may have been lost.

Southern DPS

Known historic and current spawning, based on the presence of juvenile green sturgeon, occurs in the Sacramento River (Adams *et al.*, 2002). We have indirect evidence, based on habitat assessments of Chinook salmon, that the geographic extent of spawning has been reduced due to impassable barriers (the Keswick and Shasta dams) in the upper Sacramento River. We have not been able to quantify the reduction of habitat to date, and are uncertain how reduction in spawning habitat has affected the population's viability.

Spawning is suspected to have occurred in the Feather River due to the presence of adults in the system (CDFG, 2002). Although there is no evidence of spawning in the past or now, the continued presence of adults in the system suggests that green sturgeon are trying to migrate into presumed spawning areas now blocked by the Oroville Dam. Therefore, we conclude that spawning habitat may have been lost in the Feather River, but we were not able to determine how much habitat or reproductive potential was lost.

There is no evidence of historic or current spawning in the San Joaquin River (Beamesderfer, 2004; Adams *et al.*, 2002; CDFG, 2002). While we cannot make any conclusions regarding loss of spawning habitat over time in the San Joaquin River, indirect evidence from a variety of sources (Moyle, 2002; Lindley *et al.*, 2004; L. Hess, pers. comm., 2004) suggests that both adult and juvenile green sturgeon may have been present in this system in the past. If spawning did occur in the San Joaquin River in the past, there may have been a reduction in spawning habitat again due to reasons mentioned above for the Sacramento and Feather Rivers.

Summary of Factors Affecting the Species

Section 4 of the ESA (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for adding species to the Federal list of threatened and endangered species. Section 4 requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations. 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 ESA. We must determine if either DPS of green sturgeon is endangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

Species-wide Factors

Ocean and estuarine bycatch of green sturgeon in the white sturgeon and salmonid fisheries was considered a species-wide factor for decline since its impact could not be apportioned to one DPS or the other. Current total catch of green sturgeon has been reduced to 6 percent of its 1986 high value of 9,065 fish; this does not, however, necessarily represent a reduction in green sturgeon abundance. The recent reduction is due to newly imposed fishing regulations in Oregon and Washington. Commercial fisheries targeting sturgeon have not been allowed in the Columbia River or Willapa Bay since 2001, and recreational fishing remains negligible (WDFW, 2004). Yurok and Hoopa tribal catch has remained relatively constant during the entire time series. The reduction in catch through protective

management measures represents a reduction in risk to the Northern DPS. CDFG (2002) estimated an average fishing mortality of 2.2 percent for green sturgeon based on tag return data in the Sacramento-San Joaquin Estuary. The impact of this fishing mortality rate is unknown.

A summary of DPS-specific factors for decline is presented below (Tables 1 and 2). These factors were only considered for those river systems with known or suspected historical or current spawning activity.

Northern DPS Factors

The potential factors for decline in the Northern DPS are reduced flows, changed flow regimes, increased temperatures, and reduced oxygen concentrations, principally in the Klamath-Trinity and Eel River systems (Table 1). The impact of these factors is uncertain. This DPS also has the only major in-river fishery for green sturgeon (Yurok and Hoopa tribal fisheries in the Klamath-Trinity River system), the effects of which are uncertain, but catch data show no obvious signs of decline. As mentioned in the previous section, species-wide reduction in bycatch fishing mortality through protective management measures reduces the threat of overfishing in the Northern DPS. No risks due to disease, predation, or inadequacy of existing regulatory mechanisms were identified. The Northern DPS has two known major spawning populations (e.g., the Klamath-Trinity River system and the Rogue River) that are not close to one another geographically, thus spreading risks of extinction over more than one spawning area. Spawning also appears to occur infrequently in the Umpqua River. This gives the Northern DPS some additional protection.

Southern DPS Factors

The principal factor for decline for this DPS comes from the reduction of green sturgeon spawning area to a limited area of the Sacramento River (Table 2). Keswick Dam provides an impassible barrier blocking green sturgeon access to what were likely historic spawning grounds upstream (FWS, 1995). A substantial amount of habitat in the Feather River above Oroville Dam also was lost, and threats to green sturgeon on the Feather River are similar to those faced in the Sacramento River (NMFS, 2004). The BRT concluded that a viable spawning population of green sturgeon no longer exists in the Feather River and was likely lost due to the habitat blockage as a result of Oroville Dam and from thermal barriers associated with the Thermalito Afterbay Facility (Table 2). Any observations of adult green sturgeon likely represent individuals that were stranded as a result of these barriers.

Potential adult migration barriers to green sturgeon include the Red Bluff Diversion Dam (RBDD), Sacramento Deep Water Ship Channel locks, Fremont Weir, Sutter Bypass, and the Delta Cross Channel Gates on the Sacramento River, and Shanghai Bench and Sunset Pumps on the Feather River. The threat of screened and unscreened agricultural, municipal, and industrial water diversions in the Sacramento River and Delta to green sturgeon are largely unknown as juvenile sturgeon are often not identified, and current California Department of Fish and Game (CDFG) and NMFS screen criteria do not address sturgeon. Based on the temporal occurrence of juvenile green sturgeon and the high density of water diversion structures along rearing and migration routes, we find the potential threat of these diversions to be serious and in need of study (Table 2 NMFS, 2005).

CDFG (1992) and FWS (1995) found a strong correlation between mean daily freshwater outflow (April to July) and white sturgeon year class strength in the Sacramento-San Joaquin Estuary (these studies primarily involve the more abundant white sturgeon; however, the threats to green sturgeon are thought to be similar), indicating that insufficient flow rates are likely to pose a significant threat to green sturgeon (Table 2). This association of year class strength with outflow is also found in other anadromous fishes inhabiting the Estuary, such as striped bass, Chinook salmon, American shad, and longfin smelt (Stevens and Miller, 1983). Mean April-May flow rates of 566 cubic meters per second appear to be the minimum required for the production of good year class strength based on approximately 20 years of sturgeon salvage data at the Skinner Fish Facility (CDFG, 2002). According to this criterion, low flow rates occurred slightly more than 50 percent of the time during the years spanning 1968–1987 (CDFG, 2002). The FWS (1995) used water year types, based on an index developed for the Sacramento Basin (California Department of Water Resources, 2004), to suggest that low flow conditions occurred 53 percent of the time during the years spanning 1944–2004. It is postulated that low flow rates could dampen survival by hampering the dispersal of larvae to areas of greater food availability, hampering the dispersal of larvae to all available habitat, delaying the transportation of larvae downstream of water diversions in the Delta, or decreasing nutrient supply to the nursery, thus stifling productivity (CDFG, 1992). There are no current indications that flow rates will increase over time.

High temperatures no longer seem to be the problem that they once were with the installation of the Shasta Dam temperature control device in 1997, although Shasta Dam has a limited storage capacity and cold water reserves could be depleted in long droughts (Table 2). Temperatures at RBDD have not been higher than 16° C since 1995 (California Data Exchange Center) and are within the green sturgeon egg and larvae optimum for growth and survival of 15° to 19° C (Mayfield and Cech, 2004). However, green sturgeon reproduction before 1995 may well have been adversely affected by temperature and these earlier high temperatures may have caused population reductions that would still affect the overall population size and age-structure (Table 2). Water temperatures on Feather River downstream of the Thermalito Afterbay outlet are considerably higher than temperatures in the low-flow channel (FWS, 1995). It is likely that high water temperatures (greater than 17.2° C) may deleteriously affect sturgeon egg and larval development, especially for late-spawning fish in drier water years (FWS, 1995). CDFG (2002) also indicated water temperatures may be inadequate for spawning and egg incubation in the Feather River during many years as the result of releases of warmed water from Thermalito Afterbay. CDFG believed this may be one reason neither green nor white sturgeon are found in the river in low-flow years. It is not expected that water temperatures will become more favorable in the near future (CDFG, 2002) and thus elevated water temperature continues to be a threat.

Sturgeon have high vulnerability to fisheries, and the trophy status of large white sturgeon makes these fishes a high priority for enforcement to protect against poaching (Table 2; CDFG, 2002). Green sturgeon are caught incidentally in these white sturgeon fisheries.

Non-native species are an ongoing problem in the Sacramento-San Joaquin River and Delta systems (Table 2; CDFG, 2002). One risk for green sturgeon associated with the introduction of non-native species involves the replacement of relatively uncontaminated food items with those that may be contaminated. For example, the non-native overbite clam, *Potamocorbula amurensis*, introduced in 1988, has become the most common food of white sturgeon and was found in the only green

sturgeon examined thus far (CDFG, 2002). The overbite clam is known to bioaccumulate selenium, a toxic metal (CDFG, 2002; Linville et al., 2004). Green sturgeon may also experience predation by introduced species including striped bass.

Contamination of the Sacramento River increased substantially in the mid–1970s when application of rice pesticides increased (FWS, 1995). Estimated toxic concentrations for the Sacramento River during 1970–1988 may have deleteriously affected striped bass larvae (Bailey, 1994). White sturgeon may also accumulate PCBs and selenium (White *et al.*, 1989). While green sturgeon spend more time in the marine environment than white sturgeon and, therefore, may have less exposure, the BRT concluded that some degree of risk from contaminants probably also occurs for green sturgeon (Table 2).

The previous status review (Adams *et al.*, 2002) summarized juvenile entrainment and change in annual mean number over time. Juvenile entrainment is considered a type of threat imposed by water diversion (Table 2).

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Table 1. Threats assessment by river system within the Northern DPS. No system-specific threats were identified in the Umpqua River. L=larvae; J=juvenile; and A=adult. All five listing factors were examined for each river system. Listing factors are: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

River System	Threats	Life Stage Affected	Listing Factors				
			1	2	3	4	5
Rogue	Flow management and hydrological effects	L, J, A	✓				
Klamath	Increased temperatures	L, J, A	✓				
	Reduced O_2 concentrations	L, J, A	✓				
	Flow regime change	L, J, A	✓				
	In-river fishing	J, A		✓			
-Trinity	Reduced flows	L, J, A	✓				
	See Klamath threats						
-South Fork Trinity	1955 and 1964 floods	L, J, A					✓
	See Klamath threats						
Eel	1955 and 1964 floods	L, J, A					✓
	Flow management and hydrological effects	L, J, A	✓				
	Sedimentation and TMDL	L, J, A	✓				

Table 2. Threats assessment by river system within the Southern DPS. L=larvae; J=juvenile; and A=adult. All five listing factors were examined for each river system. Listing factors are: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

River	Threats	Specific Effect	Timing of Exposure	Exposure	Life Stage	Listing Factors				
						1	2	3	4	5
Sacramento	Impassible barriers (Keswick and Shasta)	Block/preventaccess to spawning habitat	Late-spring-early summer	Continuous	A	✓				
	Adult migration barriers	Upstream migration barrier	Late spring-early fall	Continuous	A	✓			✓	
	Insufficient flow	Altered hydrology	Low flow years	Variable	L, J, A	✓				
	Increased temperatures	Developmental abnormalities (reduced swimming performance)	Low flow years	Variable	L, J, A	✓				
	Water diversion	Increased likelihood of stress, physical injury, harassment	All months	Continuous	L, J, A					✓
	Non-native species (e.g., striped bass)	Trophic alterations	All months	Continuous	L, J, A			✓		
	Poaching	Removal of Fish	Unknown	Unknown	J, A		✓			
	Pesticides and heavy metals	Contamination	All months	Continuous	L, J, A	✓				
	Local fishing	Removal of Fish	January-May	Continuous	J, A		✓			
Feather	Impassible barriers (Oroville Dam)	Block/preventaccess to spawning habitat	Late-spring-early summer	Continuous	A	✓				
	Extreme low flow rates	Altered hydrology	Low flow years	Variable	L, J, A	✓				
	Increased temperatures	Developmental abnormalities (reduced swimming performance)	Low flow years	Variable	L, J, A	✓				
	Non-native species (e.g., striped bass)	Trophic alterations	All months	Continuous	L, J, A			✓		
	Poaching	Removal of Fish	Unknown	Unknown	J, A		✓			
	Pesticides and heavy metals	Contamination	All months	Continuous	L, J, A	✓				
	Local fishing	Removal of Fish	January-May	Continuous	J, A		✓			

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Status of Green Sturgeon DPS

Northern DPS

The Fraser River in Canada currently has a catch and release fishery for sturgeon, but the number of green sturgeon captured is extremely small. A tagging study in 1992–1993 tagged 2300 sturgeon and only one was a green sturgeon (D. Lane, pers. comm., 2004). Green sturgeon occur off the West Coast of Vancouver Island where they are taken in the trawl fishery. These fish are thought to be from spawning areas in the United States, and this idea is supported by the recent acoustic and pop-off archival tagging. WDFW has investigated the possibility of green sturgeon spawning in the Chehalis River as it appears to provide suitable habitat features to support spawning. However, no evidence of spawning in this system has occurred to date. Currently, there is limited fishing in Grays Harbor, but no evidence of spawning has been found (WDFW, 2004).

Spawning does appear to take place in the Umpqua River, but is probably rare. Juvenile green sturgeon were identified in the system in 2000. Spawning in the Umpqua River apparently is not common since substantial sampling efforts in 2002, 2003, and 2004 failed to find any evidence of green sturgeon spawning.

The presence of green sturgeon spawning in the Rogue River has been only recently discovered. The river is less manipulated and habitat seems to be of better quality than in other green sturgeon spawning rivers. Blockages to migration of anadromous fish are likely to be upriver of the historical extent of green sturgeon spawning habitat and, therefore, do not seem to be limiting; habitat seems to be roughly what it was historically. Other anadromous salmonid fishes are generally doing well in the Rogue River (Weitkamp *et al.*, 1995; Busby *et al.*, 1996; and Myers *et al.*, 1998).

The Klamath River has the largest green sturgeon spawning population. Spawning still occurs upstream to the historical limit of its habitat range (Ishi Pishi Falls). Out-migrant juvenile green sturgeon are captured each year in screw traps at Big Bar (Schieff *et al.*, 2001). The BRT expressed concerns over recent fish kills in the Klamath River, but reached no conclusions regarding whether or not the temperature regime in the system played a part in this mortality event. The Yurok tribal fishery comprises the majority of green sturgeon catch coastwide. There is no new information regarding abundance trends since the last status review (Adams et al., 2002). As discussed in the previous status review, the trends in numbers and size are difficult to interpret, but do not appear to indicate population decline.

There are few available data regarding the status of green sturgeon in the Trinity River system. The Hoopa Tribe has a small in-river fishery which takes fewer than 30 adult green sturgeon each year. Juvenile out-migrant green sturgeon are captured in most years in small numbers at Willow Creek (Schieff *et al.*, 2001). Due to the continued presence of juveniles within the system, the BRT was not convinced that green sturgeon were extirpated from the South Fork Trinity River by the 1964 flood as suggested by Moyle (2002).

The Eel River is the southern-most known spawning area in the Northern DPS. Moyle *et al.* (1992) suggested that green sturgeon were extirpated from the Eel River following the 1964 flood. The 1955 and 1964 floods delivered large amounts of sediment into the Eel River. These historical flood events, combined with land use practices, have resulted in persisting high sediment levels. Some portion of the deep holes that green sturgeon use during spawning were filled in by the 1955 and 1964 flood events, but the extent of sturgeon habitat loss is unknown. The BRT was not convinced that green sturgeon have been extirpated from the Eel River. Sightings of adults in both 1995 and 1996 and of juveniles in the estuary in 1994 suggest that a green sturgeon population persists in the Eel River, although severely reduced from historical levels. Sampling was limited with adult surveys conducted only in 1995 and 1996 and estuarine surveys conducted only in 1993 and 1994.

The evaluation of extinction risk over a "significant portion of its range" is difficult for this DPS because of the lack of historical data about green sturgeon spawning areas. As explained above, in earlier technical memos and **Federal Register** publications (66 FR 64793, December 14, 2001; 68 FR 4433, January 23, 2003) we had discussed the possibility that spawning habitat in the Fraser, Umqua, South Fork Trinity, and Eel Rivers had beenseverely reduced. However, after reviewing both existing and new information, we have revised those earlier judgments and now conclude that the Eel River is the only system in the Northern DPS where the status of spawning since historic times is believed to have changed. All BRT members felt that the historic spawning area of the DPS had been larger than the current spawning area, but with no historical data describing spawning areas, there was a range of thought about how much larger.

The BRT was unable to come to firm consensus on what should be considered "a significant portion" for this DPS, however, they generally agreed that "a significant portion" of the DPS's range would include either the Klamath or Rogue Rivers, and that the South Fork Trinity and Eel Rivers do not represent a significant portion of the DPS's range. The BRT's opinion regarding "significant portion of its range" is supported by drawing analogies from salmonid habitat use and estimated abundance in the Klamath, Rogue, South Fork Trinity and Eel Rivers (Lindley *et al.*, 2004). Salmonid spawning habitat is more extensive and estimated population abundance is higher in the Klamath and Rogue Rivers than in the South Fork Trinity and Eel Rivers, and we expect that green sturgeon habitat requirements and population size are correlated with those of salmonids, both historically and today. Also, the geology of the Eel River, in particular, is more erosive and prone to sedimentation events, suggesting that spawning habitat in the Eel River is of poorer quality than that in the Klamath and Rogue Rivers. Finally, evidence suggests that the Klamath and Rogue Rivers played a more important role in historic Yurok and Hoopa tribal sturgeon fisheries than the Eel and South Fork Trinity Rivers (FWS, 1981), again supporting the BRT's conclusion that neither the Eel nor South Fork Trinity Rivers constitute a significant portion of the Northern DPS' range.

Conclusion-Northern DPS

Based on the input provided by the BRT, we conclude that the Northern DPS of green sturgeon is not in danger of extinction, nor likely to become endangered in the foreseeable future, in all or a significant portion of its range. While a significant portion of the DPS' range would include either the Klamath or the Rogue Rivers, neither of these populations is regarded as being at risk of extirpation now or in the foreseeable future. The BRT was not convinced that green sturgeon were extirpated from the South Fork Trinity or Eel Rivers, even though it is likely that the Eel River population, in particular, has suffered a severe reduction since historic times. Reference data from salmonid habitat assessments and tribal fisheries data suggest that even though green sturgeon populations in the Eel and South Fork Trinity Rivers are likely low, these rivers do not represent a significant portion of the DPS' range. The majority of the BRT felt that the presence of two

well-separated and significant spawning populations in the Klamath and Rogue Rivers, and the effective reduction in green sturgeon catch due to implemented regulatory mechanisms, confer a low level of risk to the DPS. A minority felt that overall paucity of data generates such uncertainty in green sturgeon status that the DPS' level of extinction risk may be higher than available data appear to indicate. The BRT expressed concern regarding the lack of data and monitoring efforts to adequately monitor the status of, and manage potential threats to, green sturgeon populations in this DPS. The BRT recommended that the Northern DPS be placed on the Species of Concern List, that their status be reviewed in at least 5 years, and that population status monitoring be implemented immediately.

Southern DPS

The BRT concluded that the Sacramento River contains the only known green sturgeon spawning population in this DPS. There are no updated population trends data since the last status review. The BRT concluded that there was almost certainly a substantial loss of spawning habitat behind Keswick and Shasta dams (FWS, 1995b, historical habitat data summarized in Lindley *et al.*, 2004 for salmonids). Green sturgeon currently occur up to the impassible barrier at Keswick Dam (FWS, 1995b). It is unlikely that green sturgeon reproduced in their current spawning area under the historical temperature regime that occurred before the construction of Shasta and Keswick dams. At present, water temperatures in the current spawning area are lower than they were historically due to releases from Shasta Dam. Prior to dam construction, green sturgeon would have had to migrate farther up the mainstem than they do now in order to encounter water temperatures cool enough to trigger spawning. The BRT considered it possible that the additional habitat behind Shasta Dam in the Pit, McCloud, and Little Sacramento systems would have supported separate populations or at least a single, larger Sacramento River population less vulnerable to catastrophes than one confined to a single mainstem, but the BRT was unable to be specific due to the paucity of historical information. The BRT expressed concern about the habitat limitation and potential threats that green sturgeon faced in the Sacramento River and again expressed particular concern about the high numbers of juveniles entrained prior to 1986.

Juvenile entrainment data provide an indication of how abundance has changed over time (1968–present). For the State facility (John Skinner Fish Facility; 1968–2001), the estimated average number of green sturgeon taken per year prior to 1986 was 732; from 1986 on, the average number was 47. For the Federal facility (Tracy Fish Collection Facility; 1980–2001), the average number prior to 1986 was 889; from 1986 on, the average was 32. The significant reduction in numbers is consistent across the State and Federal facilities and is also consistent with significant reductions in estimated white sturgeon take within the same time periods (NMFS, 2005). In addition, evidence indicates export levels at both facilities have increased substantially, particularly at the State facility since the 1970s and 1980s (as exhibited by yearly acre-feet exported from Federal and State facilities, NMFS, 2005). Though there are many assumptions associated with fish salvage estimates at these facilities (i.e., estimates are expanded catches from brief sampling periods; CDFG, 2002), this information may be the best available data in determining the population trends of the Southern DPS.

The BRT concluded that an effective population of spawning green sturgeon does not exist in the Feather River. Although there is no evidence of spawning in the Feather River either in the past or now, the continued presence of adults in the system suggests that green sturgeon are trying to migrate ito presumed spawning areas now blocked by Oroville Dam, suggesting in turn that spawning habitat on the Fraser River may bave been lost. A substantial amount of habitat in the Feather River was lost with the construction of Oroville Dam (constructed in 1961) and from thermal barriers at the Thermalito Afterbay facility (CDFG, 2002). FWS (1995b) stated that "Evidence also suggests that [white] sturgeon reproduction occurs in both the Feather and Bear rivers." Again, the BRT assumed that a similar suggestion could be made for green sturgeon in the face of the paucity of data. Sturgeon (including some documented green sturgeon) still regularly occur in the Bear and Yuba Rivers (CDFG, 2002; Beamesderfer *et al.*, 2004) and, therefore, must migrate through the Feather River. Threats to green sturgeon are similar to those faced in the Sacramento River.

Though the BRT concluded that there was not sufficient information to establish whether the San Joaquin River system once supported a viable green sturgeon population, we see no reason to exclude the San Joaquin River system as a possibly occupied watershed in the past based on similar conclusions reached for Chinook salmon habitat assessments in the Sacramento and Feather Rivers. While some authors indicate that there is no evidence of green sturgeon occurrence or spawning in the San Joaquin River (Beamesderfer *et al.*, 2004; Adams *et al.*, 2002; CDFG, 2002), sampling effort has been extremely limited. Thus, no evidence of presence does not necessarily mean that green sturgeon do not occur in this system. Moyle (2002) suggested that green sturgeon reproduction may have taken place in the San Joaquin River because numerous juvenile green sturgeon have been captured at Santa Clara Shoal and Brannan Island Recreational Area in the Delta. Both adult and juvenile green sturgeon salvage recoveries at the Federal facility, located closest to the San Joaquin River, also provide some evidence that the San Joaquin River system may at least be occupied by green sturgeon during parts of the year. The potential threats faced by green sturgeon if they do occur or occurred in the past in the San Joaquin system would be similar in nature to those faced in the Sacramento River, but would likely be more extreme because there are a greater number of impassable barriers in this system, many of which lack fish passage structures, and flow rates are lower in the San Joaquin than those in the Sacramento.

Conclusion-Southern DPS

The majority of the BRT concluded that the Southern DPS is likely to become endangered in the foreseeable future throughout all of its range. The BRT felt that the blockage of green sturgeon spawning from what were historic spawning areas above Shasta Dam (although it is unclear whether these were separate populations) and the accompanying decrease in spawning area with the loss of a potential spawning area in the Feather River make green sturgeon in the Southern DPS likely to become endangered within the foreseeable future. We believe that the loss of potential spawning habitat in the San Joaquin River system also may have contributed to the overall decline of the Southern DPS. The majority of the BRT also felt that the concentration of spawning adults in the Sacramento River places this DPS at even greater risk of extinction. No BRT members felt that the DPS was at imminent risk of extinction.

Efforts Being Made to Protect Green Sturgeon

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species. Therefore, in making its listing determinations, we first assess a DPS's level of extinction risk and identify factors that have led to its decline. We then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks faced by the DPS.

In judging the efficacy of existing protective efforts, we rely on the joint NMFS-FWS "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" ("PECE;" 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determining whether a species should be listed as threatened or endangered. Evaluations of the certainty an effort will be implemented include whether: the necessary resources (e.g., funding and staffing) are available; the requisite agreements have been formalized such that the necessary authority and regulatory mechanisms are in place; there is a schedule for completion and evaluation of the stated objectives; and (for voluntary efforts) the necessary incentives are in place to ensure adequate participation. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination.

PECE also notes several important caveats. Satisfaction of the above mentioned criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment. The policy stresses that just as listing determinations must be based on the viability of the species at the time of review, so they must be based on the state of protective efforts at the time of the listing determination. PECE does not provide explicit guidance on how protective efforts affecting only a portion of a species' range may affect a listing determination, other than to say that such efforts will be evaluated in the context of other efforts being made and the species' overall viability. There are circumstances where threats are so imminent, widespread, and/or complex that it may be impossible for any agreement or plan to include sufficient efforts to result in a determination that listing is not warranted.

Conservation measures that may apply to listed species include conservation measures implemented by tribes, states, foreign nations, local governments, and private organizations. Also, Federal, tribal, state, and foreign nations' recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. In addition, recognition through Federal government or state listing promotes public awareness and conservation actions by Federal, state, tribal governments, foreign nations, private organizations, and individuals.

Fishing Regulations

Recent management strategies in Oregon and Washington have considerably reduced the catch of green sturgeon. There are no targeted commercial fisheries on green sturgeon, and recreational fishing remains negligible. Commercial by-catch of green sturgeon occurs predominantly during the early fall salmon and white sturgeon fisheries in the lower Columbia River, when the green sturgeon have migrated into the estuary and lower river mainstem. Fisheries are timed to avoid coinciding with peak periods of green sturgeon presence. Since 2002, Oregon and Washington have adopted daily landing limits for sturgeon during fall Columbia River commercial salmon seasons. This management action has resulted in a significant decrease in green sturgeon catch due to the higher value (price per pound) of white sturgeon on the commercial market. Harvesters now typically release all green sturgeon (alive) to fill their weekly or daily landing limit with the more valuable white sturgeon. Additionally, this management approach has allowed the commercial fishery to access its allocation of white sturgeon prior to periods of peak green sturgeon presence and without any fisheries targeting sturgeon, further minimizing green sturgeon by-catch.

Protective efforts on the Klamath and Trinity Rivers began with take limits and maximum size ranges through the late 1970s, and between 1978 and 1993 seasonal limits were imposed to prohibit the take of sturgeon in the Klamath River upstream of and including the Trinity River. All sturgeon fishing has been prohibited in the Klamath-Trinity system since 1993. Sturgeon fishing also has been prohibited since 1993 in all waters of the Eel River from the mouth to rkm 153 including all waters of the South Fork Eel River downstream of Benbow Dam (CDFG, 2002). Sturgeon fishing in rivers and bays in Del Norte and Humboldt Counties, including the Smith River, Humboldt and Arcata Bays, and all tidal waters, has been prohibited since 1993. General angling regulations apply to sturgeon angling from Mendocino County south (one fish per day between 117 and 183cm TL).

Both white and green sturgeon are protected by the same fishing regulations in the Sacramento-San Joaquin system. No commercial take is permitted and angling take is restricted to one fish per day between 117 and 183cm TL. An additional closure in central San Francisco Bay occurs between January 1 and March 15, coinciding with the herring spawning season to protect sturgeon feeding on herring eggs (CDFG, 2002). Active sturgeon enforcement is often employed in areas where sturgeon are concentrated and particularly vulnerable to the fishery.

There is no commercial fishery for green sturgeon in Canada, although the species is taken as by-catch in white sturgeon and salmon fisheries.

Habitat Protection Efforts

In the United States, the Central Valley Project Improvement Act (CVPIA) is a Federal act directing the Secretary of the Interior to amend previous authorizations of California's Central Valley Project to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic use, and fish and wildlife enhancement as a project purpose equal to power generation. As a result of the CVPIA enacted in 1992, the FWS and U.S. Bureau of Reclamation have led an effort to implement a significant number of activities across the Central Valley including projects such as: river restoration; land purchases; fish screen projects; water acquisitions for the

environment; and special studies and investigations. The Anadromous Fish Restoration Program (AFRP), a component of the CVPIA, implements a doubling program in an attempt to "implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967–1991." The AFRP specifically applies the doubling effort toward Chinook salmon, Central Valley steelhead, striped bass, and white and green sturgeon. Though most efforts of the AFRP have primarily focused on Chinook salmon as a result of their listing history and status, green sturgeon may receive some unknown amount of benefit from these restoration efforts. For example, the acquisition of water for flow enhancement on tributaries to the Sacramento River, fish screening for the protection of Chinook salmon and Central Valley steelhead, or riparian revegetation and instream restoration projects would likely have some ancillary benefits to sturgeon. The AFRP has also invested in one green sturgeon research project that has helped improve our understanding of the life history requirements and temporal patterns of green sturgeon within the Southern DPS.

The California Bay-Delta Program (CALFED) is a cooperative effort of more than 20 State and Federal agencies designed to improve water quality and reliability of California's water supply while recovering the Central Valley ecosystem. The CALFED program contains four key objectives which include water quality, ecosystem quality, water supply and levee system integrity. Many notable beneficial actions have originated and been funded by the CALFED program including such projects as floodplain and instream restoration, riparian habitat protection, fish screening and passage projects, research regarding non-native invasive species and contaminants, restoration methods, and watershed stewardship and education and outreach programs. Prior **Federal Register** notices have reviewed the details of CVPIA and CALFED programs and potential benefits towards anadromous fish, particularly Chinook salmon and Central Valley steelhead (50 FR 33102).

Information received from CALFED regarding potential projects that could be regarded as conservation measures for green sturgeon indicated a total of 118 projects of various types and levels of progress funded between 1995 and 2004. Projects primarily consisted of fish screen evaluation and construction projects, restoration evaluation and enhancement activities, contaminations studies, and dissolved oxygen investigations related to the San Joaquin River Deep Water Ship Channel. Two evaluation projects specifically addressed green sturgeon while the remaining projects primarily address anadromous fish in general, particularly listed salmonids. The new green sturgeon information from research will be used to enhance our understanding of the risk factors affecting the species, thereby improving our ability to develop effective management measures. However, at present they do not directly help to alleviate threats that this species faces in the wild. All ongoing fish screen and passage studies are designed primarily to meet the minimum qualifications outlined by the NMFS and CDFG fish screen criteria. Though these improvements will likely benefit salmonids, there is no evidence showing that these measures will decrease the likelihood of green sturgeon mortality. While one of CALFED's goals is to recover a number of at-risk species (including green sturgeon) and the program has and continues to provide funding for a variety of laboratory-based research projects, there are no specific actions aimed at alleviating the primary risks that threaten the continued existence of green sturgeon in the wild.

Other potential conservation measures such as the opening of the RBDD gates have helped green sturgeon passage in the Sacramento River during the early part of their spawning season, but it is not known how effective this measure has been. In addition, fish ladders in place are probably too small for green sturgeon to negotiate during the latter part of the spawning season when the RBDD gates are closed (FWS, 1995b). The Glenn-Colusa Irrigation District plans to help reduce fish loss and enhance long-term fish passage, but these measures are not yet underway. Fish salvaging efforts at the Tracy Fish Collection Facility and the Skinner Delta Fish Protective Facility in the South Delta have been operating for decades, but it is unknown whether efforts to relocate adults have resulted in restoration of spawning potential and whether the salvage of juveniles is effective.

As evaluated pursuant to PECE, the above described protective efforts do not as yet, individually or collectively, provide sufficient certainty of implementation and effectiveness to counter the extinction risk assessment conclusion that the Southern DPS is likely to become an endangered species in the foreseeable future throughout its range.

Green sturgeon are listed as Species of Special Concern under Canada's Species at Risk Act (SARA). Under SARA a Species of Special Concern is a wildlife species that may become a threatened or an endangered species because of a combination of biological characteristics and identified threats. There are no specific conservation measures directed at green sturgeon in Canada to alleviate the recognized threats of habitat degradation and alteration.

Proposed Determinations

Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species. We have reviewed the petition, the reports of the BRT (NMFS, 2002, 2004), co-manager comments, and other available published and unpublished information, and we have consulted with species experts and other individuals familiar with green sturgeon. On the basis of the best available scientific and commercial information, the southern and northern populations of green sturgeon meet the discreteness and significance criteria for distinct DPSs.

Northern DPS

Informed by the BRT's risk assessment, we conclude that the Northern DPS is not presently in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Accordingly, the DPS does not warrant listing under the ESA at this time. Our review indicates that: (1) there is no evidence for reductions in spawning habitat in the South Fork Trinity River; and (2) the Eel River population may have experienced declines and loss of spawning habitat. Nevertheless, the BRT concluded that neither the South Fork Trinity nor the Eel River constitute a significant portion of the DPS' range because: (1) analogies drawn from salmonid research suggest that the South Fork Trinity and Eel Rivers do not support large salmonid populations; (2) habitat in the Eel River is of poorer quality compared to that of the Klamath and Rogue Rivers; and (3) tribal fisheries data do not suggest that the South Fork Trinity or Eel River supported significant numbers of green sturgeon in the past. Due to the poor availability of data and attendant uncertainties

regarding the status of and threats facing the species, we will maintain the Northern DPS on the Species of Concern List. We will re-evaluate the status of the Northern DPS in 5 years provided sufficient new information becomes available indicating that a status review update is warranted.

Southern DPS

We propose to find that the Southern DPS is not presently in danger of extinction throughout all of its range. Fishing regulations in place in California, the implementation of studies aimed at increasing our understanding of the ecological requirements of green sturgeon in the wild, and efforts to ameliorate threats to salmonids in the wild, thus conferring some possible benefits to green sturgeon, indicate that the Southern DPS is not presently in danger of extinction throughout all of its range. We also propose to find that the Southern DPS is not in danger of extinction throughout a significant portion of its range. We feel that spawning habitat may have been lost in the Sacramento and Feather Rivers, but due to a paucity of data, we are unable to determine the geographic extent and demographic consequences of this loss. We have no evidence of historic or current spawning in the San Joaquin River and therefore we have no evidence of lost spawning habitat.

Based on our evaluation of the best available scientific information and the ongoing state and Federal conservation efforts, we propose to find that the Southern DPS is likely to become endangered in the foreseeable future throughout all of its range and should therefore be listed as threatened. This proposal is based on the reduction of potential spawning habitat, the threats to the single remaining spawning population remaining severe and unlikely to be sufficiently alleviated by conservation measures currently in place, and the downward trend of sturgeon salvage estimates from State (1968–2003) and Federal (1980–2003) facilities.

Take Prohibitions and Protective Regulations

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. In the case of threatened species, ESA section 4(d) authorizes the Secretary to issue regulations he considers necessary and appropriate for the conservation of the species. We have flexibility under section 4(d) to tailor protective regulations based on the contents of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. We will evaluate protective regulations pursuant to section 4(d) for the Southern green sturgeon DPS and propose any thought to be necessary and appropriate for conservation of the species in a forthcoming notice of proposed rulemaking that will be published in the **Federal Register**.

Other Protective Regulations

Section 7(a)(2) of the ESA and NMFS/FWS regulations require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing or result in the destruction or adverse modification of proposed critical habitat. If a proposed species is ultimately listed, Federal agencies must consult on any action they authorize, fund, or carry out if those actions may affect the listed species or its critical habitat. Examples of Federal actions that may affect the Southern green sturgeon DPS include: water diversion for human use; point and non-point source discharge of persistent contaminants; contaminated waste disposal; water quality standards; and fishery management practices.

Service Policy on the Role of Peer Review

On July 1, 1994, we and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

Critical Habitat

Critical habitat is defined in section 3 of the ESA as: "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary (16 U.S.C. 1532(3)). Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species (16 U.S.C. 1533(a)(3)(A)(i)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species. We are currently compiling information to prepare a critical habitat proposal for the Southern DPS. In a previous **Federal Register** notice (66 FR 64793; December 14, 2001) we requested specific information on critical habitat and are again seeking public input and information to assist in gathering and analyzing the best available scientific data to support a critical habitat designation. We will continue to meet with co-managers and other stakeholders to review this information and the overall designation process. We will then initiate rulemaking with the publication of a proposed designation of critical habitat, opening a period for public comment and the opportunity for public hearings. Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at 50 CFR 424.12(b) state that the agency "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection" (hereafter also referred to as "essential features." Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other

nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. These regulations go on to emphasize that the agency shall focus on essential features within the specific areas considered for designation. These features "may include, but are not limited to, the following: spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types."

Public Comments Solicited

We recognize that there are serious limits to the quality of information available, and, therefore, we exercised our best professional judgment in developing this proposal to list the Southern DPS. To ensure that the final action resulting from this proposal will be as accurate and effective as possible, we are soliciting comments and suggestions from the public, other governmental agencies, the Government of Canada, the scientific community, industry, environmental groups, and any other interested parties. Comments are encouraged on this proposal (See **DATES** and **ADDRESSES**). Specifically, we are interested in information regarding: (1) green sturgeon spawning habitat within the range of the Southern DPS that was present in the past, but may have been lost over time (2) biological or other relevant data concerning any threats to the Southern green sturgeon DPS; (3) the range, distribution, and abundance of the Southern DPS; (4) current or planned activities within the range of the Southern DPS and their possible impact on the Southern DPS; and (5) efforts being made to protect the Southern DPS.

We are also requesting quantitative evaluations describing the quality and extent of freshwater and marine habitats for juvenile and adult green sturgeon as well as information on areas that may qualify as critical habitat in California for the proposed Southern DPS. Specific areas that include the physical and biological features essential to the recovery of the DPS should be identified. We recognize that there are areas within the proposed boundaries of the Southern DPS that historically constituted green sturgeon habitat, but may not be currently occupied by green sturgeon. We are requesting information about these currently unoccupied areas to help us determine whether these areas are essential to the recovery of the species or excluded from designation. For areas potentially qualifying as critical habitat, we are requesting information describing: (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species. Comments concerning economic impacts should attempt to distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

We will review all public comments and any additional information regarding the status of, and critical habitat for, the Southern green sturgeon DPS in developing a final listing determination as well as proposed critical habitat and, potentially, section 4(d) regulations.

Public Hearings

Public hearings will be held in several locations within the range of the proposed Southern DPS; details regarding locations, dates, and times will be published in a forthcoming **Federal Register** notice.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (See NOAA Administrative Order 216 6.)

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, who will be invited to comment. We have conferred with the States of Washington, Oregon and California in the course of assessing the status of the Southern DPS, and considered, among other things, Federal, state and local conservation measures. As we proceed, we intend to continue engaging in informal and formal contacts with the States, and other affected local or regional entities, giving careful consideration to all written and oral comments received. We also intend to consult with appropriate elected officials in the establishment of a final rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: March 28, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.102, amend paragraph (a) by adding and reserving paragraph (a)(23) and paragraph (a)(24) and adding a new paragraph (a)(25) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

(a) * * *

(25) North American green sturgeon–southern DPS *(Acipenser medirostris)*. California. The southern DPS includes all spawning populations of green

sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.

* * * * *

[FR Doc. 05–6611 Filed 4–5–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 033105A]

RIN 0648–AS69

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Amendment 24

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of Amendment 24 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 24) prepared by the Gulf of Mexico Fishery Management Council (Council). Amendment 24 would establish a limited access system for the Gulf of Mexico commercial reef fish fishery. The intended effect of Amendment 24 is to support the Council's efforts to achieve optimum yield in the fishery, and provide social and economic benefits associated with maintaining stability in the fishery.

DATES: Written comments must be received no later than 5 p.m., eastern time, on June 6, 2005.

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

- E-mail: *0648–AS69.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AS69–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Peter Hood.

Copies of Amendment 24, which includes an Environmental Assessment, a Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis, are available from the Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619–2272; email: *gulfcouncil@gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, 727–824–5305; fax 727–824–5308; e-mail: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: A moratorium on the issuance of new commercial reef fish permits was established in 1992 under Amendment 4 to the Reef Fish Fishery Management Plan (April 8, 1992; 57 FR 11914). The moratorium was designed to provide a stable environment in the fishery for the evaluation and development of a more comprehensive, controlled access system for the entire commercial reef fish fishery. The moratorium was subsequently extended through 1995 (Amendment 9) (August 2, 1994; 59 FR 39301) and to December 31, 2000 (Amendment 11) (December 15, 1995; 60 FR 674350), to provide additional time for consideration of implementing a limited access system in the reef fish fishery. During this period, the Council developed an individual transferable quota (ITQ) system for red snapper (Amendment 8); however, before it could be implemented, Congress prohibited the implementation of ITQ systems until October 1, 2000. Subsequently, the Council developed and NMFS implemented a license limitation system for red snapper (Amendment 15) (62 FR 67714). Amendment 17 was implemented by NMFS on August 10, 2000 (65 FR 41016), and extended the commercial reef fish permit moratorium for another 5 years, from its previous expiration date of December 31, 2000 to December 31, 2005, or until replaced with a license limitation, limited access, and/or individual fishing quota or individual transferable quota system.

Amendment 24, if implemented, would establish a limited access system for the commercial fishery for reef fish. The intended effect would be to prevent increases in effort, to possibly reduce the number of permittees in the reef fish fishery, and to stabilize the economic performance of current participants, while protecting reef fish species from overfishing. The existing restricted number of fishery participants in the Gulf of Mexico has demonstrated the capability of harvesting their total allowable catch well in advance of the end of the various fishing seasons. Allowing the fishery to revert to open access would probably hasten these closures. The proposed limited access system would maintain the existing restricted access to the fishery for an indefinite period, with the intent to provide continued social and economic stability to the reef fish fishery.

A proposed rule that would implement the measure outlined in Amendment 24 has been received from the Council. In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is evaluating the Council's proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by June 6, 2005, whether specifically directed to the Amendment 24 or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 24. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in a final rule.

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

Dated: April 1, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–6842 Filed 4–5–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 65
Wednesday, April 6, 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

Submission for OMB Review; Comment Request

March 31, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Public Perceptions of Wildfire Management Within the Southern California Wildland-Urban Interface.

OMB Control Number: 0596–NEW.

Summary of Collection: Recent wildfires in the Western United States and the resultant public response to the devastation caused by them highlights the need for understanding the human dimensions of forest and wildfire management. Because the impacts of wildland fire extend beyond public land boundaries into the private communities lying on their periphery, understanding their response to the loss of public and private property is important. Public land management agencies need a better understanding of local preferences for management opinions and of community needs, particularly from those residing within the wildland-urban interface. Information will be collected from residents of communities adjacent to a National Forest in Southern California and from visitors to the same National Forest area. The Forest Service (FS) will collect information using a self-administered questionnaire and onsite interviews. The authorities for this collect can be found at Pub. L. 95–307, Forest and Rangeland Renewable Resources Research Act of 1978 and Pub. L. 108–148, Healthy Forest Initiative and Healthy Forests Restoration Act.

Need and Use of the Information: The information collected will provide forest managers with greater understanding of public attitudes, preferences, and behaviors related to the FS' wildland fire management practices and policies, information about respondent's own behavior related to hazard reduction and preparedness, and respondents' knowledge of FS fire management program, such as Firewise.

Description of Respondents: Individuals or households; Federal Government.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 667.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 05–6787 Filed 4–5–05; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR parts 215, 217, and 218. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after April 1, 2005. The list of newspapers will remain in effect until October 1, 2005, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain, Regional Appeals Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 215, 217, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR parts 215, 217 and 218. In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional

information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal period. The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *Idaho Statesman*, Boise, Idaho.
For decisions made by the Regional Forester affecting National Forests in Nevada: *Reno Gazette-Journal*, Reno, Nevada.
For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune*, Casper, Wyoming.
For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune*, Salt Lake City, Utah
For decisions made by the Regional Forester that affect all National Forests in the Intermountain Region: *Salt Lake Tribune*, Salt Lake City, Utah.

Ashley National Forest

Ashley Forest Supervisor decisions: *Vernal Express*, Vernal, Utah.
Duchesne District Ranger decisions: *Uinta Basin Standard*, Roosevelt, Utah.
Flaming Gorge District Ranger for decisions affecting Wyoming: *Rocket Miner*, Rock Springs, Wyoming.
Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express*, Vernal, Utah.
Roosevelt District Ranger decisions: *Uinta Basin Standard*, Roosevelt, Utah.
Vernal District Ranger decisions: *Vernal Express*, Vernal, Utah.

Boise National Forest

Boise Forest Supervisor decisions: *Idaho Statesman*, Boise, Idaho.
Cascade District Ranger decisions: *Long Valley Advocate*, Cascade, Idaho.
Emmett District Ranger decisions: *Messenger-Index*, Emmett, Idaho.
Idaho City District Ranger decisions: *Idaho Statesman*, Boise, Idaho.
Lowman District Ranger decisions: *Idaho World*, Garden Valley, Idaho.
Mountain Home District Ranger decisions: *Idaho Statesman*, Boise, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune*, Casper, Wyoming.
Big Piney District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.
Buffalo District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.
Greys River District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.
Jackson District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.
Kemmerer District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.
Pinedale District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal*, Pocatello, Idaho.
Caribou-Targhee Forest Supervisor decisions for the Targhee portion: *Post Register*, Idaho Falls, Idaho.
Ashton District Ranger decisions: *Post Register*, Idaho Falls, Idaho.
Dubois District Ranger decisions: *Post Register*, Idaho Falls, Idaho.
Island Park District Ranger decisions: *Post Register*, Idaho Falls, Idaho.
Montpelier District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.
Palisades District Ranger decisions: *Post Register*, Idaho Falls, Idaho.
Soda Springs District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.
Teton Basin District Ranger decisions: *Post Register*, Idaho Falls, Idaho.
Westside District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions: *Daily Spectrum*, St. George, Utah.
Cedar City District Ranger decisions: *Daily Spectrum*, St. George, Utah.
Escalante District Ranger decisions: *Daily Spectrum*, St. George, Utah.
Pine Valley District Ranger decisions: *Daily Spectrum*, St. George, Utah.
Powell District Ranger decisions: *Daily Spectrum*, St. George, Utah.
Teasdale District Ranger decisions: *Richfield Reaper*, Richfield, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper*, Richfield, Utah.
Beaver District Ranger decisions: *Richfield Reaper*, Richfield, Utah.
Fillmore District Ranger decisions: *Richfield Reaper*, Richfield, Utah.
Loa District Ranger decisions: *Richfield Reaper*, Richfield, Utah.
Richfield District Ranger decisions: *Richfield Reaper*, Richfield, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press*, Elko, Nevada.
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*, Reno, Nevada.
Austin District Ranger decisions: *The Battle Mountain Bugle*, Battle Mountain, Nevada.
Bridgeport District Ranger decisions: *Mammoth Times*, Mammoth Lakes, California.
Carson District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada.
Ely District Ranger decisions: *The Ely Times*, Ely, Nevada.
Jarbidge District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.
Mountain City District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.
Ruby Mountains District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.
Santa Rosa District Ranger decisions: *Humboldt Sun*, Winnemucca, Nevada.
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*, Las Vegas, Nevada.
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News*, Tonopah, Nevada.

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate*, Price, Utah.
Ferron District Ranger decisions: *Emery County Progress*, Castle Dale, Utah.
Moab District Ranger decisions: *Times Independent*, Moab, Utah.
Monticello District Ranger decisions: *San Juan Record*, Monticello, Utah.
Price District Ranger decisions: *Sun Advocate*, Price, Utah.
Sanpete District Ranger decisions: *Sanpete Messenger*, Manti, Utah.

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman*, Boise, Idaho.
Council District Ranger decisions: *Adams County Record*, Council, Idaho.
Krassel District Ranger decisions: *Star News*, McCall, Idaho.
McCall District Ranger decisions: *Star News*, McCall, Idaho.
New Meadows District Ranger decisions: *Star News*, McCall, Idaho.
Weiser District Ranger decisions: *Signal American*, Weiser, Idaho.

Salmon-Challis National Forest

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald*, Salmon, Idaho.
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger*, Challis, Idaho.

Challis District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

Leadore District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.

Lost River District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

Middle Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

North Fork District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.

Salmon/Cobalt District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.

Yankee Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News*, Twin Falls, Idaho.

Fairfield District Ranger decisions: *The Times News*, Twin Falls, Idaho.

Ketchum District Ranger decisions: *Idaho Mountain Express*, Ketchum, Idaho.

Minidoka District Ranger decisions: *The Times News*, Twin Falls, Idaho.

Sawtooth National Recreation Area: *The Challis Messenger*, Challis, Idaho.

Uinta National Forest

Uinta Forest Supervisor decisions: *The Daily Herald*, Provo, Utah.

Heber District Ranger decisions: *The Daily Herald*, Provo, Utah.

Pleasant Grove District Ranger decisions: *The Daily Herald*, Provo, Utah.

Spanish Fork District Ranger decisions: *The Daily Herald*, Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune*, Salt Lake City, Utah.

Evanston District Ranger decisions: *Uinta County Herald*, Evanston, Wyoming.

Kamas District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah.

Logan District Ranger decisions: *Logan Herald Journal*, Logan, Utah.

Mountain View District Ranger decisions: *Uinta County Herald*, Evanston, Wyoming.

Ogden District Ranger decisions: *Ogden Standard Examiner*, Ogden, Utah.

Salt Lake District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah.

Dated: March 23, 2005.

Jack G. Troyer,

Regional Forester.

[FR Doc. 05–6756 Filed 4–5–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest-Wide Integrated Weed Management, Lolo National Forest; Missoula, Mineral, Sanders, Granite, Lewis and Clark, Flathead, Ravalli, Lake and Powell Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Revised Notice: intent to prepare an environmental impact statement (EIS).

SUMMARY: This is a revision of a Notice of Intent originally published in the **Federal Register** on August 4, 2004. This revision also hereby withdraws another Notice of Intent, originally published in the **Federal Register** on August 31, 2004, and incorporates that project into this one.

The original Notice of August 4, 2004 for the "Forest-Wide Integrated Weed Management" project stated the Forest Service would prepare an environmental impact statement to address noxious weeds on a maximum of 15,000 acres per year on the Lolo National Forest, using aerial and ground application of herbicides, biological and manual control methods.

The Notice of August 31, 2004 for the "Pattee Canyon Weed Management Project" stated the Forest Service would prepare an environmental impact statement to control invasive weeds on approximately 2,500 acres of land near Missoula, Montana, using aerial and ground applications of herbicides, biological control agents, and revegetation.

This revision withdraws the "Pattee Canyon Weed Management Project" as a separate project, and combines it into the "Forest-Wide Integrated Weed Management" project. The reason for the change is to make the analysis more efficient, because the "Pattee Canyon Weed Management Project" area is wholly within the "Forest-Wide Integrated Weed Management" project area, because the proposed weed management methods and aims are the same for both projects, and because undertaking two analyses would be less efficient.

The issues identified in the August 31, 2004 **Federal Register** Notice for the "Pattee Canyon Weed Management Project" included the effectiveness of the proposed treatments, potential risks to human health and safety associated with herbicides, and the potential adverse effects of herbicides on native vegetation.

The August 4, 2004 **Federal Register** Notice for the "Forest-Wide Integrated Weed Management" project did not list any specific issues. However, based on public scoping, the issues identified for the "Pattee Canyon Weed Management Project" apply to the "Forest-Wide Integrated Weed Management" project as well. The public comments received for the "Pattee Canyon Weed Management Project" will be incorporated into the "Forest-Wide Integrated Weed Management" project. The August 4, 2004 **Federal Register** Notice is hereby amended to include them.

The August 4, 2004 Notice is further amended to also include the following additional issues:

1. Recognizing that invasive weeds are spreading rapidly in Western Montana, what effect will invasive weeds have on wildlife and native plant communities?

2. What potential adverse effects might herbicides have on wildlife, fish and water quality?

DATES: Comments concerning this revision should be received in writing within 30 days of this Notice's publication. Persons who have already commented on either the original Notices of Intent do not need to resubmit those comments.

ADDRESSES: The responsible official is Deborah L. R. Austin, Forest Supervisor, Lolo National Forest, Supervisor's Office, Building 24, Fort Missoula; Missoula, MT 59804. Phone (406) 329–3797.

FOR FURTHER INFORMATION CONTACT: Andy Kulla, Resource Assistant, Missoula Ranger District, at (406) 329–3962. Please direct written comments to him at Missoula Ranger District; Building 24A, Fort Missoula; Missoula, MT 59804.

SUPPLEMENTARY INFORMATION: Further information about the proposal can be found in the original Notice of Intent. Another formal opportunity to comment will be provided following completion of the Draft Environmental Impact Statement (DEIS). The DEIS will be available for public review by the fall of 2005. The Final Environmental Impact Statement (FEIS) will be filed by the fall of 2006. The responsible official will make a decision on this proposal after considering comments and responses, environmental consequences discussed in the FEIS and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: March 22, 2005.

Deborah L.R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 05–6785 Filed 4–5–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting, Northwest Forest Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC), Northwest Forest Plan (NWFP), has scheduled a meeting on April 21, 2005 from 8 a.m. to 12 noon at the Washington Conference Room, Jantzen Beach DoubleTree Hotel, 909 N Hayden Island Drive, Portland, OR 97217, 503–283–4466. The purpose of the meeting is to review key findings and trends from the April 19–20, 2005 Science and the Northwest Forest Plan, Knowledge Gained Over a Decade conference (see *http://outreach.cof.orst.edu/nwforestplan/index.php*) and collect advice regarding the findings and how they may be used to improve NWFP implementation.

The meeting is open to the public and fully accessible for people with disabilities. A 15-minute time slot is reserved for public comments at 8:30 a.m. Interpreters are available upon request at least 10 days prior to the meeting. Written comments may be submitted for the meeting record. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW., First Avenue, P.O. Box 3623, Portland, OR 97208 (telephone: 503–808–2165).

Dated: March 31, 2005.

Anne Badgley,

Designated Federal Official.

[FR Doc. 05–6769 Filed 4–5–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, April 28, 2005. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

DATES: The meeting will be held on Thursday, April 28, 2005, 8:30 a.m. to 3:30 p.m., c.s.t.

ADDRESSES: The meeting will be held at Kentucky Dam Village State Resort Park, Gilbertsville, KY, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, (270) 924–2002.

SUPPLEMENTARY INFORMATION: The meeting agenda includes the following:

(1) Welcome/Introductions/Agenda.

(2) Advisory Board By-Laws and Charter.

(3) Membership Orientation/Lessons Learned.

(4) Land and Resource Management Plan Update.

(5) Nature Watch.

(6) Board Discussion of Comments Received.

(7) LBL Updates.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by April 20, 2005, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 05–6784 Filed 4–5–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville, California, April 18, 2005. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: April 18, 2005.

ADDRESSES: The meetings will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Assistant Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: March 31, 2005.

Thomas A. Contreras,

Deputy Forest Supervisor.

[FR Doc. 05–6782 Filed 4–5–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA

ACTION: Notice of meeting

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, May 4–5, June 1 and July 5 of 2005. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: May 4–5, June 1, and July 5 of 2005.

ADDRESSES: The meetings will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Assistant Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meetings are open to the Public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: March 31, 2005.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 05–6783 Filed 4–5–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–828

Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Companhia Siderúrgica Nacional (CSN), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot–rolled flat–rolled carbon quality steel products from Brazil (A–351–828). This administrative review covers imports of subject merchandise produced and exported by CSN. The period of review (POR) is March 1, 2003, through February 29, 2004.

We preliminarily find that during the POR, CSN did not make sales of the subject merchandise at less than normal value (NV). However, since the subject merchandise was further manufactured in the United States by CSN LLC, and affiliated party, and sold to an unaffiliated U.S. customer as a galvanized product outside the scope of the antidumping order, we intend to verify the further manufacturing costs and sales information reported by CSN LLC for the final results. The briefing schedule will be extended accordingly. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results, including the Department's analysis regarding the date of sale. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0405 or (202) 482–8221, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 2002, the Department published the antidumping duty order on certain hot–rolled flat–rolled carbon quality steel products from Brazil. *See Antidumping Duty Order: Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil*, 67 FR 11093 (March 12, 2002) ("AD Order"). On March 1, 2004, the Department published the opportunity to request administrative review of, *inter alia*, certain hot–rolled flat–rolled carbon quality steel products from Brazil for the period March 1, 2003, through February 29, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 9584 (March 1, 2004).

In accordance with 19 CFR 351.213(b)(2), on March 31, 2004, CSN requested that we conduct an administrative review of its sales of the subject merchandise. On April 28, 2004, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period March 1, 2003, through February 29, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 23170 (April 28, 2004).

On May 10, 2004, the Department issued its antidumping duty questionnaire to CSN. On May 24, 2004, CSN requested that the Department agree to a limited home market reporting period, because the review in question only involved a single sale. Therefore, instead of providing the Department with home market sales throughout the POR, CSN proposed reporting home market sales made during the same six month "window" period as the U.S. sale, namely, November 2003, through April 2004. In the same letter, CSN also informed the Department that it intended to prepare a section D response to reflect costs of production during the 2003 fiscal year, not the POR. CSN explained that the subject merchandise sold to the U.S. market was all further–processed and sold as non–subject merchandise in the United States by its U.S. affiliate, CSN LLC, before delivery to the unaffiliated customer, and requested that it be allowed to limit its reporting of U.S. production costs to the actual month of production, instead of relying on the production experience for the entire twelve-month POR. Finally, CSN requested that the Department allow CSN to report its sales to its home market affiliate, Indútria Nacional de Aços Laminados INAL S.A. (INAL), instead of downstream sales of further manufactured merchandise, due to complexities of calculating further manufacturing costs for all of INAL's sales of further manufactured hot–rolled steel. CSN stated that the Department could then decide whether to use these sales in its analysis based on whether CSN's sales to INAL pass the arm's length test. On June 4, 2004, the Department responded to CSN's requests by 1) agreeing to limit the reporting period for home market sales to the six-month window of the U.S. sale; 2) rejecting CSN's request to report costs for the 2003 fiscal year; 3) rejecting CSN's request to limit its period for reporting further manufacturing costs to one month; and 4) allowing CSN to report its home market sales to INAL instead of downstream sales, if these pass the arm's length test.

CSN submitted its response to section A of the Department's questionnaire on June 15, 2004, and its responses to sections B and C on July 6, 2004. On July 30, 2004, United States Steel Corporation, a petitioner, submitted comments challenging the validity of this review. The petitioner specifically questioned whether the subject merchandise exported to the United States was actually manufactured by CSN, alleging that another Brazilian company was the manufacturer of the imports in question. The Department issued a supplemental section A, B, and C questionnaire on August 10, 2004, in which it informed CSN that its sales to INAL had failed the arm's length test and that it was required to report INAL's downstream sales. CSN filed its response on August 31, 2004, and submitted a revised sales listing on September 7, 2004, that included INAL's sales to unaffiliated parties. The Department received the sales reconciliation package from CSN on October 12, 2004, and on October 15, 2004, it issued its outline and agenda for the sales verification.

During the most recently completed segment of the proceeding in which CSN participated, the antidumping administrative review of the suspension agreement, the Department found and disregarded sales that failed the cost test. *See Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil: Preliminary Results of Antidumping Duty Administrative Review of Suspension Agreement*, 66 FR 41500 (August 8, 2001) ("*Suspension Agreement*"). Pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by this company of the foreign like product under consideration for the determination of NV in this review were

made at prices below the cost of production (COP). Therefore, we instructed CSN to also complete sections D and E of the Department's initial questionnaire, issued May 10, 2004. CSN submitted its responses to these sections on July 14, 2004. Import Administration's Office of Accounting issued a supplemental questionnaire regarding CSN's responses to sections D and E on October 26, 2004 and on November 24, 2004, CSN submitted its supplemental response.

On October 18, 2004, Nucor Corporation (Nucor), a domestic interested party, requested that the Department rescind the instant review. Nucor alleged that the date of the only reported POR sale by CSN fell outside of the POR, thus invalidating this entire segment of the proceeding.

Because it was not practicable to complete the preliminary results of this review within the normal time frame, we fully extended the time limit for this review until March 31, 2005. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from Brazil*, 69 FR 60142 (October 7, 2004).

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information provided by CSN for use in our preliminary results using standard verification procedures, including on–site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. We verified CSN's sales responses from October 25, 2004, through October 29, 2004, and cost responses from February 21, 2005, through February 25, 2005, at CSN's Presidente Vargas plant in Volta Redonda, Brazil. The results of these verifications are found in the sales verification report dated January 6, 2005, and the cost verification report dated March 31, 2005, on file in the Central Records Unit (CRU) of the Department in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC. *See* Memorandum to the File, Through Abdelali Elouaradia, Program Manager, From Helen M. Kramer and Kristin A. Najdi, Case Analysts: Verification of Home Market and U.S. Sales Information Submitted by Companhia Siderúrgica Nacional in the Administrative Review of Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil for the Period March 1, 2003, through February 29, 2004, dated January 6, 2005, (Sales Verification Report); and Memorandum to Neal M. Halper, Director, Office of Accounting, Through Theresa Caherty, Program Manager, From Trinette Ruffin, Accountant: Verification Report on the Cost of Production and Constructed Value Data Submitted by Companhia Siderúrgica Nacional, dated March 31, 2005 (Cost Verification Report).

We intend to verify at CSN LLC's plant in Terre Haute, Indiana, all information pertaining to the U.S. sales and further manufacturing costs incurred in the United States.

Period of Review

The POR is March 1, 2003, through February 29, 2004.

Scope of the Order

For purposes of this order, the products covered are certain hot–rolled flat–rolled carbon–quality steel products, meeting the physical parameters described below, regardless of application.

The hot–rolled flat–rolled carbon–quality steel products subject to this review are of a rectangular shape, of a width of 0.5 inch of greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics of other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Specifically included in this scope are vacuum degassed, fully stabilized (IF) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent of less, by weight; and (3) none of the elements listed below exceeds certain specified quantities.

The merchandise subject to the order is currently classifiable under subheadings 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Certain hot–rolled flat–rolled carbon–quality steel covered by this agreement, including vacuum degassed and fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under tariff numbers 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the scope of the order is dispositive.

Fair Value Comparisons

To determine whether CSN made sales of hot–rolled flat–rolled carbon quality steel to the United States at less than fair value, we compared the constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the CEP of the single U.S. transaction falling within the period of review to monthly weighted–average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by CSN covered by the descriptions in the "Scope of the Order" section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to CSN's U.S. sale of the subject merchandise.

We have relied on the following eleven criteria to match U.S. sales of the subject merchandise to sales in Brazil of the foreign like product: whether or not painted, quality, carbon content, yield strength, nominal thickness, width, cut–to-length or coil, whether or not temper rolled, whether or not pickled, edge trim, and whether or not containing patterns in relief.

In order to make a valid comparison between the two markets, we converted the quantity sold in the United States from pounds (lb) to metric tons (MT), and changed prices from a "per lb" basis to a "per MT" basis.

Since there were sales of identical merchandise in the home market in the same month as the date of the U.S. sale,

we did not have to compare the U.S. sale to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's May 10, 2004 questionnaire.

Date of Sale

CSN requested this review on the basis of the date of its entry of subject merchandise and the date of the unaffiliated U.S. customer's purchase order within the POR. On October 18, 2004, Nucor alleged that the purchase order did not establish the material terms of sale because the amount of a surcharge imposed by CSN LLC on the further manufactured merchandise was not known until the month of shipment. Nucor argued that, since shipment occurred after the POR, the final price to the U.S. customer was not determined until after the end of the POR, and thus there was no sale for the Department to review. As such, they assert that we should rescind the review.

We agree in part with Nucor. As CSN explains, the imposition of surcharges was a practice that developed on an industry–wide basis in the United States during 2004, mainly in response to the rapidly rising cost of steel scrap, which increased production costs for non–integrated manufacturers of steel. *See* CSN's January 31, 2005, submission, "Certain Hot–Rolled Carbon Steel Flat Products from Brazil: CSN Response to the January 18, 2005 Supplemental Questionnaire," on file in the CRU. Although the CSN LLC policy of adding a surcharge to sales made during this period was made known to CSN LLC's customers in periodic bulletins announcing the effective date of new surcharges, the monthly surcharges were not explicitly linked to a predictable or market formula, and on the date of its purchase order, the customer could not anticipate the final amount due. Because CSN LLC did not conclusively set the actual price on the sales until the date of the invoice, the material terms of sale were established on the invoice date, and not the date of the original purchase order. This determination is consistent with 19 CFR 351.401(i) and the decision of the U. S. Court of International Trade in *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087 (CIT 2001) ("*Allied Tube*"). In *Allied Tube*, the plaintiff asked the court to reject the invoice date as the date of sale. The CIT declared, "the party seeking to establish a date of sale other than the invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" *See Allied Tube*, 132 F. Supp. 2d at 1090. Furthermore, "as elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date." *Id.* The CIT ruled that the plaintiff in this case "failed to cite sufficient evidence to compel a rejection of the regulatory presumption in favor of invoice date as the date of sale." *Id. See also Hornos Electricos de Venezuela, S.A. v. United States*, 285 F. Supp. 2d 1353, 1367–1368 (CIT 2003). Thus, the Department's rejection of the date of the purchase order as the date of sale is warranted, since CSN failed to establish that the material terms of sale were set on the purchase order date. Therefore, for purposes of these preliminary results of review, the appropriate date of sale is the date of the invoice, which sets the final price to the customer.

We disagree with Nucor that the absence of a sale during the POR is a basis for terminating this review. While section 751(a)(2)(A) of the Act states that a dumping calculation should be performed for each entry during the POR, section 351.213(e) of the Department's regulations gives the Department flexibility in this regard by stating that the review can be based on entries, exports, or sales. Indeed, the Department's normal practice for CEP sales made after importation is to examine each transaction that has a date of sale within the POR and to liquidate POR entries based on the dumping margin calculated on those POR sales. *See* section 351.212 of the Department's regulations and the preamble to that section of *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27314–15 (May 19, 1997).

We have also recognized that unique circumstances could lead us to base the margin for CEP sales on the sales entered rather than sold during the POR. Here, the respondent requesting an administrative review of its POR entries had only one entry during the POR, but no POR sales upon which to calculate a dumping margin for that entry. Because the entry during the POR can be tied to a sale occurring after the end of the POR and there are no other U.S. sales during the POR that could be considered for examination as a proxy for the post–POR sale, it is appropriate to determine the duties to be assessed on this entry based on the corresponding sale. Therefore, because the purpose of an administrative review is to establish the antidumping duty for entries, as well as to establish a new cash deposit rate (see section 751(a)), and we are able to tie the sale occurring shortly after the end of the POR to the entry during the POR, we are using this U.S. sale and the corresponding home market sales in the month of the U.S. sale in our margin calculation. Thus, we are conducting this review on the basis of the date of entry within the POR, and linking the entered subject merchandise to the appropriate sale to the unaffiliated U.S. customer.

We will instruct the CBP to liquidate the specific entry at the calculated rate. If CSN is a respondent in an administrative review covering the period March 1, 2004, through February 28, 2005, we will exclude this U.S. sale from our margin calculation.

Constructed Export Price

Section 772(b) of the Act defines constructed export price (CEP) as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by, or for the account of, the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).

In contrast, section 772(a) of the Act defines export price (EP) as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c).

In the instant review, CSN sold subject merchandise through an affiliated company, CSN LLC of Terre Haute, Indiana. CSN reported its single U.S. sale of subject merchandise as a CEP transaction and explained that its U.S. affiliate, CSN LLC, further manufactured the subject merchandise. The resulting product sold to the unaffiliated U.S. customer falls outside the scope of this antidumping duty order.

After reviewing the evidence on the record of this review, we have preliminarily found that this particular CSN transaction is classified properly as a CEP sale because the sale occurred in the United States and was made through its U.S. affiliate to an unaffiliated U.S. buyer. Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals for the

Federal Circuit's decision in *AK Steel Corp. v. United States*, 226 F. 3d 1361, 1374 (Fed. Cir. 2000) ("*AK Steel*"). In *AK Steel*, the Court of Appeals examined the definitions of EP and CEP, noting "the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications." *See AK Steel*, 226 F. 3d at 1369. The Court of Appeals declared, "the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate," and noted the phrase "outside the United States" had been added to the 1994 statutory definition of EP. *See AK Steel*, 226 F. 3d at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer. In the case of this review, we find that CSN LLC, which is affiliated with CSN, the Brazilian manufacturer and exporter, concluded the contract of sale inside the United States, thereby supporting the classification of this sale as CEP.

For this particular CEP sales transaction, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered prices to an unaffiliated purchaser in the United States. Pursuant to section 772(c)(2)(A) of the Act, we made deductions for movement expenses; these included foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, and inland freight to the unaffiliated U.S. customer. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including imputed credit expenses and indirect selling expenses. We also made adjustments for the cost of further manufacturing and profit from economic activities in the United States, in accordance with sections 772(d)(2) and (3) of the Act.

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared CSN's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because CSN's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. *See* CSN's section A Questionnaire Response at Attachment A–1, dated June 15, 2004.

B. Price-to-Price Comparisons

CSN reported sales in the home market to an affiliated company, INAL. The Department calculates NV based on sales to affiliated parties only if it is satisfied that the prices to the affiliates are comparable to the prices at which sales are made to unaffiliated parties, *i.e.*, sales at arm's length.

To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement and direct selling expenses, discounts and packing. In current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's length prices. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party do not pass the arm's length test, we exclude all sales to that affiliated party from the NV calculation, as was the case in this review. We found that the sales to INAL failed the arm's length test, and therefore we disregarded them and used INAL's downstream sales to unaffiliated customers in our calculation of NV.

We calculated NV based on prices to unaffiliated customers. We adjusted gross unit price for billing adjustments, interest revenue and indirect taxes. We made deductions, where appropriate, for foreign inland freight, warehousing expense and insurance, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale for imputed credit expenses and commissions, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

C. Cost of Production Analysis

At the time the questionnaire was issued in this administrative review, the antidumping duty administrative review of the suspension agreement was the most recently completed segment of this proceeding. In accordance with section 773(b)(2)(A)(ii) of the Act, and consistent with the Department's practice, because we disregarded certain below–cost sales by CSN in the review of the suspension agreement, we found reasonable grounds to believe or suspect that this respondent made sales in the home market at prices below the cost of producing the merchandise. We, therefore, initiated a cost investigation with regard to CSN in order to determine whether this respondent made home market sales during the POR at prices below COP within the meaning of section 773(b)(2)(A)(ii) of the Act.

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of CSN's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative expenses (G&A), interest expenses and packing costs. The Department relied on the COP data reported by CSN, except for the G&A expense ratios. We revised their reported home market and U.S. G&A expense ratios to correct for fees that were incurred by the U.S. affiliate, CSN LLC, but which CSN reported as expenses in Brazil. For changes made to the COP information, *see* Memorandum to Neal Harper from Trinette Ruffin, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Companhia Siderurgica Nacional (CSN), dated March 31, 2005 (COP Memo).

We compared the weighted–average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product–specific basis, we compared the COP to home market prices net of any applicable billing adjustments, state ICMS and federal IPI indirect taxes (which were not included in CSN's reported manufacturing costs), and any applicable movement charges.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below–cost sales of that product because the below–cost sales were not made in "substantial quantities." Where twenty percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determine such sales to have been made in substantial quantities.

Our cost test revealed that more than twenty percent of CSN's home market

sales of certain products were made at below–cost prices during the reporting period. Therefore, we disregarded those below–cost sales, while retaining the above–cost sales for our analysis.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is that of the starting–price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. We consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the United States and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Pursuant to section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000). In the present review, CSN claimed that there was no LOT in the home market comparable to the LOT of the CEP sale, and that consequently it was not in a position to calculate an LOT adjustment. Pursuant to the Department's practice, CSN requested a CEP offset adjustment to NV. *See* CSN's section B Questionnaire Response at page 21, dated July 6, 2004.

CSN claimed three LOTs in the home market based on distinct channels of distribution to two categories of customers: distributors and end–users. CSN's channels of distribution were direct sales from the mill to customers, sales through branches located at service centers where further processing services were provided, such as cutting and slitting, and downstream sales made through CSN's affiliate, INAL. We examined the reported selling functions and found that CSN's home market selling functions for all customers include pre–sale technical assistance, continuous technical service, price negotiation/customer communications, processing of customer orders, freight and delivery arrangements, sales calls and visits, credit evaluation, and warranty and return services. In addition, CSN also performs inventory maintenance for all customers except end–users buying directly from CSN. Finally, CSN makes small quantity sales only through INAL. *See* CSN's section A Questionnaire Response at Exhibit 11, June 15, 2004. We preliminarily find that there are three LOTs in the home market: (1) direct sales, (2) sales through branches, and (3) sales through INAL.

CSN's U.S. sale was made through one channel of distribution to its U.S. affiliate. Pursuant to the Department's practice, we determined the LOT of the U.S. sale based on the selling functions performed for the sale to CSN LLC, which include price negotiation/ customer communications, processing customer orders, and freight and delivery arrangements. *See* CSN's section A Questionnaire Response at Exhibit 11, June 15, 2004. We preliminarily find that there is only one LOT in the U.S. market.

We compared CSN's channels of distribution and selling functions in the home market with the selling functions for U.S. sales to its affiliate, CSN LLC. CSN's selling functions for sales to the United States are less numerous and less complex than CSN's selling functions for its home market sales in any of the channels of distribution. Further, in the home market, the chain of distribution is further from the factory, *e.g.*, many sales are made to distributors and may go through branches where they are further processed. We therefore preliminarily agree with CSN's claim that there is no LOT in the home market comparable to the LOT of the CEP sale, and that there is no basis to calculate an LOT adjustment. We then examined whether a CEP offset may be appropriate. Pursuant to section 351.412(f) of the Department's regulations, we grant a CEP offset only where NV is determined at a more advanced LOT than the LOT of the CEP price, and despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. Accordingly, because the data available do not provide an appropriate basis for making an LOT adjustment, but the LOTs in the home market are at more advanced stages of distribution than the LOT of the CEP sale, we preliminarily find that a CEP offset adjustment is appropriate, in accordance with section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Dow Jones Reuters Business Interactive LLC (trading as Factiva).

Preliminary Results of Review

As a result of our review, we preliminarily find the weighted–average dumping margin for the period March 1, 2003, through February 29, 2004, to be as follows:

Manufacturer / Exporter	Margin (percent)
Companhia Siderúrgica Nacional	0.00

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs for this review must be submitted to the Department no later than fourteen days after the date of the final U.S. verification report issued in this proceeding. Rebuttal briefs must be filed seven days from the deadline date for case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and (3) a

table of authorities. Case and rebuttal briefs and comments must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, an interested party may request a hearing within 30 days of the date of publication of this notice. *See* section 351.310(c) of the Department's regulations. Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first business day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any briefs or comments at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific *ad valorem* rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates (*ad valorem*) against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon completion of the final results of this administrative review 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 CSN will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis, i.e.*, less than 0.50 percent); (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any prior review, or the original LTFV investigation, the cash deposit rate for all other manufacturers or exporters will continue to be 42.12 percent, the "all others" rate established in the LTFV investigation. *See AD Order*, 67 FR at 11094.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1574 Filed 4–5–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–427–820

Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a timely request by the petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel bar (SSB) from France with respect to UGITECH S.A. (UGITECH). The period of review is March 1, 2003, through February 29, 2004.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on the preliminary results. If the 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.

In addition, the Department has received information sufficient to warrant a successor–in-interest analysis in this administrative review. Based on this information, we preliminarily determine that UGITECH S.A. is the successor–in-interest to Ugine–Savoie Imphy S.A. (Ugine–Savoie) for purposes of determining antidumping duty liability. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or David J. Goldberger, AD/CVD Operations, Office 2, Import Administration–Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department published in the **Federal Register** an antidumping duty order on SSB from France. *See* 67 FR 10385. On March 31, 2004, the petitioners submitted a letter timely requesting that the Department conduct an administrative review of the sales of SSB made by Ugine–Savoie. Also in this letter, the petitioners claimed that Ugine–Savoie had recently gone through a change in corporate structure and that the corporate entity is now known as UGITECH. The Department published a notice of initiation of an administrative review with respect to UGITECH, formerly known as Ugine–Savoie. *See* 69 FR 23170, (April 28, 2004).

On May 6, 2004, we issued a antidumping duty questionnaire to UGITECH which included successor–in-interest questions. Responses to the original questionnaire were received in July 2004. We issued a supplemental questionnaire in October 2004, and received responses in October and November 2004 and January 2005.

On November 5, 2004, we extended the time limit for the preliminary results in this review until March 30, 2005. *See Stainless Steel Bar from France: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review*, 69 FR 64563.

[1] The petitioners include the following companies: Carpenter Technology Corporation; Crucible Specialty Metals Division, Crucible Materials Corporation; and Electroalloy Corporation, a Division of G.O. Carlson, Inc.

In November 2004, we conducted a verification of certain portions of UGITECH's questionnaire responses, in accordance with 19 CFR 351.307. The results of this verification are described in the Memorandum to the File dated January 13, 2005, from Terre Keaton and David J. Goldberger, International Trade Compliance Analysts, through Irene Darzenta Tzafolias, Program Manager, entitled: *Sales Verification in Ugine, France of UGITECH S.A. (UGITECH Verification Report).*

In January 2005, as instructed by the Department, UGITECH submitted revised sales data pursuant to verification findings and revised cost data pursuant to cost supplemental questionnaires. In February 2005, the petitioner and the respondent submitted comments for purposes of the preliminary results. On March 15, 2005, we issued UGITECH a supplemental questionnaire concerning certain cost of production (COP) issues. We received UGITECH's response on March 23, 2005.

Scope of the Order

For purposes of this order, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Successor–In–Interest Analysis

In its July 2, 2004, section A response (hereafter section A response), UGITECH reported that on November 28, 2003, the shareholders of Ugine–Savoie voted to change the company's name to UGITECH S.A. UGITECH claimed that Ugine–Savoie and UGITECH remain the same legal entity and there was no change in ownership associated with the change in name. According to the section A response, prior to the name change, Ugine–Savoie Imphy dissolved one of its wholly–owned French subsidiaries (*i.e.*, Ugine–Savoie France S.A.) and integrated that company's operations as an internal department within Ugine–Savoie Imphy. Similarly, shortly after the name change, UGITECH dissolved another wholly–owned French subsidiary (*i.e.*, Sprint Metal S.A.) and integrated its operations as a internal department within UGITECH. Also at that time, the former chief executive officer of Sprint Metal was made vice president of sales at UGITECH. Other than the name change and the incorporation of the two former subsidiaries into the company, UGITECH operations and facilities remain essentially unchanged.

Thus, in accordance with section 751(b) of the Act, the Department is conducting a successor–in–interest analysis to determine whether UGITECH is the successor–in–interest to Ugine–Savoie Imphy S.A. for purposes of determining antidumping liability with respect to the subject merchandise. In making such a successor–in–interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Polychloroprene Rubber from Japan: Final Results of Changed Circumstances Review*, 67 FR 58 (January 2, 2002) (*Polychloroprene Rubber from Japan*), *and Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no individual factor or combination of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Polychloroprene Rubber from Japan, Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994), *Canadian Brass, and Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880 (September 23, 1998). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping duty treatment as its predecessor.

We preliminarily determine that UGITECH is the successor–in–interest to Ugine–Savoie. UGITECH submitted documentation supporting its claims that its name change resulted in no significant changes in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) a copy of the board meeting minutes for the name change; (2) a copy of the article of incorporation for UGITECH; (3) copies of the official registration of Ugine–Savoie (before the name change) and UGITECH (after the name change); and (4) copies of the statements of dissolution for Ugine–Savoie France S.A. and Sprint Metal S.A. These documents, which the Department examined thoroughly at verification, demonstrate that UGITECH operates as the same business entity as Ugine–Savoie. Because UGITECH has presented evidence to establish a *prima facie* case of its successorship status, we preliminarily find that UGITECH should receive the same antidumping duty treatment with respect to SSB as the former Ugine–Savoie.

Fair Value Comparisons

To determine whether sales of SSB by UGITECH to the United States were made at less than normal value (NV), we compared constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the weighted–average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by UGITECH covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by UGITECH in the following order: general type of finish; grade; remelting process; type of final finishing operation; shape; and size range.

For the preliminary results, we have reclassified UGITECH's separate grade codes 0760 and 0780 as a single grade code because the information on the record indicates that these grades are essentially identical (they have exactly the same specifications for nickel, chromium, molybdenum, sulphur and carbon components).

UGITECH identified its sales of reinforcing bar under the final finishing product characteristic (FFINISHH/U) but did not identify it under the shape product characteristic (SHAPEH/U). We have preliminarily determined that this type of bar should be identified under the SHAPEH/U variable, as such SSB normally features indentations, ribs, grooves, or other deformations produced during the rolling process. Accordingly, we have identified the reinforcing SSB under the SHAPEH/U variable. In addition, based on the information provided by UGITECH in its March 14, 2005, letter, we reclassified the FFINISHH/U product characteristics for reinforcing bar.

In addition, UGITECH reported sales of hot–rolled bar that was peeled or descaled, and added a FFINISHH/U code for this characteristic at the end of the FFINISHH/U hierarchy. Based on our analysis of UGITECH's production flow chart at Appendix SA–1 of the October 28, 2004, supplemental questionnaire response, we believe that it is more appropriate to place the peeled or descaled characteristic between "shot blasted" and "rough–turned," rather than after "centerless ground," as reported by UGITECH. Consequently, we have revised UGITECH's coding of the final finishing characteristic in order to provide more appropriate model matches.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of UGITECH by its subsidiary Ugine Stainless & Alloy, Inc. (US&A) in the United States to unaffiliated purchasers. In addition, UGITECH reported sales of SSB which were further processed by US&A in the United States. For the subject merchandise further processed in the United States, we used the starting price of the subject merchandise and deducted the costs of the further processing to determine CEP for such merchandise, in accordance with section 772(d)(2) of the Act. To calculate the cost of further manufacturing, we relied on UGITECH's reported cost of further manufacturing materials, labor, and overhead, plus amounts for further manufacturing general and administrative expenses (G&A) and financial expenses, as reported in the January 14, 2005, supplemental section E questionnaire response.

We based CEP on the packed prices to unaffiliated purchasers in the United States. We identified the correct starting price, by adjusting for alloy surcharges, freight revenue, other revenue and billing adjustments associated with the sale, and by making deductions for discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These expenses included, where appropriate, foreign inland freight (including freight from the plant/warehouse to the port of exportation), brokerage and handling, ocean freight, marine insurance, U.S. inland freight expenses (including freight from the U.S. port to the warehouse, freight between warehouses, and freight from the warehouse to the unaffiliated customer), and U.S. customs duties and fees (including harbor maintenance fees and merchandise processing fees). In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions, credit expenses, warranty expenses, other direct selling expenses and repacking expenses) and indirect selling expenses (indirect selling expenses and inventory carrying costs) incurred in the country of exportation and the United States. For the sales where the payment date was not reported, we set the payment date equal to the preliminary results date (*i.e.*, March 30, 2005). Where US&A reported a shipment date that preceded the invoice date, we set the sale date equal to the shipment date. We also deducted an amount for further–manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act, and made an adjustment for profit in accordance with section 772(d)(3) of the Act.

In Appendix SA–2 of the November 22, 2004, supplemental questionnaire response, UGITECH reported that the terms of its sales agreement with a certain U.S. customer involved the transfer of specific equipment from UGITECH to the customers. While it may be appropriate to consider the cost of this equipment to be a direct selling expense attributable to all sales covered by the agreement, the per–unit amount for such an expense, according to UGITECH's February 23, 2005, letter at page 8, is well under 0.33 percent *ad valorem*, the Department's threshold under 19 CFR 351.413 for insignificant adjustments. Therefore, we have disregarded any adjustment for this selling expense in accordance with section 777A(a)(2) of the Act and 19 CFR 351.413.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Because UGITECH's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that its home market was viable.

B. Affiliated–Party Transactions and Arm's–Length Test

During the POR, UGITECH sold the foreign like product to affiliated customers. To test whether these sales were made at arm's–length prices, we compared, on a product–specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses (including commissions), and packing expenses. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price

of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's–length. *See* 19 CFR 351.403(c). Sales to affiliated customers in the home market that were not made at arm's–length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. *See* 19 CFR 351.102(b).

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing (id.); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[2]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa* at 61731. We obtained information from UGITECH regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed for each channel of distribution.

UGITECH sold SSB to end–users and distributors in both the U.S. and home markets. UGITECH claims that it made CEP sales in the U.S. market (through its U.S. affiliate, US&A) through the following two channels of distribution: 1) sales of UGITECH–produced SSB purchased from UGITECH, and 2) sales of UGITECH–produced SSB purchased from Trafilerie Bedini, S.r.l (Bedini)[3]. We compared the selling activities performed in each channel, and found that the same selling functions (*e.g.*, production planning, warranty, technical service, and freight & delivery) were performed at the same relative level of intensity in both channels of distribution. Accordingly, we find that all CEP sales constitute one LOT.

With respect to the home market, UGITECH claimed five channels of distribution (channels 3 through 7) described as follows: 3) factory direct sales; 4) ex–inventory sales of standard SSB; 5) ex–inventory sales of SSB for special applications; 6) sales of ex–inventory French–origin standard SSB purchased from Bedini; and 7) sales of ex–inventory French–origin SSB for special applications purchased from Bedini. According to UGITECH, the direct sales (channel 3), the ex–inventory standard SSB sales (channels 4 and 6), and the ex–inventory SSB with special application sales (channels 5 and 7) constitute three distinct levels of trade in the home market.

In determining whether separate LOTs exist in the home market, we compared the selling functions performed across all channels of distribution. We found that, except for inventory maintenance, all selling functions were performed across all channels of distribution with only slight variances in the levels of intensity for a few sales activities listed within certain selling functions. We note that the selling functions (*e.g.*, strategy planning and marketing, customer sales contact, production/planning/order evaluation, advertising, warranty, technical service, computer systems and freight and delivery) were all generally performed at varying levels of intensity for both the direct ex–works sales and the inventory sales. In certain activities such as strategy planning and marketing, customer sales contact and production/planning/order evaluation, the level of intensity for direct ex–works sales and the inventory sales was identical. Based on this analysis, we find that, although the level of intensity varies within a few of the selling activities performed for UGITECH's direct ex–works and inventory sales, these variances are not so significant to constitute distinct LOTs.

With respect to inventory maintenance, we find that there is a significant difference in the level of intensity reported for the three activities (*i.e.*, light general warehouse services, further manufacturing/special services and pre–sale warehousing) being performed under this selling function by the inventory sales channels. However, we note that, although UGITECH has classified light general warehouse services (*e.g.*, cutting and grinding), further manufacturing and special services performed on SSB for special applications as selling activities, we do not consider these activities to be selling functions and thus they are not relevant to the LOT analysis. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Bar From France*, 66 FR 40201 (August 2, 2001); continued in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From France*, 67 FR 3143 (January 23, 2002) (*See Stainless Steel Bar From France*). In addition, we find that the pre–sale warehousing selling activity which UGITECH defined as "the holding of merchandise after production and before sale and shipment" is not a sufficient basis in and of itself to distinguish separate LOTs between direct ex–works and inventory sales. Therefore, based on the analysis above, taken as a whole, we find that all home market sales were made at the same LOT.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for the U.S. customer. For example, in comparing the selling activities noted under the various selling functions reported (*e.g.*,

[2] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.

[3] Bedini is an affiliated Italian company which purchases SSB from UGITECH, further processes it and then resells the SSB to the United States.

strategy planning/marketing and customer sales contact), UGITECH performed each of these selling activities at a higher level of intensity in the home market than in the U.S. market. Similarly, we noted that the advertising selling function was performed at the highest level of intensity in the home market, whereas, in the U.S. market it was not performed at all. Therefore, we conclude that UGITECH's home market sales are at a more advanced LOT than its U.S. sales.

As home market and U.S. sales were made at different LOTs, we could not match CEP sales to home market sales at the same LOT. Moreover, as we found only one LOT in the home market, it was not possible to make an LOT adjustment to home market sales because such an adjustment is dependent upon our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Because the data available do not form an appropriate basis for making an LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling expenses on home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

Cost of Production Analysis

In the less–than-fair–value (LTFV) investigation, the Department disregarded certain sales made by UGITECH that failed the cost test (*see Stainless Steel Bar From France* at 3143). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that UGITECH made sales in the home market at prices below the cost of producing the merchandise in the current review period. Accordingly, we initiated a COP investigation covering UGITECH's home market sales.

A. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated UGITECH's COP and constructed value (CV) based on the sum of UGITECH's costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses). The Department relied on the COP data submitted by UGITECH in its most recent supplemental section D questionnaire response, dated January 14, 2005, for the COP calculation, except in the following instances:

1. For the preliminary results, we relied on UGITECH's weighted–average costs during the POR. UGITECH argued that the standard methodology of weight–averaging costs over a single cost–reporting period is distortive in this instance. UGITECH reported weighted–average direct materials costs in six separate cost reporting periods, arguing that the prices of certain raw material alloys fluctuated significantly during the POR. We preliminarily determine that weighted–average costs over the POR are not distortive.
2. UGITECH reported its G&A expense ratio on a division–specific basis by allocating company–wide G&A expenses to the Ugine and Imphy divisions, rather than on a company–wide basis. We have divided UGITECH's total company–wide G&A expenses by the company's total cost of goods sold (COGS), which we adjusted for packing expenses, freight–out expenses, and custom taxes, to derive a company–wide G&A expense ratio.
3. In fiscal year 2003, UGITECH accrued restructuring costs related to a multi–year restructuring plan which is expected to be completed in 2007. Although UGITECH's home–country GAAP require the company to accrue the total estimated costs during the year in which the costs are probable and reasonably estimable, UGITECH reported that the accrued costs relate to activities which occurred or are expected to occur in five separate fiscal years (2003 through 2007). Therefore, we estimated the current portion of the restructuring costs as one–fifth of the total accrued amount.
4. UGITECH recognized expenses related to R&D costs during fiscal year 2003, including an amount for amortization expense of capitalized R&D expenditures and an amount of direct R&D expenses. Prior to fiscal year 2003, UGITECH did not capitalize any R&D expenditures. During fiscal year 2003, UGITECH changed its accounting methodology, and began to capitalize certain R&D expenditures, amortizing them over a period of five years. Thus, the R&D amortization expense represents one–fifth of the capitalized R&D expenditures which were incurred during 2003. We adjusted UGITECH's reported R&D costs to reflect the accounting method used historically by the company. As such, we added the entire amount of 2003 capitalized R&D costs to UGITECH's G&A expenses.
5. In accordance with its home country GAAP, UGITECH incurred and recognized a loss for the impairment of fixed assets during fiscal year 2003. Impairment is the condition that exists when the carrying amount of a long–lived asset or asset group exceeds its fair value and the excess carrying amount is unrecoverable. (*See* UGITECH's January 14, 2005 supplemental section D response at 8). However, UGITECH excluded the loss from the company's reported G&A expenses for purposes of this administrative review. Because the impairment loss relates to the general operations of the company during the 2003 fiscal year, we included UGITECH's recognized impairment in the company–wide G&A expenses.
6. For the purpose of calculating the financial expense ratio, because UGITECH's parent, Arcelor, does not report COGS, UGITECH estimated Arcelor's COGS by calculating UGITECH's division–specific COGS–to-operating costs and applying that ratio to Arcelor's total operating costs, deriving an estimate of Arcelor's COGS. Rather than attempting to estimate Arcelor's unreported COGS, we recalculated the financial expense ratio based on Arcelor's actual total operating expenses. Arcelor's total operating expenses include Arcelor's COGS and G&A expenses. Therefore, we applied the resulting financial expense ratio to UGITECH's per–unit COM and G&A expenses to derive the total per–unit COP of subject merchandise.
7. To calculate the short–term interest income offset to UGITECH's financial expense ratio, UGITECH estimated the short–term interest income recognized by Arcelor by analyzing the experience of Arcelor's two largest subsidiaries. UGITECH included income from mutual fund investments in the total short–term interest income of the two largest subsidiaries. We revised UGITECH's calculations to exclude the mutual fund income from the calculation of the short–term interest income offset. We also added "Charges linked to securitization programmes" to Arcelor's total financial expenses for purposes of calculating UGITECH's financial expense ratio. This expense was recognized in Arcelor's audited financial statement as a financial expense, but was excluded from the calculations in UGITECH's responses.

Our revisions to UGITECH's COP data are discussed in the Memorandum from Joseph Welton, Accountant, to Neal Halper, Director, entitled *Cost of Production and Constructed Value Calculation Adjustments for the*

Preliminary Determination - UGITECH, S.A., dated March 30, 2005.

B. Test of Home Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of interest revenue, where appropriate) were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under "Price–to-Price Comparisons." In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) within an extended period of time, (2) in substantial quantities, and (3) at prices which did not permit the recovery of all costs within a reasonable period of time.

C. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine the below–cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of UGITECH's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Price–to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that were determined to be at arm's length. We made adjustments, where appropriate, to the starting price for billing corrections, early payment discounts and rebates. We made deductions, where appropriate, from the starting price for inland freight (from the plant to the warehouse or plant to the customer), warehousing expenses, and inland insurance, under section 773(a)(6)(B)(ii) of the Act.

For the sales where the payment date was not reported, we set the payment date equal to the preliminary results date (*i.e.*, March 30, 2005). Where UGITECH reported a shipment date that preceded the invoice date, we set the sale date equal to the shipment date.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and warranty expenses.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, as discussed above under the Level of Trade section, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison–market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act 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 weighted–average dumping margin for the period March 1, 2003, through February 29, 2004, is as follows:

Manufacturer/Exporter	Percent Margin
UGITECH S.A. (Successor–in-interest to Ugine–Savoie Imphy S.A.)	17.71

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review.

For assessment purposes, we calculated importer- or customer–specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the total entered value of those same sales.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this

review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

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 the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.90 percent, the "All Others" rate made effective by the LTFV investigation (*see Notice of Antidumping Duty Order: Stainless Steel Bar From France*, 67 FR 10385 (March 7, 2002)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1577 Filed 4–5–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040105B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Committee (TIQC) will hold a working meeting which is open to the public.

DATES: The TIQC working meeting will begin Tuesday, May 10, 2005 at 8:30 a.m. and may go into the evening if necessary to complete business for the day. The meeting will reconvene from 8:30 a.m. and continue until business for the day is complete on Wednesday, May 11, 2005.

ADDRESSES: The meeting will be held in the Broadway Room at the Residence Inn by Marriott-Portland Downtown, RiverPlace, 2115 SW River Parkway, Portland, OR 97201. Telephone: 503–552–9500

Council address: Pacific Fishery Management Council, 7700 NE . Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist), 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the TIQC working meeting is to continue to review results from public scoping and some preliminary analysis, and refine recommendations to the Council on an individual quota program to cover limited entry trawl landings in the West Coast groundfish fishery.

Although nonemergency issues not contained in the TIQC meeting agenda may come before the TIQC for discussion, those issues may not be the subject of formal TIQC action during these meetings. TIQC action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TIQC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: April 1, 2005.

Emily Menashes,

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

[FR Doc. E5–1556 Filed 4–5–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040105A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) will hold a work session, which is open to the public.

DATES: The work session will be Thursday, May 12, 2005, from 1 p.m. until 5 p.m. and Friday, May 13, 2005, from 9 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Large Conference Room, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA 92037, (858) 546–7000

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council (503) 820–2280.

SUPPLEMENTARY INFORMATION: The main purpose of this work session is for the HMSMT to review issues related to the implementation of the HMS fishery management plan and make recommendations to the Council on future action on these issues. Issues discussed could include the Council's response to overfishing of bigeye tuna and other HMS so declared in the future, developing sea turtle bycatch mitigation measures for the West Coast high seas longline fishery, establishing a limited entry program for the West Coast high seas longline fishery, implementation of an observer coverage plan, and review of exempted fishing permits, among others. This HMSMT

work session is for the purpose of developing information for the Council's consideration at a future Council meeting; no management actions will be decided by the HMSMT at this work session.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 1, 2005.

Emily Menashes,

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

[FR Doc. E5–1570 Filed 4–5–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Eleventh Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Agricultural Advisory Committee." The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC, on March 31, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–6779 Filed 4–5–05; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 05–C0007]

Hamilton Beach/Proctor-Silex, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Hamilton Beach/Proctor-Silex, Inc., containing a civil penalty of $1,200,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 21, 2005.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 05–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Andrea S. Paterson, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7615.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 30, 2005.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. Hamilton Beach/Proctor-Silex, Inc. (hereinafter "HB/PS" or "Respondent") enters into this Settlement Agreement and Order (hereinafter, "Settlement Agreement" or "Agreement") with the staff of the U.S. Consumer Product Safety Commission (the "Commission"), and agrees to the entry of the attached Order incorporated by reference herein. The Settlement Agreement resolves the Commission staff's allegations set forth below.

I. The Parties

2. The Commission is an independent federal regulatory commission responsible for the enforcement of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051–2084.

3. HB/PS is headquartered in Glen Allen, Virginia, and incorporated in Delaware.

II. Staff Allegations

4. In the last five years, HB/PS has failed to report in a timely manner concerning three separate products: countertop toasters, juice extractors, and slow cookers, in violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

5. Each of these products was sold to and/or used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and was, therefore, a "consumer product" as defined in section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1). Furthermore, HB/PS was an importer and, therefore, was a "manufacturer" of these toasters, juice extractors, and slow cookers, for distribution in "commerce," as those terms are defined in sections 3(a)(4) and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (12).

A. The Countertop Toasters

6. HB/PS imported and distributed model 24205 and 24208 countertop toasters (the "subject toasters" or "toasters") from April 1997 through September 1999. These toasters were manufactured for HB/PS by Durable Electrical Metal Factory, Ltd., in China. These traditional upright electric toasters had four extra-wide slots that could toast either bagels or bread. On the front of the toasters was a bread lifter for raising or lowering the food, as well as a control dial, numbered 1–6, which consumers used to adjust the degree of toasting. The model 24205 was white, and model 24208 was black and chrome. Both models had the name "Proctor-Silex" in grey letters on the front panel.

7. The subject toasters were defective because their heating elements could remain on after the food in the toaster "popped up," which should have caused the heating element to

disengage. As a result, the toaster could set afire its contents.

8. Between 1997 and 1999, HB/PS learned of three consumer reports of damage to kitchen cabinets or countertops due to fires and received over 230 consumer complaints involving toasters that may have failed to turn off. The company also knew of product changes to attempt to correct the problem.

9. Before reporting the subject toasters to the Commission on November 9, 1999, HB/PS had obtained information which reasonably supported the conclusion that the subject toasters contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury.

10. Respondent failed to report to the Commission in a timely manner, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). In doing so, HB/PS violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

11. Respondent committed this failure to report to the Commission "knowingly" as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

B. The Juice Extractors

12. HB/PS imported and distributed juice extractor models 67150, 67180, 67180W, 67199, 395WS and 3920JS (the "subject extractors" or "juice extractors") between 1992 and October 2001. Simatelex Manufacturing Company, Ltd. (1991 to 1995) and Join-One Enterprise Co. Ltd. (1996 to 2001) manufactured these juice extractors for HB/PS. All of the juice extractors consisted of the same basic pieces: a base, a strainer basket (consisting of a strainer and a metal cutter), a top cover with a food chute (through which the food to be juiced was fed with a pusher), a juice cup, and a refuse pulp bin. The juicer bases, constructed of white plastic with the name "Hamilton Beach" on the side, housed the juicer motors, ranging from 140–150 watts (Simatelex) to 300–350 watts (Join-One).

13. The subject juice extractors contained a defect that could cause the strainer basket and lid to break apart, posing a risk of injury to nearby consumers who could be struck by pieces of metal or plastic.

14. Between 1992 and 2001, HB/PS received 59 consumer complaints related to the alleged defect. Consumer reports of injuries included four consumers who received lacerations requiring stitches and five consumers alleging possible eye injuries.

15. Before reporting the subject juice extractors to the Commission on October 8, 2001, HB/PS had obtained information which reasonably supported the conclusion that the subject juice extractors contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury.

16. Respondent failed to report to the Commission in a timely manner, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). In doing so, HB/PS violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

17. Respondent committed this failure to report to the Commission "knowingly" as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

C. The Slow Cookers

18. HB/PS imported and distributed slow cooker models 33390, 33475, 33575, 33590, 33675, 33690, 33725, 33850, 33860, 33680, 33320, 33320FD, 33325, 33375, 33380, 33625A, 106661, and 106851 (the "subject slow cookers" or "slow cookers") from January 1999 through December 2002. These slow cookers were manufactured for HB/PS by Huamei Electronics Co., Ltd., in China. These slow cookers shared the same basic elements: a cooker base with a heating element and handles, a ceramic inset where the food to be cooked was placed, and a tight-fitting lid. Most of the subject slow cookers were sold under the "Hamilton Beach" or "Proctor Silex" names, with the brand name printed on the particular unit's front. They were round or oval, were solid white or had various print designs on the outside, and had 3.5 quart to 6.5 quart capacities.

19. The subject slow cookers were defective because their handles could crack and break off when the product was lifted. This defect posed a risk of burns from hot food spilling onto consumers.

20. Between 1999 and 2001, HB/PS received over 2000 complaints of cracked or broken slow cooker handles, including two reports of consumers who required medical attention for injuries, as well as information regarding product changes to attempt to address the problem of handles breaking.

21. Before February 4, 2002, when HB/PS first shared incident and other data on the slow cookers with the staff, HB/PS had obtained information which reasonably supported the conclusion that the subject slow cookers contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury.

22. Respondent failed to report to the Commission in a timely manner, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). In doing so, Respondent violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

23. Respondent committed this failure to report to the Commission "knowingly" as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Response of HB/PS

24. HB/PS contests and denies the staff's allegations set forth above in this Settlement Agreement. HB/PS enters into this Settlement Agreement and Order to resolve this claim without the expense and distraction of litigation. By agreeing to this settlement, HB/PS does not admit any of the allegations set forth above in this Settlement Agreement, or any fault, liability or statutory or regulatory violation.

25. HB/PS, voluntarily and without the Commission having requested information from HB/PS, notified the Commission in each of the matters described above. In addition, HB/PS voluntarily recalled each of the products in cooperation with the Commission.

26. At all times HB/PS closely monitored its reporting obligations under the Consumer Product Safety Act. HB/PS never knowingly failed to file a required report with the Commission. HB/PS has continued to improve its efforts to meet its reporting obligations under the CPSA.

IV. Agreement of the Parties

27. The Consumer Product Safety Commission has jurisdiction over this matter and over Respondent under the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2084.

28. Respondent agrees to be bound by and comply with this Settlement Agreement and Order.

29. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the VPSA's reporting requirements, or a finding of fact or law by the CPSC of any of the allegations in this Settlement Agreement.

30. In settlement of the staff's allegations, Respondent agrees to pay a civil penalty of one million, two hundred thousand and 00/100 dollars ($1,200,000), in full settlement of this matter, and payable within twenty (20) calendar days of receiving services of

the final Settlement Agreement and Order.

31. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law and (5) to any claims under the Equal Access to Justice Act.

32. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written obligations within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

33. The Commission may publicize the terms of this Settlement Agreement and Order upon provisional acceptance of this Agreement by the Commission.

34. HB/PS's full and timely payment to the United States Treasury of a civil penalty in the amount of one million two hundred thousand dollars ($1,200,000) resolves the allegations in paragraphs 4–23 above with respect to (a) HB/PS, (b) any HB/PS parent, subsidiary, affiliate, division, or related entity; (c) any shareholder, director, officer, employee, agent or attorney of any entity referenced in (a) or (b) above; and (d) any successor, heir, or assign of any entity referenced in (a), (b), or (c) above.

35. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051–2084. Violation of this Order may subject Respondent to appropriate legal action.

36. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

37. The provisions of this Settlement Agreement and Order shall apply to Respondent, its parent, and each of their successors and assigns.

Dated: March 24, 2005.

Hamilton Beach/Proctor-Silex, Inc.

Kathleen Diller.

Eric A. Rubel,

Respondent's Attorney.

Dated: March 28, 2005.

U.S. Consumer Product Safety Commission.

John Gibson Mullan,
Director, Office of Compliance.

Eric L. Stone,
Director, Legal Division, Office of Compliance.

Andrea S. Paterson,
Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Hamilton Beach/Proctor-Silex, Inc., and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Hamilton Beach/Proctor-Silex, Inc., and it appearing that the Settlement Agreement and Order is in the public interest, it is Ordered that the Settlement Agreement be, and hereby is, accepted and it is Further ordered that Hamilton Beach/Proctor-Silex, Inc., shall pay the United States Treasury a civil penalty in the amount of one million, two-hundred thousand and 00/100 dollars ($1,200,000.00), payable within twenty (20) days of the service of the Final Order upon Hamilton Beach/Proctor-Silex, Inc. Upon the failure of Hamilton Beach/Proctor-Silex, Inc., to make payment or upon the making of a late payment by Respondent (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 30th day of March 2005.

By order of the Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

Finally accepted and Final Order issued on the ___ day of 2005.

By order of the Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 05–6659 Filed 4–5–05; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Notice of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies—Open Meeting

AGENCY: Department of Defense.

ACTION: Notice; Defense Task Force on Sexual Harassment and Violence at the Military Service Academies—open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96–463, notice is hereby given that the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies will hold an open meeting at the Courtyard Marriott, 2700 Eisenhower Avenue, Alexandria, Virginia 22314, on April 20, 2005, from 1 p.m. to 4 p.m. Be advised that the Task Force determined on March 31, 2005, that this additional meeting is necessary to ensure the report to the Secretary of Defense is delivered within the Task Force's scheduled deadline.

Purpose: The Task Force will meet on April 20, 2005, from 1 p.m. until 4 p.m. This session will be open to the public, subject to the availability of space. In keeping with the spirit of Federal Advisory Committee Act, it is the desire of the Task Force to provide the public with an opportunity to make comment regarding the current work of the Task Force. The first hour of the meeting will be designated for any public comment. During the final two hours, the Task Force as a whole will discuss findings and recommendations regarding victims' rights and services, accountability, training, and community collaboration at the U.S. Military and Naval Academies. Any interested citizens are encouraged to attend.

DATES: April 20, 2005 1 p.m.–4 p.m.

Location: The Courtyard Marriott, 2700 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit comments must contact: Mr. William Harkey, Public Affairs Officer, Task Force on Sexual Harassment and Violence at the Military Service Academies, 2850 Eisenhower Ave, Suite 100, Alexandria, Virginia 22314; telephone: (703) 325–6640; DSN# 221–6640; Fax: (703) 325–6710/6711; *william.harkey.CTR@wso.whs.mil.*

Interested persons may submit a written statement for consideration by the Task Force and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than 5 p.m., April 15, 2005. Oral presentations by members of the public will be permitted only on April 20, 2005, from 1 p.m. until 4 p.m. before the full Task Force. Presentations will be limited to ten (10) minutes each. Number of oral presentations to be made will depend on the number of requests received from members of the public

and the time allotted. Each person desiring to make an oral presentation must provide the point of contact listed above with one (1) written copy of the presentation by 5 p.m., April 15, 2005, and bring 15 written copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 15 written copies of the statement to the Task Force staff by 5 p.m. on April 15, 2005.

General Information: Additional information concerning the Defense Task Force on Sexual Harassment and Violence at The Military Service Academies, its structure, function, and composition, may be found on the DTFSH and VTMA Web site (*http://www.dtic.mil/dtfs*).

Dated: April 1, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–6826 Filed 4–5–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Assistant Secretary of Defense for Health Affairs; Meeting of the Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences.

ACTION: Notice.

(1) Approval of Minutes—February 8, 2005.

(2) Faculty Matters.

(3) Departmental Reports.

(4) Financial Report.

(5) Report—Interim President, USUHS.

(6) Report—Dean, School of Medicine.

(7) Report—Dean, Graduate School of Nursing.

(8) Approval of Degrees—School of Medicine; Graduate

School of Nursing.

(9) Comments—Chairman, Board of Regents.

(10) New Business.

DATES: May 20, 2005, 8 a.m. to 4 p.m.

ADDRESSES: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

FOR FURTHER INFORMATION CONTACT: Barry W. Wolcott, M.D., Executive Secretary, Board of Regents, (301) 295–3681.

Dated: March 31, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–6731 Filed 4–5–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

The Federal Student Aid Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting letters of application for participation in the Quality Assurance Program.

SUMMARY: The Secretary of Education invites institutions of higher education that may wish to participate in the Quality Assurance Program, under section 487A(a) of the Higher Education Act of 1965, as amended (HEA), to submit a letter of application to participate in the program.

DATES: Letters of application may be submitted any time after April 6, 2005.

ADDRESSES: Institutions wishing to apply to participate in the Quality Assurance Program may do so by mailing a letter of application to Barbara Mroz, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., room 84F1, Washington, DC 20202–5232 or by submitting a letter of application electronically to Barbara Mroz at: *Barbara.Mroz@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Sharyn Hutson, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., room 83G3, Washington, DC 20202–5232. Telephone: (202) 377–4379, or via e-mail: *Sharyn.Hutson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audio tape or computer diskette) on request by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

Institutions of higher education are invited to join the Department in an effort to simplify regulations and administrative processes for the Federal Student Aid (FSA) Programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). The vision of the Quality Assurance Program, with 145 institutions currently participating, is to provide tools that help all Title IV institutions promote better service to students, compliance, and continuous improvement in program delivery. The program encourages participating institutions to develop and implement their own comprehensive systems to verify student financial aid application data, and continually assess compliance to Federal requirements.

The Secretary is authorized to provide participating institutions with regulatory flexibility for the verification of student data, and to encourage alternative approaches that improve award accuracy.

The Secretary believes that the process of continuous improvement fostered by the institutions already participating in the Quality Assurance Program has enhanced not only the accuracy of student aid awards and payments, but also the management of student aid offices and the delivery of services to students.

Features of the Program

The mission of the Quality Assurance Program is to help schools attain, sustain, and advance exceptional student aid delivery and service excellence. For the past 19 years, the program has done that by providing participating institutions with the flexibility to design an institutional verification program that more directly focuses on their own population segments. It has also helped them target areas of administration that affect award accuracy or that may leave the institution vulnerable to potential liabilities.

The Quality Assurance Program has given institutions the tools and techniques to assess, measure, analyze, correct and prevent problems, and has provided them with data on which to base their decisions for solving problems and addressing verification issues.

The Secretary encourages institutions participating in the Quality Assurance Program to evaluate their student aid or verification policies and procedures and adopt improvements in those procedures. Institutions measure performance and test the effectiveness of their verification program by using the Department's ISIR Analysis Tool. The ISIR Analysis Tool is a web-based software product that provides Financial Aid Administrators with an in-depth analysis of their applicant population. It allows them to see not only which FAFSA elements changed when verified, but also what impact these changes have upon the Expected Family Contribution (EFC) and aid eligibility. This analysis helps Financial

Aid Administrators develop a targeted institutional verification program, which ultimately makes the financial aid process easier for students, while ensuring accountability and integrity.

The Quality Assurance Program also helps institutions make improvements beyond verification and basic compliance. By using the FSA Assessments, schools can set goals for continuous improvement in all areas of financial aid delivery. One key benefit of the program is the partnership between the Department and the participating institutions.

Both parties become engaged in promoting continuous improvement in the administration and delivery of the student financial assistance programs, thereby enhancing service to students.

Invitation for Applications

The Secretary invites institutions of higher education that administer one or more Title IV programs to submit a letter of application to participate in the Quality Assurance Program. Institutions that currently participate in the program may continue to do so without submitting a new letter of application. The Secretary will review the letter of application, which should reflect the institution's commitment to the goals of the Quality Assurance Program, as determined by the Secretary. The letter of application should address the following goals in detail:

- Attain and sustain compliance and continuous improvement in program delivery, and better service to students;
- Improve the accuracy of institutional verification programs;
- Increase institutional flexibility in managing student aid funds, while maintaining accountability for the proper use of those funds; and
- Encourage the development of innovative management approaches that advance quality.

Review Process

The Department will screen prospective participants to determine if the institution meets general Title IV eligibility requirements and has a demonstrated record of program compliance. The Secretary may also consider the institution's performance with regard to financial responsibility, administrative capability, program review findings, audit findings, etc. as outlined in the regulations and in the Federal Student Aid Handbook.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 31, 2005.

Theresa S. Shaw,

Chief Operating Officer Federal Student Aid.

[FR Doc. 05–6745 Filed 4–5–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants for the Integration of Schools and Mental Health Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215M.

Dates: Applications Available: April 5, 2005. Deadline for Transmittal of Applications: May 16, 2005. Deadline for Intergovernmental Review: July 18, 2005.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), and Indian tribes. LEAs or consortia of LEAs that have ever received funds or services under the Safe Schools/Healthy Students Initiative (CFDA Number 84.184L), or will receive funds under the FY 2005 competition for CFDA Number 84.184L, are not eligible for funding under this program.

Estimated Available Funds: $4,960,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Grants for the Integration of Schools and Mental Health Systems will provide funds to increase student access to high-quality mental health care by developing innovative approaches that link school systems with the local mental health system.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5541 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) (20 U.S.C. 7269).

Absolute Priority: For FY 2005 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Increasing student access to quality mental health care by developing innovative approaches to link local school systems with the local mental health system. A program funded under this absolute priority must include all of the following activities:

(1) Enhancing, improving, or developing collaborative efforts between school-based service systems and mental health service systems to provide, enhance, or improve prevention, diagnosis, and treatment services to students.

(2) Enhancing the availability of crisis intervention services, appropriate referrals for students potentially in need of mental health services, and ongoing mental health services.

(3) Providing training for the school personnel and mental health professionals who will participate in the program.

(4) Providing technical assistance and consultation to school systems and mental health agencies and families participating in the program.

(5) Providing linguistically appropriate and culturally competent services.

(6) Evaluating the effectiveness of the program in increasing student access to quality mental health services, and making recommendations to the Secretary about sustainability of the program.

Additional Requirements:

(a) *Coordination of Activities:* Recipients funded under this competition will be required to coordinate activities under this program with projects funded under the Department of Health and Human Services' Substance Abuse and Mental

Health Services Administration's Mental Health Transformation State Infrastructure Grants (MHTSIG), if a grantee's State receives a MHTSIG award. If a recipient of a grant under this program also has received or receives a Department of Education Emergency Response and Crisis Management (ERCM) grant (CFDA 84.184E), the recipient must also coordinate mental health services activities under this grant with those planned under its ERCM grant.

(b) *Application Requirements:* Applicants for an award under this program must develop and submit with their application a preliminary interagency agreement (IAA). The preliminary IAA submitted with application must contain the signatures of an authorized representative of (1) one or more SEAs or LEAs or Indian tribes; (2) one or more juvenile justice authorities; and (3) one or more State or local public mental health agencies. At a minimum, the preliminary IAA submitted with the application must include the following information that details the work to be completed should the applicant receive a grant award under this competition:

(1) The designation of a lead agency that will direct, in compliance with section 5541(e) of the ESEA, the establishment of the grantee's final interagency agreement among LEAs, juvenile justice authorities, mental health agencies, and other relevant entities in the State, in collaboration with local entities and parents and guardians of students;

(2) Commitment of the parties in the applicant's preliminary IAA to participate in the development of the final interagency agreement described in (1). The final interagency agreement must specify, with regard to each participating agency, authority, or entity—

- Financial responsibility for the services that it will provide as part of the program;
- Conditions and terms of responsibility for the services, including quality, accountability, and coordination of services;
- Conditions and terms of reimbursement with and among the other agencies, authorities, or entities that are parties to the interagency agreement, including procedures for dispute resolution; and
- Policies and procedures to ensure appropriate parental or caregiver consent for any planned services, pursuant to state or local laws or requirements.

(3) A statement that the parties in the preliminary IAA will complete the required final IAA and submit it to the U.S. Department of Education no later than 12 months after the award date.

(4) An assurance that:

- Persons providing services under the grant will be adequately trained to provide such services;
- Services provided under the grant will be consistent with the six requirements in the absolute priority;
- Teachers, principal administrators, and other school personnel will be made aware of the program; and
- Parents of students participating in services under the program will be involved in the design and implementation of the services.

Applications that fail to include the required preliminary IAA (with required content and signatures) will not be submitted for peer review.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on priorities and other grant requirements. Section 437(d)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first competition for Grants for the Integration of Schools and Mental Health Systems under the No Child Left Behind Act of 2001 and therefore qualifies for this exemption. In order to ensure timely grant awards, under section 437(d)(1) of GEPA, the Secretary has decided to forgo public comment on the *Additional Requirements* and the eligibility restriction pertaining to LEAs or consortia of LEAs that have received or will receive funding under the Safe Schools/Healthy Students Initiative (84.184L). These *Additional Requirements* and the eligibility restriction will apply to the FY 2005 grant competition and any subsequent year in which we make awards based on the list of unfunded applications from this competition.

Program Authority: 20 U.S.C. 7269.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,960,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, and Indian tribes. LEAs or consortia of LEAs that have ever received funds or services under the Safe Schools/Healthy Students Initiative (CFDA Number 84.184L), or will receive funds under the FY 2005 competition for CFDA Number 84.184L, are not eligible for funding under this program.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching but does have a supplement-not-supplant requirement. Any services provided through programs carried out under this grant must supplement, and not supplant, existing mental health services, including any services provided under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215 M.

You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

The public can also obtain applications directly from the program

office: Dana Carr, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E242, FB–6, Washington, DC 20202–6450. Telephone: (202) 260–0823 or by e-mail: *dana.carr@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:* Applications Available: April 5, 2005. Deadline for Transmittal of Applications: May 16, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: July 18, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Eastern Time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Eastern Time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Eastern Time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Eastern Time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Eastern Time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Eastern Time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: *By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215M), 400 Maryland Avenue, SW., Washington, DC 20202–4260

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.215M), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Eastern Time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the equitable distribution of grants among the geographical regions of the United States and among urban, suburban, and rural populations.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit a progress report nine months after the award date. This report should provide the most current performance and financial expenditure information, including baseline data.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Grants for the Integration of Schools and Mental Health Systems program:

a. The percentage of schools served by the grant that have comprehensive, detailed linkage protocols in place will increase; and

b. The percentage of school personnel served by the grant who are trained to make appropriate referrals to mental health services will increase.

These two measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these two outcomes in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these goals. The Secretary will also use this information to respond to the evaluation requirements concerning this program established in Section 5541(f) of the ESEA.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dana Carr, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E242, Washington, DC 20202–6450. Telephone: (202) 260–0823 or by email: *dana.carr@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 31, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–6744 Filed 4–5–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the National Institute on Disability and Rehabilitation Research's (NIDRR) Disability and Rehabilitation Research Projects and Centers Program, Disability and Rehabilitation Research Projects (DRRP). This priority may be used for competitions in fiscal year (FY) 2005 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 6, 2005.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The proposed priority is in concert with NIDRR's Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under the proposed priority, the specific reference is in Chapter 3, Employment Outcomes. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priority

Background

Despite past attempts to reduce unemployment rates for individuals with disabilities, these individuals continue to be employed at much lower rates than individuals without disabilities. The 2003 American Community Survey (U.S. Bureau of the Census, *http://www.census.gov/acs/www/Products/Profiles/Single/2003/ACS/Tabular/010/01000US2.htm*), for example, found that approximately 37.8 percent of adults age 21 to 64 with disabilities were employed, compared to approximately 77.5 percent of adults with no disability. NIDRR is committed

to supporting research on employment models and intervention approaches that can help reduce this discrepancy.

Strategic models and approaches for employment and job placement of individuals with disabilities fall primarily into two categories: Supply-side and demand-side. In supply-side models, individuals are matched against an available supply of jobs. In demand-side employment models, the focus is on the employer and work environment (*i.e.*, occupational shifts and industrial change).

NIDRR believes that a better understanding about market driven workforce trends could improve employment outcomes for individuals with disabilities and inform employment activities so that the potential workforce applicant pool is better prepared to effectively meet future or changing needs and requirements of the job market.

The supply-side and demand-side models for job placement are among the most frequently discussed in the research literature. However, there are a limited number of studies that describe the differences between the two models. Similarly, the literature that does discuss the differences between the two models provides limited insight about factors that influence the employment rate for persons with disabilities. Additionally, studies identify but provide limited understanding about the following critical issues and concerns relating to demand-side models: (1) Changing structure of the workforce and the impact of downsizing; (2) increasing use of on-call workers, temporary help agencies, and independent contractors; (3) rapid advances in technology requiring the need for highly educated, highly skilled workers; (4) employer perceptions, beliefs, and attitudes regarding the employment of individuals with disabilities; (5) employer knowledge and use of incentives for hiring individuals with disabilities; (6) the effect of labor market demand policies and economic factors on employment outcomes for individuals with disabilities; (7) employer-based hiring practices that influence employment outcomes and employer understanding of the implications of employment practices for individuals with disabilities; and (8) predictors of return to work and workforce participation. This priority seeks to improve our understanding of demand-side placement models and strategies and employment outcomes from a variety of perspectives.

Proposed Priority

The Assistant Secretary proposes a priority for one DRRP, which must focus its research on demand-side employment placement models. Studies conducted under this priority must support rigorous, empirically based research designed to develop or identify and evaluate demand-side employment placement models, methods, and measures.

To meet this priority, research activities and studies must identify or develop, demonstrate, and evaluate methods, models, and measures leading to the following:

(1) Psychometrically sound measures for determining employer-focused employment needs;

(2) Types of employment interventions that effectively address employer issues, including methods for increasing employer and business entity participation in the development of strategies for improving employment outcomes for individuals with disabilities;

(3) Analysis comparing the effectiveness of the demand-side model and the supply-side model and identification of the predictors of workforce participation for specific populations of individuals with disabilities using both models; and

(4) Effective measures for evaluating the role of demand-side models in relation to employment outcomes, employment data, individual and systems level outcomes, and trends across workplace environments and employment systems, including measures that involve macroeconomic, legislative, or policy issues that potentially influence employment outcomes.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with this proposed priority are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through the research to be conducted under the proposed priority.

Another benefit of this proposed priority will be the establishment of a new DRRP that supports the President's NFI and will support improvements in the lives and potential employment outcomes of persons with disabilities.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: March 31, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–6748 Filed 4–5–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.328M.

Dates: Applications Available: April 7, 2005. Deadline for Transmittal of Applications: May 25, 2005. Deadline for Intergovernmental Review: July 25, 2005.

Eligible Applicants: Parent organizations, as defined in section III. Eligibility Information in this notice.

Estimated Available Funds: $3,307,306. Information concerning funding amounts for individual States is provided in a chart elsewhere in this notice under section II, Award Information.

Estimated Average Size of Awards: $275,600.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: With the exception of Mississippi, projects will be funded for a period up to 60 months. Mississippi will be funded for a period up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 671 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Parent Training and Information Centers (PTI Centers) Background: This priority supports parent training and information centers that will provide parents of children with disabilities, including low-income parents, parents of limited English proficient children and parents with disabilities, with the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

In addition, a purpose of this priority is to ensure that children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under IDEA in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services.

Text of Priority:

A PTI Center shall—

(a) Provide training and information that meets the needs of parents of children with disabilities living in the area served by the PTI Center, particularly underserved parents and parents of children who may be inappropriately identified as having a disability when the child may not have a disability, to enable their children with disabilities to—

(1) Meet developmental and functional goals and challenging academic achievement goals established for all children; and

(2) Be prepared to lead productive independent adult lives, to the maximum extent possible;

(b) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

(c) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA;

(d) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law);

(e) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including the resolution session described in section 615(e) of IDEA;

(f) Assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B) of IDEA;

(g) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA;

(h) Familiarize themselves with the provision of special education and related services in the areas they serve to help ensure that children with disabilities are receiving appropriate services;

(i) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(2) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(3) Participate in decision making processes regarding participation in State and local assessments and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range, type and quality of (A) options, programs, services, technologies, practices and interventions that are based on scientifically based research, to the extent practicable, and (B) resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs' (OSEP) technical assistance network and Communities of Practice;

(5) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities;

(6) Participate in activities at the school level that benefit their children; and

(7) Participate in school reform activities;

(j) In States where the State elects to contract with the parent training and information center, contract with the State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2) of IDEA, individuals who meet with parents to explain the mediation process to the parents;

(k) Establish cooperative partnerships with other PTI Centers in the State and Community Parent Resource Centers (CPRC) funded under section 672 of IDEA;

(l) Respond to requests from the National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs) and use the technical assistance services of the NTAC and PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently

as possible. PTACs are charged with assisting parent centers with administrative and programmatic issues;

(m) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 of IDEA, the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3) of IDEA;

(n) Annually report to the Assistant Secretary on—

(1) The number and demographics of parents to whom the PTI Center provided information and training in the most recently concluded fiscal year,

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities by providing evidence of how those parents were served effectively; and

(3) The number of parents served who have resolved disputes through alternative methods of dispute resolution;

(o) If there is more than one PTI Center in a particular State, coordinate its activities with the other center or centers to ensure the most effective assistance to parents in that State;

(p) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project. In addition, a project's budget must include funds to attend a regional Project Directors' meeting to be held each year of the project;

(q) If the PTI Center maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility;

(r) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center;

(s) In collaboration with OSEP and the NTAC, participate in an annual collection of program data for PTI Centers and CPRCs; and

(t) Identify with specificity in its application the special efforts it will make to—

(1) Ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(2) Work with community based organizations, including community based organizations that work with low-income parents and parents of limited English proficient children. *Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements in the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1471.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,307,306. Information concerning funding amounts for individual States is provided elsewhere in this section of this notice.

Estimated Average Size of Awards: $275,600.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: With the exception of Mississippi, projects will be funded for a period up to 60 months. Mississippi will be funded for a period up to 48 months.

Estimated Project Awards: In order to allocate resources equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Assistant Secretary is making awards in five-year cycles for each State. In FY 2005, applications for 5-year awards will be accepted for the following States: Hawaii; Idaho; Louisiana; New Hampshire; North Carolina; Oklahoma; Pennsylvania; Rhode Island; Tennessee; and West Virginia. Applications for a 4-year award will be accepted for the State of Mississippi. Awards may also be made to eligible applicants in the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States; however, maximum funding levels for these areas have not been specified.

The Assistant Secretary took into consideration current funding levels and population distribution when determining the award amounts for grants under this competition.

In the following States, one award may be made for up to the amounts listed in the chart to a qualified applicant for a PTI Center to serve the entire State: Hawaii, Idaho, Louisiana, Mississippi, New Hampshire, North Carolina, Oklahoma, Rhode Island, Tennessee, and West Virginia.

To ensure maximum coverage for this competition, the Assistant Secretary has adopted regional designations established by Pennsylvania and has identified corresponding maximum award amounts. Regions were identified in Pennsylvania by utilizing the educational services breakdown operational within the State. Any applicant that applies for grants for more than one region must complete a separate application for each region. In Pennsylvania, one award will be made in the following amounts to a qualified applicant for a PTI Center to serve each identified Region:

Region 1—$382,000
Region 2—$254,650

The total of these two awards will not exceed the maximum amount listed in the following chart. A list of the counties that are included in each region follows the chart.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2005

CFDA No. and name	Maximum award (per year)**
84.328M Parent Training and Information Centers*:	
Hawaii	$210,680
Idaho	208,780
Louisiana	334,000
Mississippi	244,050
New Hampshire	208,600
North Carolina	424,225
Oklahoma	255,566
Pennsylvania	636,650
—Region 1	382,000
—Region 2	254,650
Rhode Island	209,400
Tennessee	364,708
West Virginia	210,647

*Awards may also be made to eligible applicants in the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels for these areas have not been specified.

**We will reject any application that proposes a budget exceeding the funding level for a single budget period of 12 months.

Pennsylvania Regions

Region 1 includes the following counties: Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Perry, Philadelphia, Pike, Schuylkill, Susquehanna, Wayne, Wyoming, and York.

Region 2 includes the following counties: Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Franklin,

Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Lycoming, McKean, Mercer, Mifflin, Montour, Northumberland, Potter, Snyder, Somerset, Sullivan, Tioga, Union, Venango, Warren, Washington, and Westmoreland.

III. Eligibility Information

1. *Eligible Applicants:* Parent organizations, as defined in section 671(a)(2) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors, the parent and professional members of which are broadly representative of the population to be served (including low-income parents and parents of limited English proficient children), and the majority of whom are parents of children with disabilities ages birth through 26; and that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.328M.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under For *Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 60 pages, using the following standards:

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- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
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The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: April 7, 2005. Deadline for Transmittal of Applications: May 25, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: July 25, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2005. Parent Training and Information Centers–CFDA Number 84.328M is one of the competitions included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for Parent Training and Information Centers–CFDA Number 84.328M competition at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your

application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.

• If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.

• To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text) or .PDF (portable document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M), 400 Maryland Avenue, SW., Washington, DC 20202–4260

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.328M), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Training and Information for Parents of Children with Disabilities

program. The measures will focus on: The extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Once the measures are developed, we will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., room 4059, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7345.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 31, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–6749 Filed 4–5–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Training and Information for Parents of Children With Disabilities—Community Parent Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.328C.

Dates: Applications Available: April 7, 2005.

Deadline for Transmittal of Applications: May 20, 2005.

Deadline for Intergovernmental Review: July 19, 2005.

Eligible Applicants: Local parent organizations, as defined in Section III, Eligibility Information, of this notice.

Estimated Available Funds: $1,000,000.

Estimated Average Size of Awards: $100,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $100,000 for a single budget period of 12 months.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priorities: This competition contains an absolute priority and a competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (*see* sections 672 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Community Parent Resource Centers

Background: This priority supports community parent training and information centers in targeted communities that will provide underserved parents of children with disabilities, including low-income parents, parents of limited English proficient children and parents with disabilities in that community, with the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

In addition, a purpose of this priority is to ensure that children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under IDEA in order to develop the skills necessary to cooperatively and effectively participate in planning and decisionmaking relating to early intervention, educational, and transitional services.

Text of Priority

Each community parent resource center assisted under this priority shall—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities within the targeted community proposed to be served by the center, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities;

Note: For purposes of this priority, "community to be served" refers to a community whose members experience significant isolation from available sources of information and support as a result of cultural, economic, linguistic, or other circumstances deemed appropriate by the Secretary.

(b) Carry out the activities required of parent training and information centers under section 671(b) of IDEA, which are listed as follows:

(1) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA;

(2) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

(3) Assist parents to—

(A) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(B) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(C) Participate in decisionmaking processes and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(D) Obtain appropriate information about the range, type, and quality of—

(i) Options, programs, services, technologies, practices and interventions based on scientifically based research, to the extent practicable, and

(ii) Resources available to assist children with disabilities and their families in school and at home;

(E) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities;

(F) Participate in activities at the school level that benefit their children; and

(G) Participate in school reform activities;

(4) In States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2) of IDEA, individuals who meet with parents to explain the mediation process to the parents;

(5) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA;

(6) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law);

(7) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including the resolution session described in section 615(e) of IDEA;

(8) Assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B) of IDEA;

(c) Establish cooperative partnerships with the parent training and information centers funded in the State under section 671 of IDEA;

(d) Respond to requests from the National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs) and use the technical assistance services of the NTAC and PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. PTACs are charged with assisting parent centers with administrative and programmatic issues;

(e) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support;

(f) Annually report to the Department on—

(1) The number and demographics of parents to whom it provided information and training in the most recently concluded fiscal year, including demographic information about those parents served, and additional information regarding the unique needs and levels of service provided; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively;

(g) In collaboration with OSEP and the NTAC, participate in an annual collection of program data for the community parent resource centers and the parent training and information centers;

(h) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center for approval;

(i) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project. In addition, a project's budget must include funds to attend a Regional Project Directors meeting to be held each year of the project;

(j) If the community parent resource center maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award additional points to an application that meets this priority.

This priority is:

We will award five points to an application that proposes to provide services to one or more Empowerment Zones, Enterprise Communities or Renewal Communities that are designated within the areas served by the center. (A list of areas that have been selected as Empowerment Zones, Enterprise Communities, or Renewal Communities can be found at *http://hud.esri.com/egis/cpd/rcezec/ezec_open.htm*). To meet this priority an applicant must indicate that it will—

(1)(i) Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones, Enterprise Communities, or Renewal Communities; or

(ii) Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities;

(2) As appropriate, contribute to the strategic plan of the Empowerment Zones, Enterprise Communities, or Renewal Communities and become an integral component of the Empowerment Zone, Enterprise Community, or Renewal Community activities.

Therefore, for purposes of this competitive preference priority, applicants can be awarded up to a total of five points in addition to those awarded under the selection criteria for this competition (*see Selection Criteria* in section V of this notice). That is, an applicant meeting the competitive preference priority could earn a maximum total of 105 points.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1472.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,000,000.

Estimated Average Size of Awards: $100,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $100,000 for a single budget period of 12 months.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Local parent organizations. Under section 672(a)(2) of IDEA, a "local parent organization" is a parent organization (as that term is defined in section 671(a)(2) of IDEA) that must meet the following criteria:

(a) Has a board of directors, the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

(b) Has—

(1) As its mission serving parents of children with disabilities from that community who (i) are ages birth through 26; and (ii) have the full ranges of disabilities as defined in section 602(3) of IDEA.

Section 671(a)(2) of IDEA defines a "parent organization" as a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention; and

(ii) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be served including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who—

(1) Are ages birth through 26; and

(2) Have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

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3. *Submission Dates and Times:*

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4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

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If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for the Community Parent Resource Centers—CFDA Number 84.328C competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

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By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.328C), 7100 Old Landover Road, Landover, MD 20785–1506.

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(1) A legibly dated U.S. Postal Service postmark,

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(1) A private metered postmark, or

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Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial

expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Training and Information for Parents of Children with Disabilities program. The measures will focus on: the extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Once the measures are developed, we will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lisa Gorove, U.S. Department of Education, 400 Maryland Avenue, SW., room 4056, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7357.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 31, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–6747 Filed 4–5–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Tuesday, April 26, 2005, 10 a.m.–11:30 a.m.

PLACE: Massachusetts Institute of Technology (MIT), Bartos Theater, 20 Ames Street (lower level), Cambridge, MA 02142–1308. (Massachusetts Bay Transit Station Stop: Kendall Square)

AGENDA: The Commission will receive reports on the following: Title II Requirements Payments Update and Other Administrative Matters. The Commission will receive presentations on the following: Technical Guidelines Development Committee (TGDC) Recommendations and Guidelines Adoption Process.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Ray Martinez III,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 05–6989 Filed 4–4–05; 3:57 pm]

BILLING CODE 6820–YN–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting for the Technical Guidelines Development Committee.

DATE AND TIME: Wednesday April 20, 2005, 9 a.m. to 5 p.m. and Thursday, April 21, 2005, 9 a.m. to 5 p.m.

PLACE: National Institute of Standards and Technology, 100 Bureau Drive, Building 101, Gaithersburg, Maryland 20899–8900.

STATUS: This meeting will be open to the public. There is no fee to attend, but due to security requirements, advance registration is required. Registration information will be available at *http://vote.nist.gov* by March 31, 2005.

SUMMARY: The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for April 20–21, 2005. The Committee was established to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Development Committee held previous meetings on July 9, 2004; January 18 and 19, 2005; and March 9, 2005. The purpose of the fourth meeting of the Development Committee will be to review and approve a draft of the recommendations for voluntary voting system guidelines. The draft document will respond to tasks defined in resolutions passed at previous Technical Guideline Development Committee meetings.

SUPPLEMENTARY INFORMATION: The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for April 20–21, 2005. The Committee was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 & 19, 2005. resolutions were debated and adopted by the TGDC at the January plenary session. The resolutions defined technical work tasks for NIST that will assist the TGDC in developing recommendations for voluntary voting system guidelines. At the March 9, 2005 meeting, NIST scientists presented preliminary reports on technical work tasks defined in resolutions adopted at the January plenary meeting and adopted one additional resolution. The Development Committee will review a draft document of initial recommendations for voluntary voting system guidelines at the April 20 & 21, 2005 meeting.

FOR FURTHER INFORMATION CONTACT: Allan Eustis 301–975–5099. If a member of the public would like to submit

written comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, or to *voting@nist.gov*.

Ray Martinez III,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 05–6990 Filed 4–4–05; 3:59 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, April 28, 2005, 9 a.m.–5 p.m. Friday, April 29, 2005, 8:30 a.m.–4 p.m.

ADDRESSES: Clarion Hotel & Conference Center, 1507 North 1st Street, Yakima, WA 98901. Phone number: (509) 576–4916. Fax number: (509) 578–4979.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, April 28, 2005

- Hanford Advisory Board (Board) Central Plateau Decision Guidance and Barrier Considerations.
- Transuranic Waste.
- U Plant Proposed Plan.
- Fiscal Year 2006 & 2007 Budget.

Friday, April 29, 2005

- Committee Updates.
- Agency Updates.
- Adoption of Board Advise.
- Identification of Topics for September 8–9, 2005 Board Meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Erik Olds, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling him at (509) 376–1563.

Issued at Washington, DC on March 31, 2005.

Carol Matthews,

Acting Advisory Committee Officer.

[FR Doc. 05–6820 Filed 4–5–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

HydroGen llc

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given to an intent to grant to HydroGen, llc, of Jefferson Hills, PA, an exclusive license to practice the inventions described in U.S. Patent No. 4,978,591, entitled "Corrosion-free Phosphoric Acid Fuel Cell"; U.S. Patent No. 4,732,822, entitled "Internal Electrolyte Supply System For Reliable Transport Throughout Fuel Cell Stacks"; U.S. Patent No. 4,853,301, entitled "Fuel Cell Plates With Skewed Process Channels For Uniform Distribution Of Stack Compression Load; and U.S. Patent No. 5,096,786, entitled "Integral Edge Seal For Phosphoric Acid Fuel Cells". The inventions are owned by the United States of America, as represented by the U.S. Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than May 6, 2005.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; telephone (202) 586–2939.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209 provides Federal agencies with authority to grant exclusive licenses in federally-owned inventions, if, among other things, the agency finds that the public will be served by the granting of the license. The statute requires that no exclusive license may be granted unless public notice of the intent to grant the license has been provided, and the agency has considered all comments received in response to that public notice, before the end of the comment period.

HydroGen llc, of Jefferson Hills, PA has applied for an exclusive license to practice the inventions embodied in U.S. Patent Nos. 4,978,591, 4,732,822, 4,853,301, and 5,096,786, and has plans for commercialization of the inventions.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to negotiate to grant the license, unless, within 30 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reason why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in which applicant states that if already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will proceed with negotiating the license if, after consideration of written responses to this notice, a finding is made that the license is in the public interest.

Issued in Washington, DC on March 29, 2005.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 05–6821 Filed 4–5–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–10]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2005.

Take notice that on March 24, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as a part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A, to become effective April 1, 2005.

Algonquin states that the purpose of this filing is to implement the negotiated rate transactions for transportation service to be rendered to Milford Power Limited Partnership and PPL EnergyPlus, LLC.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1546 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–244–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2005.

Take notice that on March 28, 2005, Dominion Transmission, Inc. tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheet, to become effective April 28, 2005

Second Revised Sheet No. 86

The purpose of this filing is to add certain recently acquired gathering lines as part of DTI's FERC Gas Tariff, Second Revised Volume No. 1A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1549 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2529–002]

Dow Pipeline Company; Notice of Issuance of Order

March 30, 2005.

Dow Pipeline Company (DPL) filed an update market power analysis that also requested a revision to its market-based rate schedule to include the Commission's market behavior rules. DPL's filing also requested waiver of various Commission regulations. In particular, DPL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by DPL.

On March 25, 2005, the Commission granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by DPL should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 25, 2005.

Absent a request to be heard in opposition by the deadline above, DPL is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of DPL, compatible with the public interest, and

is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of DPL's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1550 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–248–003 and RP04–251–004]

El Paso Natural Gas Company; Notice of Filing

March 30, 2005.

Take notice that on March 24, 2005, El Paso Natural Gas Company (EPNG) submitted a compliance filing pursuant to the Commission Order dated December 20, 2004 in the above listed proceedings. EPNG tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the tariff sheets listed in the Appendix A to become effective May 1, 2005.

EPNG states that the tariff sheets implement the pro forma tariff sheets approved by the Commission providing for rate schedule PAL, an interruptible parking and lending service, that was included as part of the settlement filed in these proceedings.

EPNG states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1547 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–631–000]

Pataula Electric Membership Corporation; Notice of Issuance of Order

March 30, 2005.

Pataula Electric Membership Corporation (Pataula) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy and capacity at market-based rates. Pataula also requested waiver of various Commission regulations. In particular, Pataula requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Pataula.

On March 25, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Pataula should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 25, 2005.

Absent a request to be heard in opposition by the deadline above, Pataula is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Pataula, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Pataula's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1544 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–146]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

March 30, 2005.

Take notice that on March 23, 2005, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, tendered for filing negotiated rate arrangement.

Tennessee states that the filed negotiated rate arrangement reflects an agreement between Tennessee and Cabot Oil and Gas Marketing Corporation for transportation under rate schedule FT–A to become effective April 1, 2005.

Any person desiring to protest this filing must file in accordance with Rules 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on Tennessee.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "e-Filing" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1543 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–243–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2005.

Take notice that on March 24, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 24, 2005. Texas Eastern states that the purpose of this filing is to modify its tariff to remove outdated provisions related to the implementation of the requirements of Order Nos. 636, *et seq.* on its system.

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1548 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–62–000, et al.]

La Paloma Holding Company, LLC, et al. and Electric Rate and Corporate Filings

March 30, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. La Paloma Holding Company, LLC and La Paloma Generating Company, LLC

[Docket No. EC05–62–000]

On March 24, 2005, La Paloma Holding Company, LLC (HoldCo) and La Paloma Generating Company, LLC (La Paloma Gen) filed with the Commission, on behalf of themselves and the current and future owners of equity interests in HoldCo, an application requesting that the Commission grant all authorizations and approvals necessary under section 203 of the Federal Power Act for an indirect disposition of jurisdictional facilities as a result of certain proposed transfers of ownership or control of equity interests in HoldCo, and, in order to facilitate a more liquid market for the trading of such interests, grant additional authorizations approving certain categories of future transfers of ownership or control of equity interests in HoldCo. HoldCo states that it owns 100 percent of the equity interests in La Paloma Gen, which owns and operates a 1,040 megawatt electric generating facility located near McKittrick, California.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

2. Lake Road Holding Company, LLC and Lake Road Generating Company, L.P.

[Docket No. EC05–63–000]

On March 24, 2005, Lake Road Holding Company, LLC (HoldCo) and Lake Road Generating Company, L.P. (Lake Road Gen) filed with the

Commission, on behalf of themselves and the current and future owners of equity interests in HoldCo, an application requesting that the Commission grant all authorizations and approvals necessary under section 203 of the Federal Power Act for an indirect disposition of jurisdictional facilities as a result of certain proposed transfers of ownership or control of equity interests in HoldCo, and, in order to facilitate a more liquid market for the trading of such interests, grant additional authorizations approving certain categories of future transfers of ownership or control of equity interests in HoldCo. HoldCo owns 100 percent of the equity interests in Lake Road Gen, which owns and operates a 750 megawatt electric generating facility located near Killingly, Connecticut.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

3. Deer Park Energy Center Limited Partnership

[Docket No. EG05–55–000]

Take notice that on March 18, 2005, Deer Park Energy Center Limited Partnership (Applicant) c/o Calpine Corporation, 717 Texas Avenue, Suite 1000, Houston, TX 77002, filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Applicant states that it is a Delaware limited partnership, and will own a nominal 950 megwatt natural gas-fired combined cycle cogeneration facility located in Deer Park, Texas.

Applicant states that copies of the application were served upon the United States Securities and Exchange Commission and Public Utility Commission of Texas.

Comment Date: 5 p.m. Eastern Time on April 8, 2005.

4. Rainbow Energy Marketing Corporation

[Docket Nos. ER94–1061–027 and ER05–729–000]

Take notice that on March 22, 2005, Rainbow Energy Marketing Corporation (Rainbow) tendered for filing an Original Sheet No. 6 to its FERC Electric Tariff, First Revised Volume No. 1 containing the change in status reporting requirement, in compliance with the Commission's orders issued in Docket No. ER05–351–000 and 001on February 23, 2005, and in Docket No. ER94–1061–024 on March 3, 2005.

In addition, Rainbow submitted First Revised Sheet No. 1 to its FERC Electric Tariff, First Revised Volume No. 1, which would allow Rainbow to sell ancillary services at market-based rates within the Midwest Independent Transmission System Operator, Inc.

Comment Date: 5 p.m. Eastern Time on April 12, 2005.

5. Morgan Stanley Capital Group Inc., South Eastern Electric Development Corporation, South Eastern Generating Corporation, Naniwa Energy LLC, Power Contract Finance, L.L.C., Power Contract Financing II, L.L.C., Power Contract Financing II, Inc., MS Retail Development Corp. and Utility Contract Funding II, LLC

[Docket Nos. ER94–1384–031, ER99–2329–004, ER00–1803–003, ER01–457–003, ER02–1485–005, ER03–1108–005, ER03–1109–004, ER03–1315–003 and ER04–733–002]

Take notice that on March 24, 2005, Morgan Stanley Capital Group Inc. (MSCG), on behalf of itself and its affiliates South Eastern Electric Development Corporation, South Eastern Generating Corporation, Naniwa Energy LLC, Power Contract Finance, L.L.C., Power Contract Financing II, L.L.C., Power Contract Financing II, Inc., MS Retail Development Corp., and Utility Contract Funding II, LLC, submitted a revised market power analysis.

MSCG states that copies of the filing were served on parties on the official service lists in the above-captioned proceedings.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

6. Morgan Stanley Capital Group Inc.

[Docket No. ER94–1384–032]

Take notice that on March 24, 2005, Morgan Stanley Capital Group Inc. (MSCG) submitted an amendment to its Second Revised Rate Schedule FERC No. 1 to reflect the change-in-status reporting requirement adopted in the Commission's Order No. 652, *Reporting Requirement for Change in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097 (2005).

MSCG states that copies of the filing were served on parties on the official service list in this proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

7. South Eastern Electric Development Corporation

[Docket No. ER99–2329–003]

Take notice that, on March 24, 2005, South Eastern Electric Development Corporation (SEEDCO) submitted amendments to its FERC Electric Tariff, Original Volume No. 1 to reflect the change-in-status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097 (2005) and the Commission's Market Behavior Rules adopted in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

SEEDCO states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005

8. Tampa Electric Company, Panda Gila River, L.P., Union Power Partners, L.P., TECO EnergySource, Inc., Commonwealth Chesapeake Company, L.L.C., TPS Dell, LLC, TPS McAdams, LLC and TECO–PANDA Generating Company, L.P.

[Docket Nos. ER99–2342–004, ER01–931–008, ER01–930–008, ER96–1563–021, ER99–415–007, ER02–510–004, ER02–507–004 and ER02–1000–005]

Take notice that, on March 24, 2005, Tampa Electric Company, Panda Gila River, L.P., Union Power Partners, L.P., TECO EnergySource, Inc., Commonwealth Chesapeake Company, L.L.C., TPS Dell, LLC, TPS McAdams, LLC, and TECO–PANDA Generating Company, L.P., (collectively, TECO Group) submitted for filing revisions to their respective market-based rate tariffs to include the reporting requirement for changes in status adopted in *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* Order No. 652, 110 FERC ¶ 61,097 (2005).

The TECO Group states that copies of the filing were served upon the parties on the official service list compiled by the Secretary in the captioned dockets.

Comment Date: 5 p.m. Eastern Time on April 14, 2005

9. Onondaga Cogeneration Limited

[Docket No. ER00–895–006 Partnership]

Take notice that on March 24, 2005, Onondaga Cogeneration Limited Partnership (Onondaga) filed a triennial updated market analysis pursuant to the Commission's triennial rate review requirements, the letter order issued on February 9, 2000 in Docket No. ER00–895–000, and the Order Implementing New Generation Market Power Analysis and Mitigation Procedures, *Acadia Power Partners, LLC, et al.*, 107 FERC ¶ 61,168 (2004). Onondaga also submitted an amendment to its market-based rate tariff to incorporate the reporting requirement set forth in Order No. 652. *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097 (2005).

Onondaga states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

10. South Eastern Generating Corporation

[Docket No. ER00–1803–002]

Take notice that, on March 24, 2005, South Eastern Generating Corporation (SEGCO) submitted amendments to its FERC Electric Tariff, Original Volume No. 1 to reflect the change-in-status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005) and the Commission's Market Behavior Rules adopted in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003).

SEGCO states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

11. WFEC GENCO, L.L.C.

[Docket No. ER01–388–003]

Take notice that on March 24, 2005, WFEC GENCO, L.L.C. (GENCO) submitted a revised updated market power analysis. GENCO also submitted revised tariff sheets to reflect the change-in-status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

GENCO states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

12. Mobile Energy, LLC and CP Pleasant Hill, LLC

[Docket Nos. ER01–480–004 and ER01–915–003]

Take notice that on March 24, 2005, Mobile Energy, LLC and CPN Pleasant Hill, LLC submitted a joint amendment to their respective pending triennial updated market power analyses.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

13. Redbud Energy, LP

[Docket Nos. ER01–1011–003]

Take notice that on March 24, 2005, Redbud Energy LP (Redbud) submitted its market power update in compliance with the Commission's order issued May 13, 2004 in *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004).

Redbud states that copies of the filing were served upon parties on the official service list in the captioned proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

14. Redbud Energy LC

[Docket No. ER01–1011–004]

Take notice that on March 24, 2005, Redbud Energy LP (Redbud) submitted for filing revisions to its FERC Electric Tariff, Original Volume No. 1 to include the reporting requirement for changes in status adopted in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Redbud states that copies of the filing were served upon the parties on the official service list.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

15. Astoria Energy LLC

[Docket No. ER01–3103–008]

Take notice that on March 21, 2005, Astoria Energy LLC (Astoria) submitted a supplement to its March 1, 2005, filing of a request for Commission renewal of all aspects of Astoria's existing market-based rate authority, together with the waivers of and blanket authorizations under the Federal Power Act previously granted to Astoria. Astoria requests an effective date of March 6, 2005.

Comment Date: 5 p.m. Eastern Time on April 11, 2005.

16. Power Contract Financing II, L.L.C.

[Docket No. ER03–1108–004]

Take notice that, on March 24, 2005, Power Contract Financing II, L.L.C. (PCF II, LLC) submitted an amendment to its Rate Schedule FERC No. 1 to reflect the change-in-status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Change in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

PCF II, LLC states that copies of the filing were served on parties on the official service list in this proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

17. Power Contract Financing II, Inc.

[Docket No. ER03–1109–005]

Take notice that on March 24, 2005, Power Contract Financing II, Inc. (PCF II, Inc.) submitted an amendment to its Rate Schedule FERC No. 1 to reflect the change-in-status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Change in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

PCF II, Inc. states that copies of the filing were served on parties on the official service list in this proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

18. Utility Contract Funding II, LLC

[Docket No. ER04–733–001]

Take notice that, on March 24, 2005, Utility Contract Funding II, LLC (UCF II) submitted an amendment to its Rate Schedule FERC No. 1 to reflect the change-in-status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Change in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

UCF II states that copies of the filing were served on parties on the official service list in this proceeding.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

19. Elk River Windfarm LLC

[Docket Nos. ER05–365–002 and ER05–365–003]

Take notice that on March 23, 2005 and March 25, 2005, Elk River Windfarm LLC (Elk River) submitted Second Revised Sheet No. 8 and First Revised Sheet No. 1, respectively, to FERC Electric Tariff Original Volume No. 1.

Comment Date: 5 p.m. Eastern Time on April 15, 2005.

20. Otter Tail Corporation

[Docket No. ER05–555–000]

Take notice that on March 23, 2005, Otter Tail Corporation, pursuant to the Commission's Rules of Practice and Procedures, 18 CFR 385.216, submitted a notice of withdrawal of its February 4, 2005 filing of a notice of succession in the Docket No. ER05–555–000.

Comment Date: 5 p.m. Eastern Time on April 13, 2005.

21. Hot Spring Power Company

[Docket No. ER05–570–002]

Take notice that on March 23, 2005, Hot Spring Power Company submitted for filing Original Sheet No. 4, Revision No. 1, Hot Spring Power Company's FERC Electric Rate Schedule No. 1, in compliance with the Commission's letter order issued March 14, 2005, 110 FERC ¶ 61,284 (2005).

Comment Date: 5 p.m. Eastern Time on April 13, 2005.

22. Gulf States Wholesale Equity Partners, LP

[Docket Nos. ER05–679–000 and ER05–679–001]

Take notice that on March 4, 2005, as amended on March 23, 2005, Gulf States Wholesale Equity Partners, LP submitted a petition requesting the acceptance of Gulf States Wholesale Equity Partners, LP's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Gulf States Wholesale Equity Partners, LP states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer and is not in the business of generating or transmitting electric power. Gulf States Wholesale Equity Partners, LP further states that it is involved in consulting of electricity and marketing of wholesale power and is not associated with any utilities, investor owned or otherwise.

Comment Date: 5 p.m. Eastern Time on April 13, 2005.

23. California Independent System Operator Corporation

[Docket No. ER05–718–000]

Take notice that on March 23, 2005, the California Independent System Operator Corporation (CAISO) tendered for filing an amendment to the CAISO Tariff, Amendment No. 66, for expedited consideration and acceptance by the Commission. The CAISO states that the purpose of Amendment No. 66 is to implement an interim solution to the problem of excessive costs incurred as a result of the manner in which import and export bids from System Resources are cleared and settled under Phase 1B of the CAISO's Market Redesign and Technology Upgrade. The CAISO is requesting an effective date of March 24, 2005.

The CAISO states that this filing has been served upon the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the CAISO Tariff.

Comment Date: 5 p.m. Eastern Time on April 4, 2005.

24. Entergy Services, Inc.

[Docket No. ER05–719–000]

Take notice that on March 23, 2005, Entergy Services, Inc. (Entergy Services) submitted for filing on behalf of Entergy Arkansas, Inc. (EAI) a 2005 Wholesale Formula Rate Update (Update). Entergy Services states that the Update redetermines the formula rate charges and the Transmission Loss Factor.

Comment Date: 5 p.m. Eastern Time on April 13, 2005.

25. Basin Electric Power Cooperative

[Docket No. NJ04–2–003]

Take notice that on March 23, 2005, Basin Electric Power Cooperative (Basin Electric) tendered for filing a revised Attachment L to its non-jurisdictional open-access transmission reciprocity tariff, FERC Electric Tariff, Original Volume No. 1 (West-Side OATT) pursuant to the Commission's order issued February 18, 2005, *Basin Electric Power Cooperative,* 110 FERC ¶ 61,175 (2005). Basin Electric requests an effective date of January 19, 2005.

Basin Electric states that copies of the transmittal letter to the filing were served upon customers under the West-Side OATT, the Public Service Company of Colorado, the Iowa Utilities Board, the Minnesota Public Utilities Commission, the Montana Public Service Commission, the Nebraska Public Service Commission, the New Mexico Public Service Commission, the North Dakota Public Service Commission, the South Dakota Public Utilities Commission, and the Wyoming Public Service Commission.

Comment Date: 5 p.m. Eastern Time on April 13, 2005.

26. Birchwood Power Partners, L.P.

[Docket Nos. QF93–126–007 and EL05–69–002]

Take notice that on March 21, 2005, Birchwood Power Partners, L.P. filed a supplement to its February 28, 2005 "Request for Declaratory Order, Or in the Alternative, Petition for Order Granting Limited Waiver of Qualifying Facility Operating Standard."

Comment Date: 5 p.m. Eastern Time on April 11, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1576 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 620–009 Alaska]

NorQuest Seafoods, Inc.; Notice of Availability of Environmental Assessment

March 30, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Chignik Hydroelectric Project and has prepared an Environmental Assessment (EA) for the project. The project is located on the Indian Creek, in the town of Chignik, Alaska. The project occupies about two acres of United States land within the boundary of the Alaska Peninsula National Wildlife Refuge that is in the process of being conveyed to Far West, Inc., a local tribal Corporation.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 45 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Chignik Hydroelectric Project No. 620–009" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. For further information, contact Kenneth Hogan at (202) 502–8434 or by e-mail at *keneth.hogan@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1545 Filed 4–5–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0019; FRL–7705–8]

TSCA Section 8(d) Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C 3501 *et seq.*), EPA is seeking public comment on the following Information Collection Request (ICR): TSCA Section 8(d) Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies (EPA ICR No. 0575.10, OMB Control No. 2070–0004). This ICR involves a collection activity that is currently approved and scheduled to expire on February 28, 2006. The information collected under this ICR relates to requirements that manufacturers and processors submit lists and copies of health and safety studies relating to the health and/or environmental effects of chemical substances and mixtures listed in the Toxic Substances Control Act (TSCA) section 8(d) rule (40 CFR part 716). The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPPT–2005–0019, must be received on or before June 6, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8086; fax number: (202) 564–4765; e-mail address: *brown.gerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that manufactures, processes, imports, or distributes in commerce chemical substances or mixtures. Potentially affected entities may include, but are not limited to:

- Chemical Manufacturing (NAICS 325), e.g., Basic Chemical Manufacturing; Resin, Synthetic Rubber and Artificial and Synthetic Fibers and Filaments Manufacturing; Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing; Paint, Coating, and Adhesive Manufacturing; Soap, Cleaning Compound, and Toilet Preparation Manufacturing, etc.
- Petroleum Refineries (NAICS 32411), e.g., Crude Oil Refining, Diesel Fuels Manufacturing, Fuel Oils Manufacturing, Jet Fuel Manufacturing, Kerosene Manufacturing, Petroleum Distillation, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 710.28. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2005–0019. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2005–0019. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0019. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0019. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person

listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: TSCA Section 8(d) Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies.

ICR numbers: EPA ICR No. 0575.10, OMB Control No. 2070–0004.

ICR status: This ICR is currently scheduled to expire on February 28, 2006. 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 title 40 of the CFR, after appearing in the Federal Register, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Section 8(d) of TSCA and 40 CFR part 716 require manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d) of TSCA, respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA will use information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA.

Responses to the collection of information are mandatory (see 40 CFR part 716). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, "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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to be 14 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated total number of potential respondents: 20

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 882 hours.

Estimated total annual burden costs: $45,851.

IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 1,462 hours (from 2,344 hours to 882 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change is due to adjustments in the estimates to better reflect EPA's experience with the 1998 revisions to the TSCA section 8(d) reporting standards that reduced reporting burden. The last ICR renewal estimated reporting burden by projecting responses based on historical reporting from rules prior to the 1998 revisions. The data used to project future responses for this ICR renewal are limited to reports for chemicals added to the TSCA section 8(d) list after the 1998 revisions. The new estimates are based solely on experience with the 2004 list of TSCA section 8(d) chemicals (the first chemicals added to the list since the 1998 revisions to the regulations). As a result, EPA has reduced the estimated number of reports that will be submitted in the future.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the

submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 25, 2005.

Margaret Schneider,

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

[FR Doc. 05–6634 Filed 4–5–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7896–5]

National Drinking Water Advisory Council's Water Security Working Group Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces the fifth public meeting of the Water Security Working Group (WSWG) of the National Drinking Water Advisory Council (NDWAC), which was established under the Safe Drinking Water Act. The purpose of this meeting is to provide an opportunity for the WSWG members to continue deliberations on the following topics: (1) Features of active and effective security programs for drinking water and wastewater utilities (water sector); (2) incentives to encourage broad adoption of active and effective security programs in the water sector; and (3) measures of the performance of water security programs. The focus of the meeting will be on review of the WSWG's draft report and recommendations. The meeting will be open to the public and an opportunity for public comment will be provided. The WSWG findings and recommendations will be provided to the NDWAC for their consideration. The WSWG anticipates providing findings and recommendations to the NDWAC in spring 2005. This is the final planned meeting of the WSWG.

DATES: The WSWG meeting is April 18–20, 2005, in Crystal City, VA, in the Washington, DC area. On April 18, 2005, the meeting is scheduled from 1:30 p.m. to 5:30 p.m., eastern time (e.t.). On April 19, 2005, the meeting is scheduled from 8 a.m. to 5 p.m., e.t. On April 20, 2005, the meeting is scheduled from 8 a.m. to 12 p.m., e.t.

ADDRESSES: The meeting will take place at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202. Meetings will be held in the Decatur Room on April 18 and April 19 and in Chesapeake Hall on April 20.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Marc Santora, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Marc Santora at *santora.marc@epa.gov* or call 202–564–1597 to receive additional details.

SUPPLEMENTARY INFORMATION:

Background

The WSWG's mission is to: (1) Identify, compile, and characterize best security practices and policies for drinking water and wastewater utilities and provide an approach for considering and adopting these practices and policies at a utility level; (2) consider mechanisms to provide recognition and incentives that facilitate a broad and receptive response among the water sector to implement these best security practices and policies and make recommendations as appropriate; (3) consider mechanisms to measure the extent of implementation of these best security practices and policies, identify the impediments to their implementation, and make recommendations as appropriate. The Group is comprised of sixteen members from water and wastewater utilities, public health, academia, state regulators, and environmental and community interests. It is supported by technical experts from the Environmental Protection Agency, the Department of Homeland Security, the Centers for Disease Control and Prevention, and the Department of Defense.

Closed and Open Parts of the Meeting

The WSWG is a working group of the NDWAC; it is not a Federal advisory committee and therefore not subject to the same public disclosure laws that govern Federal advisory committees. The Group can enter into closed session as necessary to provide an opportunity to discuss security-sensitive information relating to specific water sector vulnerabilities and security tactics. Currently, the WSWG does not anticipate closing any parts of the April meeting to the public. However, the Group reserves the right to enter into closed session, if necessary, late in the afternoon of April 18, 2005, immediately before lunch on April 19, 2005, and late in the day on April 20, 2005. If closed sessions are needed, opportunities for public comment will be provided before the closed sessions begin.

If there is a closed meeting session, only WSWG members, Federal resource personnel, facilitation support contractors, and outside experts identified by the facilitation support contractors will attend the closed meeting. A general summary of the topics discussed during closed meetings and the individuals present will be included with the summary of the open portions of the WSWG meeting.

Public Comment

An opportunity for public comment will be provided during the open part of the WSWG meeting. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent, by mail, to Marc Santora, Designated Federal Officer for the WSWG, at the e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Marc Santora, Designated Federal Officer, at the number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the WSWG meeting.

Dated: April 4, 2005.

Nanci E. Gelb,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 05–6941 Filed 4–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0372]; FRL–7703–5]

Fluometuron; Notice of Availability of Risk Assessments andOpening of Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA'srisk assessments, preliminary risk reduction options, and related documentsfor fluometuron, a phenylurea herbicide, and opens a public comment periodon these documents. The public is encouraged to suggest risk managementideas or proposals to address the risks identified. EPA is developing aReregistration Eligibility Decision (RED) for fluometuron through amodified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0372, must be received on or before June 6, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kylie Rothwell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; courier address: 1801 S. Bell Street; Arlington, VA 22202; telephone number: (703) 308–8055; fax number: (703) 308–8172; e-mail address: *rothwell.kylie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0372. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will

be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0372. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0372. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0372.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0372. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for the phenylurea herbicide, fluometuron, and is encouraging the public to suggest risk management ideas or proposals. EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Fluometuron is a preplant, preemergence and/or postemergence herbicide used on cotton to control broadleaf and grass weeds. There are potential chronic dietary risks of concern and cancer risks of concern as a result of drinking water exposure, and potential acute and chronic ecological risks of concern. EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for fluometuron. Such comments and input could address the potential risks of concern. The Agency is interested in obtaining any additional data or information that may further refine the risk assessments, such as additional cancer data, ecological toxicity data, percent crop treated information, typical application rates and timings, etc.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to fluometuron, compared to the general population.

EPA is releasing for public comment its risk assessments for fluometuron, to provide an opportunity for interested parties to also provide risk management proposals or otherwise comment on risk management. Such comments and proposals should further discuss ways to manage fluometuron's dietary (water), cancer, and/or ecological risks resulting from its use on cotton, as discussed in the Agency's risk assessments.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, explains that

in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For fluometuron, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its limited use pattern. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for fluometuron. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, pesticides and pests.

Dated: March 11, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–6708 Filed 4–5–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0059; FRL–7701–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0059, must be received on or before May 6, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne Edwards, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, telephone number: (703) 305–6736; E-mail address: *edwards.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Crop production (NAICS code 111)

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0059. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2005–0059. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0059. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0059.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0059. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response.

You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 80224–R. *Applicant*: Innolytics, LLC, P.O. Box 675935, Rancho Santa Fe, CA 92067. *Product name*: LLC/Ovocontrol-P. *Active ingredient*: Nicarbazin. *Proposed classification/Use*: None. Control hatchability of feral pigeon eggs.

2. *File Symbol*: 80224–E. *Applicant*: Innolytics, LLC, P.O. Box 675935, Rancho Santa Fe, CA 92067. *Product name*: Nicarbazin 30% Granulated Premix. *Active ingredient*: Nicarbazin. *Proposed classification/Use*: None. Manufacturing-use product for formulation into end-use products to control the hatchability of resident Canada geese and feral pigeon eggs.

3. *File Symbol*: 80224–G. *Applicant*: Innolytics, LLC. *Product name*: LLC/Ovocontrol-G. *Active ingredient*: Nicarbazin. *Proposed classification/Use*: None. Control hatchability of resident Canada geese eggs.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 21, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–6629 Filed 4–5–05; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0017; FRL–7707–4]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–05–0001. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective March 24, 2005.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Virginia Lee, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0883; e-mail address: *lee.virginia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

III. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–05–0001

Date of receipt: February 7, 2005.

Notice of receipt: March 14, 2005, (70 FR 12478) (FRL–7704–9).

Applicant: PPG Industries, Inc..

Chemical: Alkanediocic acid, polymer with 1,3,5-tris(substituted alkyl)-1,3,5-triazine-2,4,6(*1H,3H,5H*)-trione, alkanotate (ester) 3-substituted-2-(substituted alkyl)-2-alkanoate (ester).

Use: Component of an automotive refinish direct-gloss topcoat.

Production volume: 5,000 kilogram/year (kg/yr).

Number of customers: 50.

Test marketing period: 365 days, commencing on first day of commercial manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

V. What was EPA's risk assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VI. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding, that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 24, 2005.

Miriam Wiggins-Lewis,

Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 05–6628 Filed 4–5–05 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 25, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments June 6, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1005.

Title: Numbering Resource Optimization—Phase 3.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and state, local or tribal government.

Number of Respondents: 53.

Estimated Time Per Response: 50–85 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 3,380 hours.

Annual Cost Burden: $12,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Federal Communications Commission ("Commission") was given "exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertains to the United States." In order for price cap local exchange carriers (LECs) to qualify for exogenous adjustment to access charges established under the federal cost recovery mechanism, they must demonstrate that pooling results in a net cost increase rather than a cost reduction. Applications to state commissions from carriers must demonstrate that certain requirements are met before states grant any use of the safety valve mechanism. State commissions seeking to implement service-specific and/or technology-specific area code overlays, must request delegated authority to do so.

OMB Control No.: 3060–1012.

Title: Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02–6, Notice of Proposed Rulemaking (NPRM), Proposed Americans with Disabilities Act (ADA) Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and not-for-profit institutions.

Number of Respondents: 30,000.

Estimated Time Per Response: 2.5 minutes (0.4 hours).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 1,200 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is seeking an extension (no change) to this OMB-approved information collection. After the 60-day comment period, the Commission will submit this information collection to OMB in order to obtain the full three-year clearance from them. The NPRM solicited comment on whether the Commission

should require applicants to certify that the services for which they seek discounts will be used in compliance with the Americans with Disabilities Act and related statutes. The current FCC Form 471, on which entities apply for universal service discounts, contains the following notice: "The Americans with Disabilities Act (ADA, the individuals with Disabilities Education Act and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities."

The Commission does not, however, explicitly require compliance with these statutory requirements as a condition of receipt of universal service discounts. If this proposal is adopted and used with an existing form, *e.g.*, FCC Form 486, the requirement will be consolidated into the form. The NPRM also solicited comment on whether the Commission should establish a computerized list accessible on-line, whereby applicants could select specific product or service as part of their FCC Form 471 applications. This proposal is made pursuant to a Government Accountability Office (GAO) recommendation that the Administrator implement stronger measures to ensure that applicants receive funding only for eligible services. One possible approach suggested is the establishment of a computerized list displaying only eligible products and services. If this proposal is adopted, it will be consolidated with FCC Form 471 requirements currently approved under OMB Control Number 3060–0806.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6562 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 28, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 6, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0600.

Title: Application to Participate in an FCC Auction.

Form No: FCC Form 175.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 500.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 750 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission has revised the FCC Form 175 to: (a) Clarifies the information being collected, limit the information collected from any particular party to only essential information. The Commission has standardized certain data elements that previous filers submitted in free-form attachments; (b) eliminate the need to request duplicative information already on file with the Commission; (c) requires that all information is filed electronically. The Commission has developed an on-line interactive format to help filers; and (d) integrated with other Commission forms that collect similar information. Filers that previously have filed information with the Commission will have the information automatically entered into the revised FCC Form 175. If necessary, filers can make changes to that information in the FCC Form 175.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6808 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 30, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 6, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0169.

Title: Sections 43.51 and 43.53—Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 71 respondents; 374 responses.

Estimated Time Per Response: 85 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 6,029 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Sections 211 and 215 of the Communications Act of 1934, as amended, requires that the FCC examine transactions of any common carriers relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. The reports required by Sections 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. Section 43.51 also requires carriers to maintain copies of certain contracts, to have them readily accessible to Commission staff and members of the public upon request and to forward individual contracts to the Commission as requested.

The Commission is requesting an extension (no change in requirements) in order to obtain the full three-year clearance from OMB. As soon as the 60 day comment period is completed, the Commission will submit this collection to the Office of Management and Budget (OMB) for review and approval.

The information contained in these reports is used by the FCC to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in charges.

OMB Control No.: 3060–0742.

Title: Telephone Number Portability (47 CFR Part 52, Subpart C, §§ 52.21—52.33) and CC Docket No. 95–116.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,960.

Estimated Time Per Response: 85 hours.

Frequency of Response: On occasion, annual, and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 14,333 hours.

Total Annual Cost: $84,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Title 47 of the CFR, Part 52, Subpart C implements the statutory requirements that local exchange carriers (LECs) and Commercial Mobile Radio Service (CMRS) providers are to provide local number portability (LNP). This collection is being revised to include implementation of wireless carriers providing LNP. Wireline carriers began providing LNP in 1998. In a Memorandum Opinion and Order, FCC 02–215, CC Docket No. 95–116, the Commission extended the deadline for CMRS providers to offer LNP. Long-term number portability must be provided by LECs and CMRS providers in switches for which another carrier has made a specific request for number portability, according to the Commission's deployment schedule. Carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file a petition (to extend the time by which implementation in its network will be completed) with the Commission at least 60 days advance of the deadline. Incumbent LECs must recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Commission certain number of portability charges. Incumbent LECs are required to include many details in this cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order. For instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new costs incremental to and resulting from the provision of long-term number portability. Incumbent LECs are required to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability.

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations.

Form No.: FCC Form 312, Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,001.

Estimated Time Per Response: 11 hours.

Frequency of Response: On occasion, annual, and other reporting requirements and third party disclosure requirement.

Total Annual Burden: 41,279 hours.

Total Annual Cost: $531,874,875.

Privacy Act Impact Assessment: N/A.

Needs and Uses: On March 10, 2005, the Commission adopted a Fifth Report and Order and Order in IB Docket No. 00–248, FCC 05–63. The Fifth Report and Order adopts streamlined procedures for non-routine earth station applications. For applications to use smaller-than-routine antennas, the Commission gives earth station applicants a choice of two procedures: (1) Providing certifications that the proposed earth station has been coordinated with adjacent satellite operators; and (2) showing that the earth station operator will reduce its power sufficiently to compensate for the higher gain levels of the smaller antenna. For applications to use high-than-routine power levels, the Commission allows earth station applicants to use the certification procedure discussed above. This collection of information will enable the Commission to license non-routine earth stations faster, and thus, encourage deployment of broadband internet access, while also carrying out its duties as required by the Communications Act.

After this 60 day comment period is completed, the Commission will submit this information collection to the Office of Management and Budget (OMB) for review and approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6809 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 31, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 6, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Person with Disabilities.

Form Number: N/A.

Type of Review: Extension of a currently approved collection

Respondents: Business or other for-profit entities.

Number of Respondents: 1,268.

Estimated Time per Response: 9.86 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure requirement.

Total Annual Burden: 25,000 hours.

Total Annual Cost: $272,000.

Privacy Impact Assessment: No.

Needs and Uses: 47 CFR 68.224—Notice of non-hearing aid compatibility. Every non-hearing aid compatible telephone offered for sale to the public on or after August 17, 1989, whether previously-registered, newly registered or refurbished shall (a) contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid compatible; and (b) be accompanied by instructions.

47 CFR 68.300—Labeling requirements. As of April 1, 1997, all registered telephones, including cordless telephones, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible (HAC) shall have the letters "HAC" permanently affixed. The information collections for both rules include third party disclosure and labeling requirements. The information is used primarily to inform consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6810 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 1, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0833.

OMB Approval date: 3/25/2005.

Expiration Date: 3/31/2008.

Title: Implementation of Section 255 of the Telecommunications Act of 1996; Complaint Filings/Designation of Agents.

Form No.: N/A.

Estimated Annual Burden: 11,827 responses; 0.5–5 hours average per response.

Needs and Uses: This information collection includes rules governing the filing of complaints as part of the implementation of section 255 of the Telecommunications Act of 1996, which seeks to ensure that telecommunications equipment and services are available to all Americans, including those individuals with disabilities. In particular, telecommunications service providers and equipment manufacturers are asked for a one-time designation of an agent who will receive and promptly handle voluntary consumer complaints of accessibility concerns. As with any complaint procedure, a certain number of regulatory and information burdens are necessary to ensure compliance with FCC rules.

OMB Control No.: 3060–1043.

OMB Approval date: 3/11/2005.

Expiration Date: 3/31/2008.

Title: Telecommunication Relay Services and Speech-to-Speech Services for Individual with Hearing and Speech Disabilities, (*Report and Order, Order on Reconsideration*), FCC 04–137.

Form No.: N/A.

Estimated Annual Burden: 7 responses; 70 total annual burden hours; 10 hours average per response.

Needs and Uses: On June 30, 2004, the Commission released the *Report and Order, Order on Reconsideration, (Report and Order)* In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67 and CC Docket No. 90–571, FCC 04–137. In the *Report and Order,* the Commission grants Video Relay Service (VRS) waiver requests of the following Telecommunications Relay Services (TRS) mandatory minimum requirements: (1) 47 CFR 64.604(a)(3) types of calls that must be handled; (2) 47 CFR 64.604(a)(3)(iv) pay-per-call services; (3) 47 CFR 64.604(a)(4) emergency call handling; (4) 47 CFR

64.604(b)(2) speed of answer; and (5) 47 CFR 64.604(b)(3) equal access to interexchange carriers. These waivers are granted provided that VRS providers submit an annual report to the Commission, in a narrative form, detailing: (1) The provider's plan or general approach to meet the waived standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standards; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waivers should continue in effect. Further, as requested by the parties and for administrative convenience, VRS providers may combine the reporting requirement established in the *Report and Order* with existing VRS/IP Relay reporting requirements, which are scheduled to be submitted annually on April 16th of each year pursuant to the *IP Relay Order on Reconsideration and Second Improved TRS Order & NPRM*. In the *Order on Reconsideration*, the Commission affirms, except as otherwise specifically provided therein, the cost recovery methodology for VRS established in the June 30, 2003, *Bureau TRS Order*. The Commission adjusts the VRS compensation rate to a per-minute compensation rate of $8.854.

On June 30, 2004, the Commission also released a *Further Notice of Proposed Rulemaking*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 04–137, that addressed a number of outstanding issues with respect to VRS and IP Relay, none of which have any implications under the Paperwork Reduction Act.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 05–6812 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–674]

End User Common Line Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document establishes final procedures for resolving End User Common Line (EUCL) informal complaints. The Commission's actions are necessary in order to resolve several hundred longstanding informal complaints previously filed by payphone providers against local exchange carriers (LEC). The intended effect of the *EUCL Procedures Order* is to notify EUCL informal complainants that, if they intend to pursue their claims and collect damages, they must follow a number of specific procedures between Friday, April 22, 2005 and Friday, September 9, 2005, or risk losing the right to pursue certain claims. All informal complainants are strongly encouraged to read closely the *EUCL Procedures Order*.

DATES: EUCL informal complainants must file their Notices of Intent to Convert by Friday, April 22, 2005, if they wish to pursue their claims via the Commission's formal complaint process. The final deadline for actual conversion of informal complaints to formal complaints is extended to Friday, September 9, 2005, for those complaints for which a Notice of Intent to File is filed by Friday, April 22, 2005.

ADDRESSES: Submit electronic notification of intent to pursue existing informal complaints at the following Web address: *http://www.fcc.gov/eb/eucl*, click on the Complainant Notification Form. Alternatively, notice of intent to proceed may be made by certified mail (postmarked no later than April 22, 2005) to: EB/MDRD, Federal Communications Commission, 445 12th Street, SW., Room 4–C366, Washington, DC 20554, Attention: EUCL Notice. *See* **SUPPLEMENTARY INFORMATION** for address and mailing instructions for all converted formal complaints.

FOR FURTHER INFORMATION CONTACT: Sandra Gray-Fields, 202–418–7330.

SUPPLEMENTARY INFORMATION: On March 25, 2005, the Enforcement Bureau of the Federal Communications Commission (Commission) released the *EUCL Procedures Order* establishing final procedures for resolving End User Common Line (EUCL) informal complaints. The critical legal issues raised by the existing EUCL informal complaints have been previously and definitively addressed in consolidated formal complaint proceedings before the Commission, see, *e.g.*, *Communications Vending Corporation of Arizona, Inc. et al.* v. *Citizens Communications Company f/k/a Citizens Utility Company and Citizens Telecommunications Company d/b/a Citizens Telecom, et al.*, Memorandum Opinion and Order, 17 FCC Rcd 24201 (2002), *Communications Vending Corporation of Arizona, Inc., et al.*, v. *FCC, et al.*, 365 F.3d 1064 (D.C.Cir. 2004). Accordingly, the *EUCL Procedures Order* informs all remaining informal complainants that they must initiate final resolution of their claims within the next few months. Specifically, each payphone provider who previously filed a EUCL informal complaint and who still wishes to pursue its claims, must now take the following actions: (1) notify the Commission by Friday, April 22, 2005, of its intent to pursue its claim by inputting notification data into the Commission's Web site at *http://www.fcc.gov/eb/eucl*, click on the Complainant Notification Form, or notice of intent to proceed may be made by sending the information set forth in Paragraph 8 of the *EUCL Procedures Order* by certified mail (postmarked no later than April 22, 2005) to: EB/MDRD, Federal Communications Commission, 445 12th Street, SW., Room 4–C366, Washington, DC 20554, Attention: EUCL Notice; (2) make a good faith effort to settle its claim against the LEC prior to filing a formal complaint; and, (3) if settlement efforts are unsuccessful, file a formal complaint by Friday, September 9, 2005, in accordance with the streamlined procedures described in the *EUCL Procedures Order*.

The *EUCL Procedures Order* may have a further impact on a complainant's right to recover damages. All informal complainants should read thoroughly the EUCL Procedures Order. If a complainant fails to provide Notice of Intent to File as described herein and in the *EUCL Procedures Order*, that complainant will not be able to pursue its claim further via the Commission's formal complaint process. The Enforcement Bureau has deferred the mandatory filing date for the conversion of informal complaints to formal complaints numerous times, *see, e.g.*, *Informal Complaints filed by Independent Payphone Service Providers against Various Local Exchange Carriers Seeking Refunds of End User Common Line Charges*, Order, 16 FCC Rcd 3669 (CCB 1999); *Informal Complaints filed by Independent Payphone Service Providers against Various Local Exchange Carriers Seeking Refunds of End User Common Line Charges*, Order, 2004 WL 2973797, File Nos. IC–98–42853, *et al.*, DA No. 04–4022 (EB Rel. Dec. 22, 2004). The extension of the conversion date in the *EUCL Procedures Order* to September 9, 2005 is considered to be the final extension. Formal complainants must deliver the following copies of the

newly converted formal complaint to the following addresses on or before September 9, 2005: (a) the original copy of the newly converted formal complaint should be delivered, along with the requisite filing fee, to the Federal Communications Commission, Enforcement, PO Box 358120, Pittsburgh, PA 15251–5120; (b) one copy of the formal complaint should be delivered to Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–204(B), Washington, DC 20554; and, (c) two copies of the formal complaint should be delivered to Market Disputes Resolution Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room TW–204(B), Washington, DC 20554.

The complete text of the *EUCL Procedures Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *http://www.bcpiweb.com*. An electronic copy of the *EUCL Procedures Order* is also available at *http://www.fcc.gov/eb/mdrd/Items.html*.

The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(A), because there are no new rules attached to the Notice and the Order simply responds to informal complaints previously filed by parties to this particular Commission proceeding.

Federal Communications Commission.

Christopher N. Olsen,

Deputy Chief, Enforcement Bureau.

[FR Doc. 05–6559 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2697]

Petitions for Reconsideration of Action in Rulemaking Proceeding

DATE:

March 23, 2005

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI)(1–800–378–3160). Oppositions to these petitions must be filed by April 21, 2005. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject:

In the Matter of Improving Public Safety Communications in the 800 MHz Band (WT Docket No. 02–55);

Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels;

Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258);

Petition for Rulemaking of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service (RM–9498);

Petition for Rulemaking of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service (RM–10024);

Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service (ET Docket No. 95–18)

Number of Petitions Filed: 6.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6807 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2698]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

March 28, 2005.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by April 21, 2005. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands (IB Docket No. 02–10).

Number of Petitions Filed: 5.

Subject: In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (WT Docket No. 02–381); 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services (WT Docket No. 01–14); Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation (WT Docket No. 03–202).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6815 Filed 4–5–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date of this notice appears in the **Federal Register**.

Agreement No.: 010955–008.

Title: ACL/H–L Reciprocal Space Charter and Sailing Agreement.

Parties: Atlantic Container Line AB and Hapag-Lloyd Container Line GmbH.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes the capacity rationalization authority contained in the agreement.

Agreement No.: 011654–012.

Title: Middle East Indian Subcontinent Discussion Agreement.

Parties: American President Lines; A.P. Moller-Maersk A/S; China Shipping Navigation Co., Ltd. d/b/a

Indotrans; CMA CGM SA; Contship Containerlines, a division of CP Ships (UK) Ltd.; P&O Nedlloyd Limited; The National Shipping Company of Saudi Arabia; United Arab Shipping Company (S.A.G.).

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment adds The China Shipping Navigation Co., Ltd. d/b/a Indotrans as a party to the agreement.

Agreement No.: 011728–001.

Title: Maersk Sealand/APL Mediterranean Slot Charter Agreement.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; and APL Co. Pte Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Washington, DC 20036.

Synopsis: The agreement revises the name of Maersk Sealand.

Agreement No.: 011786–005.

Title: Zim/Great Western Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Great Western Steamship Company.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment revises the space allocations under the agreement.

Agreement No.: 011910.

Title: HSDG/APL Space Charter Agreement.

Parties: APL Co. Pte Ltd and Hamburg-Sud.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Washington, DC 20036.

Synopsis: The agreement authorizes HSDG to charter space to APL on its vessels in the trade between the U.S. East Coast and the East Coast of South America.

By order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–6823 Filed 4–5–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities: Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), HHS.

ACTION: Notice of meeting.

DATES: Monday, May 9, 2005, from 3 p.m. to 5 p.m. (daylight savings time). The full committee meeting of the President's Committee for People with Intellectual Disabilities will be conducted by telephone conference call and will be open to the public. Anyone interested in participating in the conference call should advise Sally Atwater at 202–619–0634, no later than April 25, 2005.

ADDRESSES: While the meeting will be conducted by telephone conference call, if you would like to participate in the call with staff, please report to the Aerospace Center Office Building, 901 D Street, SW., Office of Public affairs Conference Room, 7th Floor West, Washington, DC no later than 2:45 p.m. (daylight savings time). Please bear in mind that space is limited.

The toll free number is: 1–800–857–9091, Passcode: May 2005 Quarterly Meeting. Individuals with disabilities who need accommodations in order to participate in the call (*i.e.,* TTY, assistive listening devices, or materials in alternative format) should notify Sally Atwater at 202–619–0634 no later than April 25, 2005. Efforts will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed.

Agenda: The Committee plans to further refine topic areas chosen by the Committee members at the two previous Committee meetings: Comprehensive Health Care and Long Term Care, Dental Care, Housing and Aging of Caregivers, Emergency Preparedness and Direct Support Professional Challenges.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone—(202) 619–0634, Fax—(202) 205–9519, e-mail—*satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact on the quality of life that is experienced by citizens with intellectual disabilities and their families.

Dated: March 31, 2005.

Sally Atwater,

Executive Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. 05–6800 Filed 4–5–05; 8:45 am]

BILLING CODE 41894–01–M

DEPARTMENT OF HOMELAND SECURITY

[DHS–2005–0027]

Directorate of Information Analysis and Infrastructure Protection (IAIP); Open Meeting of the Telecommuncations Service Priority System Oversight Committee (TSP OC)

AGENCY: Directorate of Information Analysis and Infrastructure Protection, DHS.

ACTION: Notice of meeting.

SUMMARY: The Telecommunications Service Priority System Oversight Committee (TSP OC) will meet on Tuesday, May 3, 2005, from 9 a.m. to 12 noon at the offices of the U.S. Department of Homeland Security (DHS) National Communications System (NCS) in Arlington, Virginia. This meeting is open to the public. Limited seating will be available. Reservations are necessary for access to the NCS facility and meeting location.

The TSP OC identifies and reviews any problems developing in the TSP System and recommends actions to correct them or prevent recurrence.

DATES: The TSP OC will meet Tuesday, May 3, 2005, from 9 a.m. to 12 noon.

ADDRESSES: The TSP OC will meet at the DHS/NCS National Coordinating Center for Telecommunications Conference Room, 701 S. Courthouse Road, Arlington, VA, second floor. You may submit comments, identified by DHS Docket Number DHS–2005–0027 by one of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow the instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail/Hand Delivery/Courier: Department of Homeland Security, c/o DISA, Attn: NCS (N3), Lt. Col. Joanne Sechrest/703–607–4960, NCS/Priority Telecommunications Branch, P.O. Box 4502, Arlington, VA 22204–4502, 7:30 a.m. to 4 p.m.

Instructions: All submissions received must include the docket number, DHS–2005–0027. All comments received will

be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Flint, DHS/NCS TSP Program Office, 703–607–4932. Media or press should contact Mr. Steve Barrett at 703–607–6211.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 1 *et seq.*

Draft Agenda of Committee Meeting on May 3, 2005

I. Call To Order—TSP OC Chair, Ken Keim, National Emergency Management Association
II. Welcoming Remarks—TSP OC Chair Ken Keim
III. Approve Minutes of May 5, 2004 Meeting—TSP OC Chair Ken Keim
IV. Election of TSP OC Vice Chair—Lt. Col. Joanne Sechrest, U.S. Department of Homeland Security (DHS)/Designated Federal Official, TSP OC
V. Review Action Items from May 5, 2004 TSP OC Meeting—TSP OC Chair Ken Keim
VI. TSP Program Update—Deborah Bea, DHS/TSP Program Manager
  A. Status of Revalidation, Confirmation, TSPWeb—Deborah Bea
  B. TSP OC Charter Renewal Review, Nomination Results (new and returning members)—Deborah Bea
  C. General Services Administration Office of Governmentwide Policy Advisory Committee Engagement Survey Information Briefing—Deborah Bea
VII. Priority Services Working Group Update—Ken Moran, Federal Communications Commission
VIII. Overview of TSP Vendor Working Group—Lt. Col. Sechrest
IX. TSP Outreach—Lt. Col. Sechrest
X. Review Action Items—Lt. Col. Sechrest
XI. Old Business/New Business Adjournment—TSP OC Chair Ken Keim

Procedural Information

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone Susan Flint as soon as possible.

Peter M. Fonash,

Acting Deputy Manager, National Communications System.

[FR Doc. 05–6818 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20769]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Hazardous Cargo Transportation Security (HCTS) Subcommittee will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Thursday, April 21, 2005, from 9 a.m. to 3:30 p.m. The HCTS Subcommittee will meet on Wednesday, April 20, 2005, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 15, 2005. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before April 15, 2005.

ADDRESSES: Both CTAC and the HCTS Subcommittee will meet at the Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington DC 20593, in room 2415. Send written material and requests to make oral presentations to Commander Robert J. Hennessy, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or E-mail: *CTAC@comdt.uscg.mil.* This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Robert J. Hennessy, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of HCTS Subcommittee Meeting on Wednesday, April 20, 2005

(1) Introduce Subcommittee members and attendees.

(2) Discuss new Policy Advisory Council decisions.

(3) Discuss security issues related to the National Response Center.

(4) Discuss Coast Guard Maritime Security Training Initiatives.

(5) Brief on Sensitive Security Information training initiatives.

(6) Review of draft documents governing Facility Security Plan audits.

Agenda of CTAC Meeting on Thursday, April 21, 2005

(1) Introduce Committee members and attendees.

(2) Final report presentation from the CTAC National Fire Protection Association (NFPA) 472 Subcommittee.

(3) Discussion and vote on draft chapter incorporating marine specific competencies, for hazardous material incident responders, into the NFPA 472 Standard.

(4) Status report presentation from the CTAC Hazardous Cargo Transportation Security Subcommittee.

(5) Discussion and vote on the initiative to establish a CTAC Outreach Subcommittee.

(6) Presentation by the Coast Guard's Office of Operating and Environmental Standards on the Ballast Water Management Program.

(7) Presentation on MARPOL Annex II.

(8) Presentation by the Coast Guard's Office of Investigations and Analysis on the Coast Guard Marine Casualty Analysis Program.

(9) Presentation by the Coast Guard's Office of Response on Hazardous Substance Response Plan Regulations.

(10) Update of Coast Guard Regulatory Projects.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings generally limited to 5 minutes. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before April 15, 2005. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (*see* **ADDRESSES**) no later than April 15, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: March 28, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–6726 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the North Fork Rancheria's Proposed Trust Acquisition and Hotel/Casino Project, Madera County, California; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public of a correction to the Bureau of Indian Affairs' (BIA) Notice of Intent to prepare an Environmental Impact Statement (EIS) for the North Fork Rancheria's Proposed Trust Acquisition and Hotel/Casino Project, Madera County, California, published in the **Federal Register** on October 27, 2004 (69 FR 62721), which described the proposed action. The October notice is corrected to include statements concerning project alternatives, which are provided in the **SUPPLEMENTARY INFORMATION** section.

This notice also re-opens public scoping to identify potential issues, concerns and alternatives to be considered in the EIS.

DATES: Written comments must arrive by May 6, 2005.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The proposed action and a reasonable range of alternatives, including a no-action alternative, will be analyzed in the EIS. Other possible alternatives currently under consideration are a reduced-intensity alternative, an alternate-use alternative and an off-site alternative. The range of issues and alternatives may be expanded based on comments received during the scoping process. Additional supplemental information, including maps of the project site, may be obtained from John Rydzik at (916) 978–6042.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: March 2, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–6732 Filed 4–5–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Compact taking effect.

SUMMARY: Notice is given that the Tribal Gaming Compact between the Tonkawa Tribe and the State of Oklahoma is considered approved and is in effect.

DATE: *April 6, 2005.*

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 (d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal State compact that is approved, or considered to have been approved for the purpose of engaging in Class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove this compact before the date that is 45 days after the date it was submitted. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), this compact is considered approved but only to the extent it is consistent with IGRA. This compact authorizes the Tonkawa Tribe to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games, and takes effect on the date the approval is published in the **Federal Register**.

Dated: March 17, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–6722 Filed 4–5–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0004

AGENCY: Bureau of Land Management, Interior

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from those persons who submit Form 2520–1 to apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States. The BLM uses this information to determine if the applicant is eligible to make a desert-land entry under the appropriate land entry laws.

DATES: You must submit your comments to BLM at the address below on or before June 6, 2005. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0004" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress passed the Desert Land Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 231, 323, 325, 327–329) to encourage and promote the economic development of the arid and semiarid public lands. Through the Act, you may apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States. The regulations in 43 CFR 2520 provide guidelines and procedures to obtain public lands under the Act.

You qualify to file a desert-land entry if you are a citizen of the United States; 21 years old; and a resident in the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, South Dakota, Utah, Washington, or Wyoming (no residency is required in the State of Nevada).

You may apply for one or more tracts of public lands totaling no more than 320 acres. The land must be surveyed or unsurveyed, unappropriated, non-mineral, and non-timber. The lands must be suitable for agricultural purposes and more valuable for that purpose than any other. The tracts of land must be sufficiently close to each other to manage satisfactorily as an economic unit.

You must locate lands you feel can be economically developed and determine the legal land description. You must contact the BLM State Office where the lands are located and verify the lands are available for desert-land entry application.

When BLM receives the application, we will examine your application for completeness and accuracy and classify the lands included in the application. BLM will approve your application of the lands are classified suitable for desert-land entry or reject your application if the lands are classified unsuitable for desert-land entry.

Based on past experience processing these applications, BLM estimates the public reporting burden for completing the Form 2520–1 is 2 hours. BLM estimates that we receive approximately 3 applications annually, with a total annual burden of 6 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 2520–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: April 1, 2005.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 05–6752 Filed 4–5–05; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0034

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from those persons who wish to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the terms of the mineral leasing laws. BLM uses Form 3000–3, Assignment of Record Title Interest In A Lease for Oil and Gas or Geothermal Resources, and Form 3000–3a, Transfer of Operating Rights (Sublease) In A Lease for Oil and Gas or Geothermal Resources, to collect this information. This information allows the BLM to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the regulations at 43 CFR 3106, 3135, and 3216.

DATES: You must submit your comments to BLM at the address below on or before June 6, 2005. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0034" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-

day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) authorize the Secretary of the Interior to issue leases for development of Federal oil and gas and geothermal resources. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands) authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359). The Department of the Interior Appropriations Act of 1981 (42 U.S.C. 6508) provides for the competitive leasing of lands for oil and gas in the National Petroleum Reserve-Alaska (NPRA). The Attorney General's Opinion of April 2, 1941 (40 Opinion of the Attorney General 41) provides the basis under which the Secretary issues certain leases for lands being drained of mineral resources. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et. seq.*) provides the authority for leasing lands acquired from the General Services Administration.

Assignor/transferor submits Form 3000–3, Assignment of Record Title Interest In A Lease for Oil and Gas or Geothermal Resources, and Form 3000–3a, Transfer of Operating Rights (Sublease) In A Lease for Oil and Gas or Geothermal Resources, to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the regulations at 43 CFR 3106, 3135, and 3216. These regulations outline the procedures for assigning record title interest and transferring operating rights in a lease to explore for, develop, and produce oil and gas resources and geothermal resources.

The assignor/transferor provides the required information to comply with the regulations in order to process the assignments of record title interest or transfer of operating rights (sublease) in a lease for oil and gas or geothermal resources. The assignor/transferor submits the required information to BLM for approval under 30 U.S.C. 187a and the regulations at 43 CFR 3106, 3135, and 3216.

BLM uses the information submitted by the assignor/transferor to identify the interest ownership that is assigned or transferred and the qualifications of the assignee-transferee. BLM determines if the assignee-transferee is qualified to obtain the interest sought and ensures the assignee/transferee does not exceed statutory acreage limitations.

Based on BLM's experience administering the activities described above, we estimate it takes 30 minutes per response to complete the required information. The respondents include individuals, small businesses, and large corporations. The frequency of response is occasional. We estimate 60,000 responses per year and a total annual burden of 30,000 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: April 1, 2005.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 05–6753 Filed 4–5–05; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Scientific Committee (SC); Announcement of Plenary Session

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Scientific Committee will meet at the Embassy Suites Dulles-North in Dulles (Sterling), Virginia.

DATES: Wednesday, April 27, 2005, from 8 a.m. to 5:30 p.m.; Thursday, April 28, 2005, from 8 a.m. to 5:30 p.m.; and Friday, April 29, 2005, 8:30 a.m. to 12:30 p.m.

ADDRESSES: Embassy Suites Dulles-North/Loudoun, 44610 Waxpool Road, Dulles, Virginia 20147, telephone (703) 723–5300.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda may be requested from MMS by calling Ms. Carolyn Beamer at (703) 787–1211. Other inquiries concerning the OCS SC meeting should be addressed to Dr. James Kendall, Executive Secretary to the OCS SC, Minerals Management Service, 381 Elden Street, Mail Stop 4043, Herndon, Virginia 20170–4817 or by calling (703) 787–1656.

SUPPLEMENTARY INFORMATION: The OCS SC will provide advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of the MMS. The SC will review the relevance of the research and data being produced to meet MMS scientific information needs for decision making and may recommend changes in scope, direction, and emphasis.

The Committee will meet in plenary session on Wednesday, April 27. Individual Committee members will report on the January meetings of the Gulf of Mexico OCS Region's Information Transfer Meeting and affiliated OCS SC's Deepwater Subcommittee, the January and March meetings of the OCS SC Arctic Subcommittee meeting, and the OCS SC's observations made at the MMS/Environmental Protection Agency Hypoxia meeting conducted this past summer. Also on April 27, presentations will be made to the OCS SC outlining how archeology studies are useful to MMS information needs and how other large environmental programs handle environmental data and what options are being used and/or considered for serving MMS's database needs. The MMS Director will also address the Committee.

On Thursday, April 28, the Committee will meet in discipline breakout sessions (*i.e.*, biology/ecology, physical sciences, and social sciences) to review the specific research plans of the MMS regional offices for Fiscal Years 2006 and 2007.

On Friday, April 29, the Committee will meet in plenary session for reports of the individual discipline breakout sessions of the previous day and to continue with Committee business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: March 31, 2005.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–6819 Filed 4–5–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Indiana Dunes National Lakeshore, IN

SUMMARY: This notice announces a revision of the boundaries of Indiana Dunes National Lakeshore, Indiana, to include four (4) parcels of land within the boundaries of the National Lakeshore. This action is taken under the authority of 16 U.S.C. 460u–19 (Pub. L. 94–549, enacted October 18, 1976).

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299, or by telephone at 219–926–7561, extension 410.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Indiana Dunes National Lakeshore are revised. This revision is to include certain parcels of real property situated in Porter County, Indiana, and is effective upon publication of this notice. These parcels will be donated to the United States of America and they are contiguous to the National Lakeshore boundaries. These parcels contain, in aggregate, 0.82 of an acre of land, more or less.

The parcels are identified as follows:

Tract 20–136 and Tract 20–137 on Segment Map 20, Drawing No. 626/35,020.

Tract 100–29 on Segment Map 100, Drawing No. 626/35,100.

Tract 101–15 on Segment Map 101, Drawing No. 626/35,101.

All of the above-cited segment maps are dated July 14, 2004.

These maps are on file at the following locations: U.S. Department of the Interior, National Park Service, Midwest Region, Land Resources, 601 Riverfront Drive, Omaha, Nebraska 68102–2571; Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299.

Dated: October 5, 2004.

Ernest Quintana,

Regional Director, Midwest Region.

Editorial Note: This document was received at the Office of the Federal Register on April 1, 2005.

[FR Doc. 05–6829 Filed 4–5–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Rio Grande Wild and Scenic River, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Rio Grande Wild and Scenic River.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Final Environmental Impact Statement, General Management Plan for Rio Grande Wild and Scenic River, Texas. On February 8, 2005, the Associate Regional Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the General Management Plan, described as the Preferred Alternative contained in the Final Environmental Impact Statement issued on January 7, 2005.

The following course of action will occur under the preferred alternative. The protection of natural and cultural resources will be emphasized throughout the river corridor, as well as providing opportunities for traditional visitor uses. As mandated by the Wild and Scenic Rivers Act, a permanent boundary for the wild and scenic river is established for protection and management of the outstandingly remarkable values. The National Park Service will negotiate and implement cooperative agreements with nonfederal landowners that specify the rights and responsibilities of the National Park Service and each landowner. A river use plan and resource management plan will be developed for the entire river. The NPS will cooperate with other U.S agencies and the appropriate agencies in Mexico to maintain or enhance water quality and minimum flows in the river. The preferred alternative also recommends to Congress that the upstream segment of the Rio Grande in Big Bend National Park be designated as part of the Wild and Scenic River.

The selected action and one other alternative were analyzed in the draft and final environmental impact statements. A full range of foreseeable environmental consequences was assessed. The full Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a finding of non-impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the planning process.

FOR FURTHER INFORMATION CONTACT: John H. King, Superintendent, Rio Grande Wild and Scenic River, P.O. Box 129, Big Bend National Park, TX 79834–0129, (432) 477–1102.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision are available from the contact listed above.

Dated: February 8, 2005.

Bob Moon,

Associate Regional Director, Resource, Stewardship, and Research, Intermountain Region, National Park Service.

[FR Doc. 05–6830 Filed 4–5–05; 8:45 am]

BILLING CODE 4312–KF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historic Park Advisory Commission will be held at 9:30 a.m. on Friday April 15, 2005, Camp Kanawha, end of Rock Hall Road in Point of Rocks Maryland.

The Commission was established by Public Law 91–644 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Shelia Rabb Weidenfeld, Chairman;
Mr. Charles J. Weir;
Mr. Barry A. Passett;
Mr. Terry W. Hepburn;
Ms. Elise B. Heinz;
Ms. JoAnn M. Spevacek;
Mrs. Mary E. Woodward;
Mrs. Donna Printz;
Mrs. Ferial S. Bishop;
Ms. Nancy C. Long;
Mrs. Jo Reynolds;
Dr. James H. Gilford;
Mrs. Sue Ann Sullivan;
Brother James Kirkpatrick.

Topics that will be presented during the meeting include:

1. Update on park planning and design projects.

2. Update on major construction/development projects.

3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway, suite 100, Hagerstown MD 21740.

Minutes of the meeting will be available for public inspection six weeks after the meeting at park headquarters, Hagerstown, Maryland.

Dated: March 9, 2005.

Kevin Brandt,

Superintendent, C&O Canal National Historical Park.

[FR Doc. 05–6832 Filed 4–5–05; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of April 16, 2005, meeting.

SUMMARY: This notice sets forth the date of the April 16, 2005, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, April 16, 2005, from 1 p.m. to 4 p.m. Additionally, the Commission will attend the Flight 93 Memorial Task Force meeting the same day from 8 a.m. to 11 a.m., which is also open to the public.

Location: The Commission meeting will be held at the Somerset County Courthouse, Courtroom #1; 2nd floor, 111 East Union Street, Somerset, Pennsylvania, 15501. The Flight 93 Memorial Task Force meeting will be held in the same location.

Agenda:

The April 16, 2005 Commission meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Minutes from January 15, 2005.

(3) Reports from the Flight 93 Memorial Task Force and the National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.

(4) Old Business.

(5) New Business.

(6) Public Comments.

(7) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501. 814–443–4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 05–6828 Filed 4–5–05; 8:45 am]

BILLING CODE 4310–WH–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 19, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 21, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Hinsdale County

Debs School, (Rural School Buildings in Colorado MPS) 2783 McManus Rd., Pagosa Springs, 05000338.

Mesa County

Cayton Guard Station, Forest Service Road 814.1, Silt, 05000335.

DISTRICT OF COLUMBIA

District of Columbia

Glen Hurst, 4933 MacArthur Blvd. NW., Washington, 05000336.

IDAHO

Ada County

Star Camp, N. Star Rd. and W. 3rd St., Star, 05000344.

Idaho County

Foskett, Dr. Wilson, Home and Drugstore, West side of River Rd., White Bird, 05000337.

INDIANA

Owen County

Cataract Covered Bridge, Jct. of Cty Rte. 235W and Cty Rte 1000N over Mill Creek in Leiber State Recreation Area, Cataract, 05000339.

IOWA

Johnson County

Gilbert—Linn Street Historic District, (Iowa City, Iowa MPS AD) Portions of 300–600 blks of N. Gilbert and N. Linn Sts., Iowa City, 05000366.

LOUISIANA

St. Landry Parish

Donator, Martin, House, (Louisiana's French Creole Architecture MPS) 8343 U.S. 182, Opelousas, 05000345.

MICHIGAN

Charlevoix County

Charlevoix South Pierhead Light, (Light Stations of the United States MPS) S pier at harbor entrance, 0.3 WNW of U.S. 31 drawbridge, Charlevoix, 05000346.

NEBRASKA

Lancaster County

Stake, R.O., House, 145 S 28th St., Lincoln, 05000357.

Richardson County

Weaver, Gov. Arthur J., House, 1906 Fulton St., Falls City, 05000356.

NEW YORK

Nassau County

Jones Beach State Park, Causeway and Parkway System, Ocean, Wantagh, Meadowbrook and Loop State Parkways, Wantagh, 05000358.

Suffolk County

Race Rock Light Station, (Light Stations of the United States MPS) 0.6 mi. SW of Race Point, Fishers Island, 05000347.

NORTH CAROLINA

Durham County

Forbus, Wiley and Elizabeth, House, (Durham MRA) 3307 Devon Rd., Durham, 05000348.

Greene County

Best, Benjamin W., House, 2193 Mewborn Church Rd., Jason, 05000349.

Lenoir County

American Tobacco Company Prizery, 619 N. Herritage St., Kinston, 05000350.

Martin County

Bear Grass Primitive Paptist Church, NW side NC 1001, 0.1 mi. N of jct with NC 1106, Bear Grass, 05000352.
Everetts Christian Church, 109 S. Broad St., Everetts, 05000351.
First Christian Church, 126 S. Main St., Robersonville, 05000353.
Oak City Christian Church, 310 W. Commerce St., Oak City, 05000354.
Skewarkey Primitive Baptist Church, W side of U.S. 17, 0.04 mi. S. of jct. with US 64, Williamston, 05000355.

OHIO

Clinton County

Beam Farm Woodland Archeological District, Address Restricted, Sabina, 05000340.

Hamilton County

NcWilliams, Matthew, House, 3586 River Rd., Cincinnati, 05000341.

Jefferson County

Bernhard, Ann E. Lewis, House, 42 e. Main St., Adena, 05000342.

Putnam County

Bridenbaugh District No. 3 Schoolhouse, Jct. of Cty Rd. 6 and Township Rd M6, Pandora, 05000343.

TENNESSEE

Dickson County

Miller Family Farm, (Historic Family Farms in Middle Tennessee MPS) 160 Old TN 48, Charlotte, 05000360.

Franklin County

Haynes House, 519 Spring St., Decherd, 05000359.

TEXAS

Travis County

Royal Arch Masonic Lodge, 311 W. 7th St., Austin, 05000362.
Teachers State Association of Texas Building, (East Austin MRA) 1191 Navasota, Austin, 05000361.

UTAH

Salt Lake County

Granite LDS Ward Chapel—Avard Fairbanks Studio, (Sandy City MPS) 9800 S 3100 E, Sandy, 05000364.

Weber County

Odgen Union Station (Boundary Increase), 2501 Wall Ave., Ogden, 05000363.

WASHINGTON

Grays Harbor County

Hodgdon, Judge Charles W., House, 717 Bluff, Hoquiam, 05000365.

A request for *removal* has been made for the following resources:

UTAH

Duchesne County

Toyack Future Farmers of America Chapter House, 340 N. 300 West Roosevelt, 84002175.

Salt Lake County

Webster School, 2700 South 9180 West Magna, 00001585.

Utah County

Hotel Roberts, 192 S. University Ave. Provo, 79002516.
Nunn Power Plant, Off US 189 Provo, 79002517.

Washington County

Hurricane High School, (Public Works Buildings TR), 34 S. One Hundred W Hurricane, 8600752.

[FR Doc. 05–6742 Filed 4–5–05; 8:45 am]
BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Guidance for Compliance With the Native American Graves Protection and Repatriation Act by National Park Service Offices and Units

AGENCY: National Park Service, Interior.
ACTION: Notice of availability.

SUMMARY: The National Park System Advisory Board completed a servicewide review of the process used by NPS to determine the cultural affiliation of human remains and other cultural items as required under the Native American Graves and Protection Repatriation Act (25 U.S.C. 3001 *et seq.*) in June 2002. The final report contains five recommendations that are being implemented by revising and updating Appendix R of the Cultural Resource Management Guideline under Director's Order 28. The revised draft "Guidance for Compliance with the Native American Graves Protection and Repatriation Act by National Park Service Offices and Units—NPS Cultural Resource Management Guideline, Appendix R" is now available for public comment.

DATES: The National Park Service will accept comments from the public on the draft "Guidance for Compliance with the Native American Graves Protection and Repatriation Act by National Park Service Offices and Units—NPS Cultural Resource Management Guideline, Appendix R" for 90 days after publication of this notice.

ADDRESSES: To request a paper copy contact: Mary S. Carroll, Park NAGPRA Program Lead, National Park Service, 12795 W. Alameda Parkway, Lakewood CO 80225, 303–969–2300, 303–987–6675 (fax), *mary_carroll@nps.gov*. The draft guidance also may be accessed and downloaded from the Internet at *http://www.cr.nps.gov/aad/SITES/affiliation.htm*.

Submit comments via regular mail or express delivery service to the address. Comments also may be submitted via e-mail to the address above.

FOR FURTHER INFORMATION CONTACT: Mary S. Carroll, Park NAGPRA Program Lead, National Park Service, 12795 W. Alameda Parkway, Lakewood CO 80225, 303–969–2300, 303–987–6675 (fax), *mary_carroll@nps.gov*.

SUPPLEMENTARY INFORMATION: A subcommittee of the National Park System Advisory Board (NPSAB), the Federally chartered board that advises NPS and the Secretary of the Interior on a wide range of matters, conducted a servicewide review of the process used by NPS to determine the cultural affiliation of human remains and other cultural items as required under NAGPRA.

The NPSAB provided Director Fran Mainella with the final report in June 2002. The report contains five recommendations that focus on the distinction between "cultural affiliation" and "traditionally associated peoples," the precision of cultural affiliation determinations, and the consultation process. The recommendations are being implemented by revising and updating technical guidance on implementation of NAGPRA, specifically, Appendix R of the Cultural Resource Management Guideline under Director's Order 28.

The process of revising the guidelines has been undertaken by a group of National Park Service experts familiar with NAGPRA and representing a variety of perspectives on the implementation of NAGPRA. Members of the work group include staff familiar with regional NAGPRA coordination, Native American perspectives, park cultural resources, park management, and tribal liaison issues. As recommended by the NPSAB, tribes, Native Hawaiian organizations, and

others affected by NAGPRA are being contacted for comments and input.

Dated: February 14, 2005.

Cyd Martin,

Director, Office of Indian Affairs & American Culture, IMR.

[FR Doc. 05–6831 Filed 4–5–05; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Preliminary)]

Artists' Canvas From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1091 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of artists' canvas [1], provided for in statistical reporting numbers 5901.90.2000 and 591.90.4000 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 16, 2005. The Commission's views are due at Commerce within five business days thereafter, or by May 23, 2005.

[1] The products covered by this investigation are artist canvases regardless of dimension and/or size, whether assembled or unassembled (*i.e.*, kits that include artist canvas and other items, such as a wood frame), that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat. Artist canvases (*i.e.*, pre-stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placements) are tightly woven prepared painting and/or printing surfaces. The written description of the scope of this investigation is dispositive.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Megan Spellacy (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 1, 2005, by Tara Materials, Inc., Lawrenceville, GA.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 22, 2005, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Megan Spellacy (202–205–3190) not later than April 19, 2005, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 27, 2005, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 1, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–6827 Filed 4–5–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–501]

In the Matter of Certain Encapsulated Integrated Circuit Devices and Products Containing Same; Notice of Commission Determination To Remand Investigation to the Administrative Law Judge; Extension of Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-referenced investigation to the presiding administrative law judge (ALJ) for further proceedings and findings in light of claim construction determinations made by the Commission and an expected ruling by the U.S. Court of Appeals for the District of Columbia (D.C. Court of Appeals) in *U.S. International Trade Commission* v. *ASAT Inc.*, Appeal No. 05–5009. The Commission also has determined to extend the target date in this investigation by seven (7) months and twenty-one (21) days, *i.e.*, until November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3115. Copies of the public version of the IDs and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On December 19, 2003, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Amkor Technology, Inc. ("Amkor") alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain encapsulated integrated circuit devices and products containing same in connection with claims 1–4, 7, 17, 18 and 20–23 of U.S. Patent No. 6,433,277 ("the '277 patent"); claims 1–4, 7 and 8 of U.S. Patent No. 6,630,728 ("the '728 patent"); and claims 1, 2, 13 and 14 of U.S. Patent No. 6,455,356 ("the '356 patent"). 68 FR 70836 (December 19, 2003). The complainant named Carsem (M) Sdn Bhd; Carsem Semiconductor Sdn Bhd; and Carsem, Inc. (collectively, "Carsem") as respondents.

The evidentiary hearing in this investigation was held from July 6 through July 30, 2004, and August 9 through August 11, 2004. On November 18, 2004, the presiding ALJ issued a final ID finding no violation of section 337. All parties to the investigation, including the Commission investigative attorney filed timely petitions for review of various portions of the final ID. Respondents designated their petition contingent upon the granting of any other petition for review or upon the Commission's reviewing the ALJ's ID on its own motion pursuant to 19 CFR 210.44. All parties filed timely responses to the petitions for review.

On February 1, 2005, the Commission determined to review the final ID in its entirety. 70 FR 6454 (February 7, 2005). The Commission requested briefing, based on the evidentiary record, on the issue of claim interpretation only. *Id.* The Commission also extended the target date for completion of this investigation until March 31, 2005. *Id.* All the parties to this investigation filed timely written submissions and timely reply submissions regarding the issues under review.

On February 15, 2005, respondent Carsem filed a motion and memorandum to strike complainant's initial written submission regarding the issues under review. On February 25, 2005, both complainant Amkor and the IA filed responsive pleadings in opposition to Carsem's motion.

Having reviewed the record in this investigation, including the ID and the written submissions of the parties, the Commission has determined to make various claim construction determinations with regard to the patent claims under review, and to remand the investigation to the ALJ for additional proceedings and findings in light of those claim constructions. The Commission has also directed the ALJ to reopen the evidentiary record to receive, and make findings based on, evidence that may become available after the D.C. Court of Appeals rules in *U.S. International Trade Commission* v. *ASAT, Inc.*, Appeal No. 05–5009. In order to allow sufficient time to complete the remand, the Commission has extended the target date for completion of the investigation by seven (7) months and twenty-one (21) days, *i.e.*, until November 21, 2005. The Commission also determined to deny respondent Carsem's motion to strike.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45 and 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45 and 210.51).

Issued: March 31, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–6736 Filed 4–5–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment to Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on March 23, 2005, a proposed First Amendment to Consent Decree in *United States* v. *Boise Cascade Corp., et al.*, Civil Action 7:97–cv–1704 ("Amendment"), was lodged with the United States District Court for the Northern District of New York.

On November 20, 1997, the court entered a Consent Decree regarding the Sealand Restoration Superfund Site in Lisbon, New York ("Site"). The Consent Decree required five Settling Defendants to implement the groundwater remedy that EPA selected in a 1995 Record of Decision ("ROD") for the Site. In November 2001, EPA issued an Explanation of Significant Differences ("ESD") which modified the selected groundwater remedy (requiring the construction of a permeable reactive barrier) and provided for implementation of institutional controls and the performance of a supplemental study. The proposed Amendment conforms the Decree to the ESD. In addition, the Amendment calls for a revised threshold above which the

settling defendants will be required to pay for future oversight costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Boise Cascade Corp.*, D.J. Ref. 90–11–3–1144.

The Consent Decree may be examined at the Office of the United States Attorney, James Foley Bldg., 445 Broadway, Room 218, Albany 12207 (contact Civil Chief, Assistant U.S. Attorney James Woods), and at U.S. EPA Region II, 290 Broadway, 17th Floor, New York, New York, 10007–1866 (contact Assistant Regional Attorney James Doyle). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $30.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–6843 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act and the Clean Water Act

Notice is hereby given that on March 24, 2005, a proposed Consent Decree in *United States, et al.* v. *Marathon Oil Company, et al.*, Civil Action No. 2:05–CV–0090–LIM–WGH, was lodged with the United States District Court for the Southern District of Indiana. This Consent Decree represents a settlement of claims brought by the United States and the State of Indiana against Marathon Oil Company and Marathon Ashland Pipe Line LLC ("Settling Defendants") in the above referenced action under Sections 1002 and 1006 of the Oil Pollution Act, 33 U.S.C. 2702 and 2706, and Section 311 of the Clean Water Act, 33 U.S.C. 1321, for natural resource damages relating to discharges of oil from pipelines owned or operated by Settling Defendants in and around Rosedale, Catlin, and Daylight, Indiana.

Under the proposed Consent Decree, the Settling Defendants would convey 56.54 acres of riparian flood plain habitat to the Indiana Department of Natural Resources for replacement or acquisition of the equivalent of injured natural resources. In addition, the Settling Defendants would pay the United States and the State of Indiana $24,220.10 for costs incurred in assessing the damages to natural resources resulting from the discharges of oil, and $5,779.90 to be used for future restoration of the 56.64 acre property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Marathon Oil Company, et al.* (S.D. Ind.), D.J. Ref. 90–5–1–1–4150/1.

The Consent Decree may be examined at the Office of the United States Attorney, 10 West Market Street, Suite 2100, Indianapolis, IN 46204–3048, and at the U.S. Department of the Interior, Three Parkway Center, Room 385, Pittsburgh, PA 15220. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–6845 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given of a proposed settlement agreement, *In the Matter of: Morning Star Mine Site*, for the performance of a removal action and the reimbursement of response costs incurred by the Department of the Interior ("DOI") under Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

The proposed settlement resolves CERCLA claims against respondent Vanderbilt Gold Corporation ("VGC") and potential CERCLA claims against respondent Mineral, Metal & Mining Management Company ("4EM") related to VGC's mining activities at the Morning Star Mine Site ("Site"), which is an inactive open mine pit located in the Mojave National Preserve, a unit of the National Park Service. DOI incurred response costs of approximately $1 million for a "time critical" removal action taken in response to the releases and threats of releases of hazardous substances at the Site. The proposed settlement requires respondents VGC and 4EM to: (1) Conduct a removal action at the Site, (2) reimburse DOI, over time, for approximately $1 million in past response costs, (3) pay DOI's future response costs, and (4) pay DOI $1 million, over time, for deposit into the DOI Natural Resource Damage Assessment and Restoration Fund to restore, replace, or acquire the equivalent of Park System Resources injured by VGC. In exchange, DOI agrees not to sue respondents for the work, past response costs, and future response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, with a copy to Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *In the Matter of: Morning Star Mine Site*, D.J. Ref. #90–11–2–08222.

During the public comment period, the proposed settlement agreement may be examined on the following Department of Justice Web site: *http://www.usdoj.,gov/enrd/open.html*. A copy

of the proposed settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547.

In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–6844 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Two Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 23, 2005, two proposed consent decrees in *United States* v. *Parker Hannifin Corporation and Central Sprinkler Corporation*, Civil Action No. 05–1351, were lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking injunctive relief and recovery of response costs incurred by the United States pursuant to the Compressive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the Parker Hannifin/Precision Rebuilding and the Central Sprinkler properties at the North Penn Area Six Superfund Site ("Site"), which consists of a contaminated groundwater plume and a number of separate parcels of property located within and adjacent to the Borough of Landsdale, Montgomery County, Pennsylvania. The proposed consent decrees will resolve the United States' claims against Parker Hannifin Corporation and Central Sprinkler Corporation ("Settling Defendants") in connection with Operable Unite 3 at the Site. Under the terms of the proposed consent decrees, Settling Defendants will implement the EPA-selected groundwater remedies at their respective properties and reimburse the United States for certain future response costs. Settling Defendants will receive a covenant not to sue by the United States for performance of the work and for recovery of past and future response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Parker Hannifin Corporation et al*, D.J. Ref. 90–11–2–06024/10.

The proposed consent decrees may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decrees may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html*. A copy of one or both of the proposed consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy or copies from the Consent Decree Library, please enclose a check in the amount of $37.75 for a copy the proposed consent decree with Parker Hannifin Corporation, $38.25 for a copy of the proposed consent decree with Central Sprinkler Corporation, or $76.00 for copies of both (25 cents per page reproduction cost). Checks should be made payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enfotcement Section, Environmental and Natural Resources Division.

[FR Doc. 05–6846 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 16, 2004, and published in the **Federal Register** on September 30, 2004, (69 FR 58541), Aldrich Chemical Company Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Lysergic acid dethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamophetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine Intermediate-A (9232)	II
Merperidine Intermediate-B (9233).	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273).	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Aldrich Chemical Company, Inc. to manufacture the listed basic classes of controlled substances is consistent with

the public interest at this time. DEA has investigated Aldrich Chemical Company, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6794 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated December 21, 2004 and published in the **Federal Register** on January 4, 2005 (70 FR 389), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substances listed in Schedule II.

The company plans to import the phenylacetone to manufacture amphetamine for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cambrex Charles City, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6797 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Correction

By Notice dated December 21, 2004, and published in the **Federal Register** on January 4, 2005, (70 FR 390), the listing of controlled substances N–Ethylamphetamine (1475), 2,5–Dimethoxyamphetamine (7396), 4–Methoxyamphetamine (7411), and Difenoxin (9168), were inadvertently added for Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409. The Notice of Application should be corrected by deleting N–Ethylamphetamine (1475), 2,5–Dimethoxyamphetamine (7396), 4–Methoxyamphetamine (7411), and Difenoxin (9168).

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6788 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 21, 2004 and published in the **Federal Register** on January 4, 2005, (70 FR 390), Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule I and II:

Drug	Schedule
N–Ethylamphetamine (1475)	I
2,5–Dimethoxyamphetamine (7396).	I
4–Methoxyamphetamine (7411)	I
Difenoxin (9168)	I
Methamphetamine (1105)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. Sections 823(a) and 952(a) and determined that the registration of Cambrex Charles City, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. Sections 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6795 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Correction

By notice dated July 21, 2004, and published in the **Federal Register** on August 10, 2004 (69 FR 48522), Dade Behring Inc., Route 896 Corporate Boulevard, Building 100, Attention: RA/QA, Post Office Box 6101, Newark, Delaware 19717 made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer, and to modify its address. The address modification was inadvertently omitted. The state of

Delaware renamed the road where the facility is located, thus causing the address to change. The address should be modified to read: Dade Behring Inc., 100 GBC Drive MS514, Post Office Box 6101, Attention: RA/QS, Newark, Delaware 19714–6101.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6789 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated November 8, 2004, and published in the **Federal Register** on November 22, 2004 (69 FR 67963), ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import Phenylacetone to be used in the manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of ISP Freetown Fine Chemicals to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freetown Fine Chemicals to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6790 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated February 17, 2005, and published in the **Federal Register** on February 28, 2005 (70 FR 9677–9678), JFC Technologies, LLC, 100 West Main Street, PO Box 669, Bound Brook, New Jersey 08805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Meperidine-Intermediate B (9233), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substances for manufacture of controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of JFC Technologies, LLC to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated JFC Technologies, LLC to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6798 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Correction

The Notice dated December 21, 2004, and published in the **Federal Register** on January 4, 2005, (70 FR 393), the drug code for Fentanyl was incorrect, for Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144. The correct drug code for Fentanyl is (9801). The Notice of Application should be corrected to reflect Fentanyl (9801).

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6793 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952 (a) (2) (B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on February 1, 2005, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedules II:

Drug	Schedule
Coca Leaves (9040)	II
Raw Opium (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacturer bulk controlled substances and non-controlled substance flavor extracts.

Any manufacturer who is presently, or is applying to be, registered with DEA

to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 6, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6786 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 8, 2005, Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02454, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture the listed controlled substance in bulk for conversion into non-controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than June 6, 2005.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6799 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Correction

By notice dated February 23, 2005, and published in the **Federal Register** on March 4, 2005 (70 FR 10683), the listing of controlled substances Oxycodone (9143) and Morphine (9300), were inadvertently omitted, for Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070. The Notice of Application should be corrected to include Oxycodone (9143) and Morphine (9300).

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6791 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 7, 2005, Sigma Aldrich Company, Subsidiary of Sigma-Aldrich Corporation, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxy-amphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Psilocyn (7438)	I
Benzylpiperazine (BZP) (7493)	I
1-(alpha, alpha, alpha-trifluoro-m-tolyl) Piperazine (TEMPP) (7494).	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II

Drug	Schedule
Glutethimide (2550)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9649)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for drug testing and analysis.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 6, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c),(d),(e) and (f) are satisfied.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6792 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 26, 2005, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance for the manufacture of bulk controlled substances and distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6801 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 16, 2005, Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules II:

Drug	Schedule
Phencyclidine (7471)	II
1–Piperidinocyclohexane-carbonitrile (8603).	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA

Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than (60 days from publication).

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–6796 Filed 4–5–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; PTE 86–128

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 86–128 for certain transactions involving employee benefit plans and securities broker-dealers.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 6, 2005.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410. Fax: (202) 693–4745 (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 86–128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by the insurance companies. This exemption provides relief from certain prohibitions in section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1)(E) or (F).

In order to insure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department has included in the exemption five information collection requirements. The first requirement is written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction with the broker-fiduciary. The second requirement is, within three months of the authorization, the broker-fiduciary furnish the independent fiduciary with any reasonably available information necessary for the independent fiduciary to determine whether an authorization should be made. The information must include a copy of the exemption, a form for termination, and a description of the broker-fiduciary's brokerage placement practices. The third requirement is that the broker-fiduciary must provide a termination form to the independent fiduciary annually so that the independent fiduciary may terminate the authorization without penalty to the plan; failure to return the form constitutes continuing authorization. The fourth requirement is for the broker-fiduciary to report all transactions to the independent fiduciary, either by confirmation slips or through quarterly reports. The fifth requirement calls for the broker-fiduciary to provide an annual summary of the transactions. The annual summary must contain all security transaction-related charges incurred by the plan, the brokerage placement practices, and a portfolio turnover ratio.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department is requesting an extension of the currently approved ICR pertaining to Prohibited Transaction Class Exemption 86–128 for certain transactions involving employee benefit plans and securities broker-dealers. The Department is not proposing or implementing changes to the existing ICR at this time.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: PTE 86–128 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0059.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 4,200.

Total Responses: 284,000.

Frequency of Response: Quarterly; Annually.

Total Annual Burden: 93,530 hours.

Total Annual Cost (Operating & Maintenance): $183,550.

Comments submitted in response to this request will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 31, 2005.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 05–6751 Filed 4–5–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11261]

Proposed Amendment to Prohibited Transaction Exemption 2002–51 (PTE 2002–51) To Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed amendment to PTE 2002–51.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 2002–51 (67 FR 70623 November 25, 2002). PTE 2002–51 is a class exemption that provides relief from certain prohibited transaction restrictions imposed by section 4975 of the Internal Revenue Code (the Code) of 1986 for certain eligible transactions identified in the Department's Voluntary Fiduciary Correction (VFC) Program, which was adopted on March 28, 2002. This exemption is being proposed in conjunction with the Department's Amendment and Restatement of the VFC Program (revised VFC Program), which is being published simultaneously in this issue of the **Federal Register**. The VFC Program allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) of ERISA in connection with an investigation or civil action by the Department. If granted, the proposed amendment to PTE 2002–51 would affect plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

DATES: Written comments and requests for a public hearing on the proposed amendment must be received by the Department by June 6, 2005.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) concerning the proposed amendment should be sent to: U.S. Department of Labor, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Amendment to the VFC Program Exemption D–11261). Comments and requests for a hearing alternatively may be sent by fax to (202) 219–0204 or submitted electronically to *moffitt.betty@dol.gov* by the end of the comment period. All comments received from interested persons will be available for public inspection in EBSA's Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8545 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 2002–51. PTE 2002–51 provides relief from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed amendment would expand the relief under the exemption to additional transactions included in the revised VFC Program. The Department is proposing to amend PTE 2002–51 on its own motion pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).[1]

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this proposed amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, an assessment of the potential costs and benefits under section 6(a)(3) of that order is not required. In order to better inform the public, the Department has, however, included a brief analysis of the applicable costs and benefits of the proposed amendment.

PTE 2002–51 provides relief from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. In general, the exemption enhances the benefits of participation in the VFC Program by granting relief from excise taxes under section 4975 for breaches of fiduciary duty that are prohibited transactions. The class exemption will have positive economic effects by eliminating such excise taxes and promoting increased participation in the VFC Program. The purpose of the VFC Program is to encourage the correction of breaches of fiduciary duty, resulting in the recovery of lost earnings or profits for the benefit of plan participants and beneficiaries.

The Department has assumed that not all Plan Officials that apply to the VFC Program will necessarily take advantage of the excise tax relief provided under the exemption, either by choice or because the corrected transaction is not an eligible transaction to which this exemption applies. The Department has assumed that as many as one half of all applicants who take the opportunity to voluntarily correct a violation under the Program, or 350 Plan Officials annually, will choose to avail themselves of the opportunity for excise tax relief.

This amendment to PTE 2002–51 is proposed in connection with the Amendment and Restatement of the VFC Program (revised VFC Program), which is published in this issue of the

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code of the Secretary of Labor.

Federal Register. This proposed amendment would expand the relief under the exemption to an additional transaction included in the revised VFC Program. As described in detail below, the additional eligible transaction generally includes the purchase of an asset by a plan where the asset has been determined to be illiquid as described in the revised VFC Program, and the sale of the illiquid asset by the plan to a party in interest.

The proposed addition of this eligible transaction may increase participation in the VFC Program, and utilization of the exemption. However, the Department is unable to estimate the impact of these changes because participation in the Program has steadily increased without any revisions to the Program such as those adopted today. Due to a lack of information regarding the substantial increases, it is not possible to identify factors that influence the decision to participate or to make use of the exemption, or to predict how this proposed amendment would influence future participation.

Applicants must meet all of the applicable requirements of the revised VFC Program and must have received a no action letter from EBSA with respect to the eligible transaction at issue. Additional costs will accrue to applicants seeking relief under the VFC Program and this exemption because of the notice requirements. The cost of preparing and distributing such notices is estimated to be about $31,000 per year based on the projected use of the exemption by 350 applicants. This estimate does not take into account any increase related to the additional eligible transaction. This cost is accounted for in burden estimates submitted to and approved by OMB pursuant to the Paperwork Reduction Act (PRA).

Paperwork Reduction Act

The Amended and Restated Voluntary Fiduciary Correction Program includes a revision to its information collection provisions. Accordingly, the revisions have been submitted to OMB for review and approval under the PRA. Because the exemption is used in connection with the Program, and for ease of public review, the burden of the Information Collection Request (ICR) in the VFC Program is combined with the burden of the information collection provisions of the exemption for purposes of accounting for burden under the PRA. These information collection provisions are currently approved under OMB control number 1210–0118. That approval is scheduled to expire on December 31, 2006. Because the information collection provisions of this proposed exemption are unchanged from those of existing PTE 2002–51, no submission is made to OMB in connection with these proposed amendments.

Background

Title I of ERISA, which establishes certain standards of conduct for fiduciaries of employee benefit plans covered by ERISA, includes provisions prohibiting fiduciaries from causing a plan to engage in certain classes of transactions with persons defined as parties in interest. Similarly, Title II of ERISA prohibits plans described in section 4975(e)(1) of the Code from engaging in certain classes of transactions with persons defined under the Code as disqualified persons. Generally, such transactions are subject to taxation under section 4975 of the Code.

The VFC Program was adopted by the Department on a permanent basis in March 2002.[2] Under the VFC Program, persons who are potentially liable for a breach can avoid the possibility of civil investigations and/or civil actions initiated by the Department for that breach and the imposition of civil penalties under section 502(l) of ERISA if they satisfy the conditions for correcting the breach as described in the VFC Program. The VFC Program was based on the Department's experience with the Pension Payback Program, 61 FR 9203 (March 7, 1996), and continued public interest in such correction programs. In response to comments received on the VFC Program requesting that the Department provide relief from the excise taxes imposed by section 4975 of the Code for prohibited transactions, the Department proposed a class exemption for four of the eligible transactions described in the VFC Program. A final exemption, PTE 2002–51, was published in the **Federal Register** on November 25, 2002. The four eligible transactions described in the exemption are as follows:

(A) The failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR 2510.3–102 and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

(B) The making of a loan by a plan at a fair market interest rate to a party in interest[3] with respect to the plan.

(C) The purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value.

(D) The sale of real property to a plan by the employer and leaseback of such property to the employer, at fair market value and fair market rental value, respectively.

Based on growing public utilization and over two years experience in administering the original VFC Program, EBSA has decided to amend the Program, effective immediately upon publication of a notice which is being published simultaneously in this issue of the **Federal Register**. The Department is amending the VFC Program, in part, to expand the categories of eligible transactions. Specifically, the revised VFC Program will, in part, include relief under Title I of ERISA for the purchase of an asset by a plan where the asset was determined to be illiquid as described under the revised VFC Program, either from a party in interest at no greater than fair market value at that time or from an unrelated third party, and the subsequent sale of such asset to a party in interest, provided the plan receives the correction amount as described in Section 5 of the revised VFC Program.

To the extent that the original purchase of an asset by a plan where the asset was determined to be illiquid as described under the revised VFC Program was from a person defined as a party in interest under section 3(14) of ERISA and a disqualified person under section 4975(e)(2) of the Code, the transactions would violate the prohibited transaction rules under both Title I of ERISA and section 4975 of the Code. Moreover, as distinguished from the eligible transactions covered in the VFC Program[4] and PTE 2002–51, correction as specified in the revised VFC Program in the case of an asset that was illiquid, as described under the revised VFC Program, while owned by the plan will in most instances involve an additional prohibited transaction. In

[2] 67 FR 15062 (March 28, 2002). Prior to adoption in March 2002, the VFC Program was made available on an interim basis during which the Department invited and considered public comments on the Program. (See 65 FR 14164, March 15, 2000).

[3] The Department notes that the term "party in interest" was used in the description of the eligible transactions covered under PTE 2002–51 although that exemption provided, and this proposed amendment will provide, relief only from the sanctions imposed under section 4975 of the Code, which prohibits certain transactions between a plan and a disqualified person. For purposes of clarity, references in the exemption to a party in interest will be changed to disqualified person in the final exemption.

[4] Under the VFC Program prior to the current revision, correction could not be achieved by engaging in a new prohibited transaction. *See* VFC Program, 67 FR 15073 (March 28, 2002) Section 2(d).

this regard, correction under the revised VFC Program would permit the plan to dispose of the illiquid asset in a sale to a party in interest. If the party in interest that purchases the illiquid asset from the plan pursuant to the terms of the revised VFC Program is also a disqualified person under section 4975(e)(2) of the Code, then the correction permitted for holding the illiquid asset would violate the prohibited transaction rules under section 4975 of the Code.

The revised VFC Program provides relief for both the original acquisition of the asset by the plan that was determined to be illiquid under the revised VFC Program, as well as the correction involving the sale of such asset to a party in interest, provided all of the requirements of the revised VFC Program are met. The Department has determined that it would be appropriate to amend PTE 2002–51 to provide additional exemptive relief from the sanctions imposed under section 4975 of the Code in conjunction with the revision of the VFC Program.

Proposed Amendment

PTE 2002–51 provided limited exemptive relief from the excise taxes imposed under section 4975 of the Code for certain eligible transactions identified in the VFC Program. The proposed amendment to PTE 2002–51 will provide limited relief for an additional eligible transaction identified in the revised VFC Program. Specifically, the proposed amendment to PTE 2002–51 will cover the purchase of an asset by a plan where the asset has been determined to be illiquid as described in the revised VFC Program (including real property) from a party in interest at no greater than fair market value at that time, and/or the subsequent sale of such asset to a party in interest provided the plan receives the correction amount as described in Section 5 of the revised VFC Program.

The Department notes that all the safeguards already embodied in PTE 2002–51 must be met under the amended class exemption. With respect to the additional eligible transaction identified above, the amendment includes a requirement that the plan pay no brokerage fees or commissions in connection with the sale of the asset to the party in interest.

The additional eligible transaction may be illustrated by the following example:

Example: Corporation D sponsors a pension plan for its employees. Corporation D's plan has total assets of $1,000,000. In June 1999, the plan purchases undeveloped real property from a party in interest/disqualified person with respect to the plan for $60,000 (which is the fair market value of the property at the time). In April 2004, Plan Officials determine that the property is an illiquid asset in accordance with the revised VFC Program. A qualified independent appraiser appraises the property at a current fair market value of $20,000. To correct the transaction under the revised VFC Program, the plan sponsor purchases the property from the plan for the Principal Amount as described in section 5(b)(2) of the revised VFC Program ($60,000), plus Lost Earnings as described in section 5(b)(6) of the revised VFC Program. Provided that all other requirements of the revised VFC Program are met and proper application is made to the appropriate EBSA Regional Office, the plan sponsor receives a no action letter with respect to the breaches involved in the original purchase by the plan of the asset and the subsequent sale of the illiquid asset to a party in interest. Upon compliance with the terms of PTE 2002–51, as amended, the original purchase by the plan of the asset and the subsequent sale of the illiquid asset to the plan sponsor will be exempt from the excise taxes imposed under section 4975 of the Code for prohibited transactions. For the sake of convenience and clarity, the Department is restating the entire text of PTE 2002–51 in this notice of proposed amendment.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply, the requirement that all assets of an employee benefit plan be held in trust by one or more trustees, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed amendment, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) Before this amendment may be granted under section 4975(c)(2) of the Code, the Department must find that the amendment is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans.

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address above and within the time period set forth above. All comments received will be made part of the record and will be available for public inspection at the above address.

Proposed Amendment

Under section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend Sections I and II of PTE 2002–51 as set forth below.

Section I: Eligible Transactions

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following eligible transactions described in section 7 of the Voluntary Fiduciary Correction (VFC) Program, as amended and restated, published simultaneously in this issue of the **Federal Register**, provided that the applicable conditions set forth in Sections II, III and IV are met:

A. Failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulation at 29 CFR section 2510.3–102. (*See* VFC Program, section 7.A.1.), and/or the failure to transmit participant loan repayments to

a pension plan within a reasonable time after withholding or receipt by the employer.

B. Loan at a fair market interest rate to a party in interest with respect to a plan. (*See* VFC Program, section 7.B.1.).

C. Purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value. (*See* VFC Program, sections 7.D.1. and 7.D.2.).

D. Sale of real property to a plan by the employer and the leaseback of the property to the employer, at fair market value and fair market rental value, respectively. (*See* VFC Program, section 7.D.3.).

E. Purchase of an asset by a plan where the asset has been determined to be illiquid (including real property) as described under the revised VFC Program from a party in interest at no greater than fair market value at that time, and/or the subsequent sale of such asset to a party in interest, provided the plan receives the correction amount as described in section 5(b) of the Program. (*See* VFC Program, as amended, section 7.D.6.).

Section II: Conditions

A. With respect to a transaction involving participant contributions or loan repayments to pension plans described in Section I.A., the contributions or repayments were transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amounts otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

B. With respect to the transactions described in Sections I.B., I.C., I.D., or I.E., the plan assets involved in the transaction, or series of related transactions, did not, in the aggregate, exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction.

C. The fair market value of any plan asset involved in a transaction described in Sections I.C., I.D., or I.E. was determined in accordance with section 5 of the VFC Program.

D. The terms of a transaction described in Sections I.B., I.C., I.D., or I.E., were at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

E. With respect to any transaction described in Section I, the transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

F. (1) With respect to any transaction described in Section I, the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is three years prior to submission of the current application.

(2) Notwithstanding the foregoing, Section II.F.(1) shall not apply to an applicant provided that:

(a) The applicant was a broker-dealer registered under the Securities Exchange Act of 1934, a bank supervised by the United States or a State thereof, a broker-dealer or bank subject to foreign government regulation, an insurance company qualified to do business in a State, or an affiliate thereof;

(b) The applicant was a party in interest (including a fiduciary) solely by reason of providing services to the plan or solely by reason of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of ERISA (and/or the corresponding provisions of section 4975 of the Code);

(c) Neither the applicant nor any affiliate (i) was a fiduciary (within the meaning of section 3(21)(A) of ERISA) with respect to the assets of the plan involved in the transaction and (ii) used its discretion to cause the plan to engage in the transaction;

(d) Individuals acting on behalf of the applicant had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and

(e) Prior to the transaction, the applicant established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and the applicant engaged in periodic monitoring for compliance.

G. With respect to a transaction involving a sale of an illiquid asset under the VFC Program by the plan to a party in interest described in Section I.E., the plan paid no brokerage fees, or commissions in connection with the sale of the asset.

Section III: Compliance With the Revised VFC Program

A. The applicant has met all of the applicable requirements of the revised VFC Program.

B. EBSA has issued a no action letter to the applicant pursuant to the revised VFC Program with respect to a transaction described in Section I.

Section IV: Notice

A. Written notice of the transaction(s) for which the applicant is seeking relief pursuant to the revised VFC Program, and this exemption, and the method of correcting the transaction, was provided to interested persons within 60 calendar days following the date of the submission of an application under the revised VFC Program. A copy of the notice was provided to the appropriate Regional Office of the United States Department of Labor, Employee Benefits Security Administration within the same 60-day period, and the applicant indicated the date upon which notice was distributed to interested persons. Plan assets were not used to pay for the notice. The notice included an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average Plan participant or beneficiary. The notice provided for a period of 30 calendar days, beginning on the date the notice was distributed, for interested persons to provide comments to the appropriate Regional Office. The notice included the address and telephone number of such Regional Office.

B. Notice was given in a manner that was reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof. The notice informed interested persons of the applicant's participation in the revised VFC Program as amended and intention of availing itself of relief under the exemption.

Signed at Washington, DC, this 30th day of March, 2005.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits, Security Administration, U.S. Department of Labor.

[FR Doc. 05–6626 Filed 4–5–05; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–068]

NASA Advisory Council, Financial Audit Committee, Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended,

the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Financial Audit Committee (NFAC).

DATES: Friday, April 22, 2005, 11 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ermerdene Lee, of the Chief Financial Officer's Office, National Aeronautics and Space Administration, Washington, DC 20546. (202) 358–4529, e-mail *elee1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—NASA Financial Systems Overview
—NASA Management Material Weaknesses Discussion

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 3 working days prior to the meeting: full name; gender, date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information in advance by contacting Ermerdene Lee via e-mail at elee1@hq.nasa.gov or by telephone at (202) 358–4529. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations.

[FR Doc. 05–6734 Filed 4–5–05; 8:45 am]

BILLING CODE 7510–13–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 May 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: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@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., 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

1. Department of Education, Office for Civil Rights, (N1–441–05–1, 9 items, 6 temporary items). Civil rights compliance reports submitted by state vocational education agencies, reference copies of electronic master files of elementary and secondary school civil rights surveys, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are such records as

electronic master files containing data gathered in civil rights surveys and recordkeeping copies of files relating to state higher education desegregation plans and policies.

2. Department of Housing and Urban Development, Office of Public and Indian Housing (N1–207–04–1, 24 items, 19 temporary items). Inputs, outputs, work files, and other records associated with an electronic system that contains statistical information concerning low income public housing and housing for Native Americans. Master files and system documentation are proposed for permanent retention.

3. Department of Justice, Federal Bureau of Prisons (N1–129–04–6, 10 items, 8 temporary items). Inputs and outputs of the Office of Research and Evaluation's Key Indicators/Strategic Support System, which is used to monitor and track institutional performance and support policy formulation and policy impact assessment. Proposed for permanent retention are the system master files and the system documentation.

4. Department of Justice, Federal Bureau of Prisons (N1–129–04–7, 4 items, 2 temporary items). Inputs and outputs of an electronic information system maintained by the Information, Policy, and Public Affairs Division which is used to track individual inmates throughout the agency's facilities. Proposed for permanent retention are the system master files and the system documentation.

5. Department of State, Bureau of Educational and Cultural Affairs (N1–59–05–6, 11 items, 6 temporary items). Exchange proposals, copies of treaties, and personnel files maintained by the J. William Fulbright Foreign Scholarship Board. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of meeting files, membership files, reports, general subject files, and country files.

6. Department of Transportation, Federal Aviation Administration (N1–237–04–3, 31 items, 25 temporary items). Records relating to the registration, recordation, and leasing of aircraft. Included are paper aircraft registration and recordation files that have been imaged, backup copies of signature authorization files, export certificate of airworthiness files, engine propeller and spare parts location recordation files, dealer's aircraft registration certificate files, truth-in-leasing files, foreign aircraft leases files, finding aids, and summary reports with statistical data. Also included are electronic copies of records created using electronic mail and word processing.

Proposed for permanent retention are recordkeeping copies of aircraft registration and recordation files, signature authorization files, finding aids, summary reports with statistical data, and annual snapshot of the Aircraft Registration Master File.

7. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–05–12, 12 items, 9 temporary items). Records accumulated by the Office of Communications, including briefing materials, budget background records, chronological files, copies of press releases, report files, copies of speeches, and working papers. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of press releases, agency-wide publications, and speech files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of the Treasury, Bureau of Public Debt (N1–53–05–3, 4 items, 4 temporary items). Records relating to mail management and external audits, including electronic copies of records created using electronic mail and word processing.

9. National Aeronautics and Space Administration, Agency-wide (N1–255–04–3, 13 items, 12 temporary). Files relating to projects that pertain to space flight, aerospace technology research, and basic or applied scientific research that lack historical significance. Also included are routine records relating to historically significant projects as well as files relating to these projects that are not required for documenting the history of the project and/or agency programs, but have operational value to the agency throughout the program or project life cycle. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to historically significant projects that must be retained to document the history of the project and/or agency programs. The schedule provides criteria for identifying historically significant projects (*e.g.*, produce major contributions to scientific knowledge, establish precedents, attract widespread media attention, etc.). For historically significant projects, the schedule describes the three categories of records (routine records, long-term temporary records, and permanent records) in broad terms. It also includes detailed notes defining the types of records that typically fall into each category. Routine records include such materials as cost data, presentation materials, agendas, and budget information. Long-term records that will be retained throughout the project life cycle include such records as configuration management controls, interface control documents, periodic reports, Program Control Board minutes, waivers, work instructions and authorizations, and quality assurance audit reports. Permanent records include such files as operations plans, formulation documents, concept documents, technology assessments, approval records, design development information, manufacture, fabrication, and assembly records, flight verification and certification reports, implementation and operational records, and evaluation and termination documents. This schedule authorizes the agency to apply the proposed disposition instructions to records regardless of the recordkeeping medium.

Dated: March 30, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–6833 Filed 4–5–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering (1170).

Date/Time: May 11, 2005, 8 a.m.–7 p.m.; May 12, 2005, 8 a.m.–3 p.m.

Place: National Science Foundation, Room 1235.

Type of Meeting: Open.

Contact Person: Deborah Young, Administrative Officer, and Office of the Assistant Director for Engineering, (703) 292–8301.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on Strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession and engineering education.

Dated: April 1, 2005.

Suzanne Bolton,

Committee Management Officer.

[FR Doc. 05–6780 Filed 4–5–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Notice of Receipt and Availability of Application for Renewal of Monticello Nuclear Generating Plant Facility, Operating License No. DPR–22, for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated March 16, 2005, from Nuclear Management Company, LLC, filed pursuant to Section 104b (DPR–22) of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew the operating license for the Monticello Nuclear Generating Plant. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the Monticello Nuclear Generating Plant (DPR–22) expires on September 8, 2010. The Monticello Nuclear Generating Plant is a Boiling Water Reactor designed by General Electric. The unit is located near Monticello, MN. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20582 or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under accession number ML050880237. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, on the NRC Web page, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, extension (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

A copy of the license renewal application for the Monticello Nuclear Generating Plant is also available to local residents near the Monticello Nuclear Generating Plant at the Monticello Public Library, 200 West 6th Street, Monticello, MN 55362.

Dated at Rockville, Maryland, this 31st day of March, 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1558 Filed 4–5–05; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

April 21, 2005.

Time and Date: 2 p.m., Thursday, April 21, 2005.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing OPEN to the public at 2 p.m.

Purpose: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, April 19, 2005. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, April 19, 2005. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: April 4, 2005.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 05–6928 Filed 4–4–05; 11:42 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27954; 70–10285]

PNM Resources, Inc.; Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 30, 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 April 25, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 25, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Notice of Proposal To Amend Restated Certificate of Incorporation; Order Authorizing the Solicitation of Proxies

PNM Resources, Inc. ("PNM Resources"), Alvarado Square, Albuquerque, NM 87158, a registered holding company, has filed an application-declaration ("Application") under sections 6(a), 7, 8, 9(a), 10, 11, and 12(e) of the Act and rules 51, 54 and 62–65 under the Act.

PNM Resources became an exempt public utility holding company on December 31, 2001, and conducts its operations consistent with the order of the New Mexico Public Regulation Commission which authorized the holding company structure. Except for certain corporate support services provided to its subsidiaries at cost pursuant to that order, PNM Resources conducts no business operations other than as a holding company. PNMR Services Company ("Services") is a subsidiary service company, which provides services at cost to the subsidiaries of PNM Resources. PNM Resources filed a notice of registration under the Act on December 30, 2004, and transferred its service functions to Services on January 1, 2005.

PNM Resources' only public utility company subsidiary is Public Service Company of New Mexico ("PNM"), a New Mexico corporation. PNM is an electric and gas public utility company. It is engaged in the generation, transmission, and distribution of electric energy at retail in the State of New Mexico and makes sales for resale ("wholesale" sales) of electricity in interstate commerce. PNM is also engaged in the distribution of natural gas in the State of New Mexico, which includes some off-system wholesale sales of natural gas.

PNM Resources proposes to acquire all of the outstanding voting securities of TNP Enterprises, Inc. ("TNP Enterprises"), a public utility holding company claiming exemption by rule 2 under the Act (the acquisition is referred to hereafter as the "Transaction"). TNP Enterprises has subsidiary electric utility operations in Texas and New Mexico conducted by Texas-New Mexico Power Company ("TNMP"), its public utility subsidiary. In connection with the Transaction, PNM Resources is requesting authorization to amend its Restated Articles of Incorporation ("Restated Articles") and to solicit proxies from its shareholders to approve such amendment at its annual meeting of shareholders to be held on May 17, 2005.

In order to finance a portion of the acquisition cost, PNM Resources will issue and sell 4,000,000 units of its 6.625% Hybrid Income Term Security Units (the "Units") to Cascade Investment, L.L.C. ("Cascade"), a limited liability company formed under the laws of the State of Washington, in consideration for $100,000,000. Each Unit will have a stated amount of $25.00. The proceeds of the sale of the Units will be used by PNM Resources to finance a portion of the cash consideration paid in the Transaction and for refinancing the debt and preferred securities of TNP Enterprises. The Units will be sold pursuant to the terms of a Unit Purchase Agreement, dated August 13, 2004, between PNM Resources and Cascade (the "UPA"). Each Unit consists of two components, (i) a forward purchase contract which obligates the holder (Cascade or an affiliate of Cascade) to purchase and PNM Resources to sell, no later than February 16, May 16, August 16 or November 16 first following the third anniversary of the issuance of the Units, a specified number of shares of PNM Resources common stock ("Common Shares") (subject to anti-dilution adjustments), and (ii) a 1/40, or 2.5%, ownership interest in one of PNM Resources' senior notes ("Senior Notes") (A) with a principal amount of $1,000, (B) with an initial maturity date of February 16, May 16, August 16, or November 16 next preceding the fifth anniversary date of the initial issuance of the Units, and (C) bearing interest at a rate per annum (not to exceed 6.625%) to be set at the market at or near the date of issuance.

Under the UPA, Cascade (or any Cascade affiliate holder of the Units) shall have the right to purchase PNM Resources' Convertible Preferred Stock, Series A (the "Preferred Shares") *in lieu* of Common Shares. Each Preferred Share is convertible at any time, at the option of the holder, into ten Common Shares, subject to adjustment for stock splits, combinations, reclassifications, mergers, consolidations, sales of assets and other transactions. In accordance with the Cascade Order, Cascade intends to exercise its right to purchase Preferred Shares *in lieu* of Common Shares in order to maintain its ownership of PNM Resources' outstanding voting securities at less than 10%.

Also under the UPA, PNM Resources is obligated to seek shareholder approval for an amendment to the Restated Articles that would confer upon holders of the Preferred Shares certain voting rights in addition to those voting rights conferred by law. Specifically, under the Restated Articles, as proposed to be amended, the Preferred Shares, voting as a single class with PNM Resources' common stock, will be entitled to the number of votes to which the shares of common stock into which the Preferred Shares are convertible are entitled to vote on all matters required to be submitted to a vote of common stockholders, other than the right to vote in the election of directors, provided that such voting rights are exercisable by the holders of Preferred Shares only if approved and permitted by the Commission.

The proposed amendment to PNM Resources' Restated Articles to confer the additional (*i.e.*, non-statutory) voting rights on the Preferred Shares requires the approval of the common stockholders of PNM Resources.[1] PNM Resources intends to seek such approval at its annual meeting to be held on May 17, 2005. Accordingly, PNM Resources requests that its proposal to solicit proxies for shareholder approval of the proposed amendment be permitted to become effective immediately under rule 62(d).

It appears to the Commission that PNM Resources' Application regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

It is ordered, under rule 62 under the Act, that the portion of the Application regarding the proposed solicitation of proxies from PNM Resources' shareholders become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1552 Filed 4–5–05; 8:45 am]

BILLING CODE 8010–01–P

[1] PNM Resources' obligation to issue, and Cascade's obligation to purchase, the Units are not dependent on shareholder approval of the amendment.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–1447; File No. SR–ISE–2004–28]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Relating to Trading Options on Full and Reduced Values of the ISE 250 Index, the ISE 100 Index and the ISE 50 Index, Including Long-Term Options

March 30, 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 September 10, 2004, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. The ISE submitted Amendments No. 1 and No. 2 to the proposal on January 5, 2005,[3] and on March 7, 2005, respectively.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organizaiton's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules to trade options on full and reduced values of three broad-based indexes, the ISE 250 Index, the ISE 100 Index and the ISE 50 Index. Options on these indexes would be cash-settled and would have European-style exercise provisions. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*) at the ISE's Office of the Secretary, and at the Commission. The text of the proposed rule change appears below.. Additions are *italicized;* deletions are bracketed.

* * * * *

Rule 2001. Definitions

Supplementary Material to Rule 2001

01. The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.

Underlying index	*Reporting authority*
S&P SmallCap 600 Index.	Standard & Poor's
Morgan Stanley Technology Index.	American Stock Exchange
S&P MidCap 400 Index.	Standard & Poor's
S&P 1000 Index	Standard & Poor's
Nasdaq 100 Index	The Nasdaq Stock Market
ISE 250 Index	*International Securities Exchange and Standard & Poor's*
ISE 100 Index	*International Securities Exchange and Standard & Poor's*
ISE 50 Index	*International Securities Exchange and Standard & Poor's*

* * * * *

Rule 2004. Position Limites for Broad-Based Index Options

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by this Rule 2004. There may be no position limit for certain Specified (as provided in Rule 2000) broad-based index options contracts. All other broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in the chart below.

Broad-based underlying index	Standard limit (on the same side of the market)	Restrictions
S&P SmallCap 600 Index	100,000 contracts	No more than 60,000 near term.
S&P MidCap 400 Index	45,000 contracts	No more than 25,000 near-term.
Reduced Value S&P 1000 Index	50,000 contracts	No more than 30,000 near-term.
Micro S&P 1000 Index	500,000 contracts	No more than 300,000 near-term.
Nasdaq 100 Index	75,000 contracts	None.
Mini Nasdaq 100 Index	750,000 contracts	None.
ISE 250 Index	*50,000 contracts*	*No more than 30,000 near-term.*
Mini ISE 250 Index	*500, contracts*	*No more than 300,000 near-term.*
ISE 100 Index	*50, contracts*	*No more than 30,000 near-term.*
Mini ISE 100 Index	*500,000 contracts*	*No more than 300,000 near-term.*
ISE 50 Index	*50,000 contracts*	*No more than 30,000 near-term.*
Mini ISE 50 Index	*500,000 contracts*	*No more than 300,000 near-term.*

* * * * *

Rule 2009. Terms of Index Options Contracts

(a) General.

(4) "European-Style Exercise." The following European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index
(ii) Morgan Stanley Technology Index
(iii) S&P MidCap 400 Index
(iv) Reduced Value S&P 1000 Index
(v) Micro S&P 1000 Index
(vi) Full-size Nasdaq 100 Index
(vii) Mini Nasdaq 100 Index
(viii) ISE 250 Index
(ix) Mini ISE 250 Index
(x) ISE 100 Index
(xi) Mini ISE 100 Index
(xii) ISE 50 Index
(xiii) Mini ISE 50 Index

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 set forth a list of the underlying components of the ISE Indexes.

[4] Amendment No. 2 replaced the original filing in its entirely, proposed a reduced number of contracts for position and exercise limits, addressed one of the events that the Exchange will monitor on an annual basis, and made other technical corrections to the filing.

price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 2008(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The following A.M.-settled index options are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index
(ii) Morgan Stanley Technology Index
(iii) S&P MidCap 400 Index
(iv) Reduced Value S&P 1000 Index
(v) Micro S&P 1000 Index
(vi) Full-size Nasdaq 100 Index
(vii) Mini Nasdaq 100 Index
(viii) ISE 250 Index
(ix) Mini ISE 250 Index
(x) ISE 100 Index
(xi) Mini ISE 100 Index
(xii) ISE 50 Index
(xiii) Mini ISE 50 Index

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) The interval between strike prices will be no less than $5.00; provided, that in the case of the following classes of index options, the interval between strike prices will be no less than $2.50:

(i) S&P SmallCap 600, if the strike price is less than $200.00
(ii) Morgan Stanley Technology Index, if the strike price is less than $200.00
(iii) S&P MidCap 400 Index, if the strike price is less than $200.00
(iv) Reduced Value S&P 1000 Index, if the strike price is less than $200.00
(v) Micro S&P 1000 Index, if the strike price is less than $200.00
(vi) Full-size Nasdaq 100 Index, if the strike price is less than $200.00
(vii) Mini Nasdaq 100 Index, if the strike price is less than $200.00
(viii) ISE 250 Index, if the strike price is less than $200.00
(ix) Mini ISE 250 Index, if the strike price is less than $200.00
(x) ISE 100 Index, if the strike price is less than $200.00
(xi) Mini ISE 100 Index, if the strike price is less than $200.00
(xii) ISE 50 Index, if the strike price is less than $200.00
(xiii) Mini ISE 50 Index, if the strike price is less than $200.00

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style, index options on full and reduced values of the ISE 250 Index, the ISE 100 Index and the ISE 50 Index (collectively. the "ISE Indexes").[5]

Specifically, the Exchange proposes to list options based upon the full value of the ISE Indexes ("Full-size ISE Indexes") as well as one-tenth of the value of the ISE Indexes ("Mini ISE Indexes").

Index Design and Composition

The ISE Indexes are designed to track the performance of the most highly capitalized publicly traded companies in the United States. Each index is a float-adjusted capitalization-weighted index,[6] whose components are all headquartered in the United States and listed on either the New York Stock Exchange, Inc. ("NYSE"), the National Association of Securities Dealers, Inc. ("NASD"), Automated Quotation System ("NASDAQ"), or the American Stock Exchange LLC ("Amex"). All companies in the ISE Indexes will either be operating companies or Real Estate Investments Trusts. All other companies, such as Closed-end Funds, Exchange Traded Funds, Holding Companies, Investment Vehicles and Royalty Trusts are not eligible for inclusion.

Companies are selected for inclusion in the ISE Indexes by the Exchange based on the Exchange's methodology.[7] Companies may not apply, and may not be nominated, for inclusion. Companies may be added or removed by the Exchange based on the methodology described below. In order for a company to be eligible for inclusion in the ISE Indexes, it must satisfy certain minimum criteria. One of the requirements for inclusion is that a company's ratio of cumulative shares traded to adjusted shares outstanding must be greater than 0.30 over the past 12 months. Another requirement that must be met by each company is the number of shares in its public float must constitute at least 50% of its total number of outstanding shares. To be eligible for inclusion in the ISE 100 Index, companies must meet one additional requirement: options on the component company's stock must be listed on the Exchange.

The ISE indexes are calculated and maintained by Standard & Poor's ("S&P") pursuant to the Exchange's rules-based methodology and instructions.

ISE 250 Index

The ISE 250 Index is designed to track the combined performance of the most highly capitalized stocks in the U.S. equity markets and specifically includes the top 250 stocks as ranked by market capitalization.

Components of the ISE 250 Index are selected using a rules-based methodology that is fully transparent. Its original selection pool includes all common stocks listed on the NYSE, Amex and NASDAQ. The entire index universe is ranked in descending order by unadjusted market capitalization. Companies that do not meet component eligibility requirements are removed. If a component has multiple share classes, the most liquid issue for that company is included. The top 250 companies, ranked by market capitalization, are then selected from the remaining universe.

Each component's eligibility and ranking is reviewed twice annually, in June and December of each calendar year. Any necessary component changes are made after the close on the third Friday of June and December, and become effective at the opening on the next trading day. Changes to the ISE 250

[5] A description of each of the ISE Indexes will be available on the Exchange's publicly available Web site at *http://www.iseoptions.com*.

[6] The calculation of a float-adjusted, market-weighted index involves taking the summation of the product of the price of each stock in the index and the number of shares available to the public for trading, rather than the total shares outstanding for each issue. In contrast, a price-weighted index involves taking the summation or the prices of the stocks in the index.

[7] Rules governing component selection of the ISE Indexes will be available on the Exchange's publicly available Web site at *http://www.iseoptions.com*.

Index will be announced on ISE's publicly available Web site five trading days prior to the effective date.

In addition to the scheduled reviews, the ISE 250 Index is reviewed on an ongoing basis to accommodate extraordinary events and corporate actions, such as delisting, bankruptcies, mergers or acquisitions involving index components.

As set forth in Exhibit 3 to the proposal, as of June 11, 2004, following are the characteristics of the ISE 250 Index: (i) The total capitalization of all of the components in the Index is $8.63 trillion; (ii) regarding component capitalization, (a) the highest capitalization of a component is $328.14 billion (General Electric Co.), (b) the lowest capitalization of a component is $5.47 billion (The Estee Lauder Co., Class A), (c) the mean capitalization of the components is $34.51 billion, and (d) the median capitalization of the components is $16.85 billion; (iii) regarding component price per share, (a) the highest price per share of a component is $113.71 (Wellpoint Health Networks, Inc.), (b) the lowest price per share of a component is $3.40 (Lucent Technologies, Inc.), (c) the mean price per share of the components is $45.73, and (d) the median price per share of the components is $42.67; (iv) regarding component weightings, (a) the highest weighting of a component is 3.8% (General Electric Co.), (b) the lowest weighting of a component is 0.1% (Estee Lauder Co., Class A), (c) the mean weighting of the component is 0.4%, (d) the median weighting of the components is 0.2%, and (e) the total weighting of the top five highest weighted components is 15.9% (General Electric Co., Exxon Mobil Corp., Pfizer, Inc., Citigroup, Inc., Microsoft Corp.); (v) regarding component available shares, (a) the most available shares of a component is 10.77 billion shares (Microsoft Corp.), (b) the least available shares of a component is 118.91 million shares (M&T Bank Corp.), (c) the mean available shares of the components is 1.01 billion shares, and (d) the median available shares of the components is 455.63 million shares; (vi) regarding the six month average daily volumes of the components, (a) the highest six month average daily volume of a component is 64.6 million shares (Lucent Technologies, Inc.), (b) the lowest six month average daily volume of a component is 514,230 shares (William Wrigley Jr., Co.), (c) the mean six month average daily volume of the components is 5.292 million shares, (d) the median six month average daily volume of the components is 2.81 million shares, (e) the average of six month average daily volumes of the five most heavily traded components is 57.56 million shares (Lucent Technologies, Inc., Microsoft Corp., Intel Corp., Cicso Systems, Inc, & Sun Microsystems, Inc.), and (f) 100% of the components had a six month average daily volume of at least 50,000; and (vii) regarding option eligibility, (a) 99.2% of the components are options eligible, as measured by weighting, and (b) 97.2% of the components are options eligible, as measured by number.

ISE 100 Index

The ISE 100 Index tracks the 100 most actively traded listed options classes on the Exchange. Components of the ISE 100 Index are selected based on the average daily volume of each options class over a six-month period on the Exchange. Its original selection pool includes all equity options listed on the Exchange, ranked by average daily volume over the previous six month period. Companies that do not meet component eligibility requirements are removed. The top 100 companies, ranked by average daily volume, are then selected, and the index is weighted by float-adjusted market capitalization.

Similar to the ISE 250 Index, each component's eligibility and ranking in the ISE 100 Index is reviewed twice annually, in June and December of each calendar year. Any necessary component changes are made after the close on the third Friday of June and December, and become effective at the opening on the next trading day. Changes to the ISE 100 Index will be announced on ISE's publicly available website five trading days prior to the effective date.

In addition to the scheduled reviews, the ISE 100 Index is reviewed on an ongoing basis to accommodate extraordinary events and corporate actions, such as delistings, bankruptcies, mergers or acquisitions involving index components.

As set forth in Exhibit 3 to the proposal, as of June 11, 2004, following are the characteristics of the ISE 100 Index: (i) The total capitalization of all of the components in the Index is $5.36 trillion; (ii) regarding component capitalization, (a) the highest capitalization of a component is 328.14 billion (General Electric Co.), (b) the lowest capitalization of a component is $104.44 million (Genta, Inc.), (c) the mean capitalization of the components is $53.65 billion, and (d) the median capitalization of the components is $26.09 billion; (iii) regarding component price per share, (a) the highest price per share of a component is $93.01 (Goldman, Sachs Group, Inc.), (b) the lowest price per share of component is $2.27 (Genta, Inc.), (c) the mean price per share of the components is $36.94, and (d) the median price per share of the components is $31.59; (iv) regarding component weightings, (a) the highest weighting of a component is 6.1% (General Electric Co), (b) the lowest weighting of a component is 0.002% (Genta, Inc.), (c) the mean weighting of the components is 1.0%, (d) the median weighting of the components is 0.5%, and (e) the total weighting of the top five highest weighted components is 25.6% (General Electric Co., Exxon Mobil Corp., Pfizer, Inc., Citigroup, Inc., Microsoft Corp.); (v) regarding component available shares, (a) the most available shares of a component is 10.77 billion shares (Microsoft Corp.), (b) the least available shares of a component is 39.05 million shares (Osi Pharmaceuticals, Inc.), (c) the mean available shares of the components is 1.67 billion shares, and (d) the median available shares of the components is 924.04 million shares; (vi) regarding the six month average daily volumes of the components, (a) the highest six month average daily volume of a component is 64.6 million shares (Lucent Technologies, Inc.), (b) the lowest six month average daily volume of a component is 981,490 shares (Reynolds American, Inc.), (c) the mean six month average daily volume of the components is 11.58 million shares, (d) the median six month average daily volume of the components is 6.84 million shares, (e) the average of six month average daily volumes of the five most heavily traded components is 60.08 million shares (Lucent Technologies, Inc., Microsoft Corp., Intel Corp., Sirius Satellite Radio, Inc. & Cisco Systems, Inc.), and (f) 100% of the components had a six month average daily volume of at least 50,000; (vii) regarding option eligibility, (a) 100% of the components are options eligible, as measured by weighting, and (b) 100% of the components are options eligible, as measured by number.

ISE 50 Index

The ISE 50 Index is a subset of the ISE 250 Index, such that the components of the ISE 50 Index consist of the top 50 components that make up the ISE 250 Index, as ranked by market capitalization. Thus, the criteria for inclusion into the ISE 50 Index, as well as the maintenance of the Index, are identical to those of the ISE 250 Index.

As set forth in Exhibit 3 to the proposed as of June 11, 2004, following are the characteristics of the ISE 50 Index: (i) The total capitalization of all of the components in the Index is $5.18 trillion; (ii) regarding component capitalization, (a) the highest

capitalization of a component is $328.14 billion (General Electric, Co.), (b) the lowest capitalization of a component is $24.86 billion (Motorola, Inc.), (c) the mean capitalization of the components is $103.5 billion, and (d) the median capitalization of the components is $73.7 billion; (iii) regarding component price per share, (a) the highest price per share of a component is $93.01 (Goldman, Sachs Group, Inc.), (b) the lowest price per share of a components is $11.71 (Oracle Corp.) (c) the mean price per share of the components is $47.57, and (d) the median price per share of the components is $45.67; (iv) regarding components weightings, (a) the highest weighting of a component is 6.3% (General Electric Co.), (b) the lowest weighting of a component is 0.5% (Goldman, Sachs Group, Inc.), (c) the mean weighting of the components is 2.0%, (d) the median weighting of the components is 1.4% and (e) the total weighting of the top five highest weighted components is 26.5% (General Electric Co., Exxon Mobil Corp., Pfizer, Inc., Citigroup Inc., Microsoft Corp.); (v) regarding component available shares, (a) the most available shares of a components is 10.77 billion shares (Microsoft Corp.), (b) the least available shares of a components is 480.65 million shares (Goldman, Sachs Group, Inc.), (c) the mean available shares of the components is 2.74 billion shares, and (d) the median available shares of the components is 1.97 billion shares; (vi) regarding the six month average daily volumes of the components, (a) the highest six month average daily volume of a component is 62.59 million shares (Microsoft Corp.), (b) the lowest six month average daily volume of a component is 2.38 million shares (ConocoPhillips), (c) the mean six month average daily volume of the components is 11.63 million shares, (d) the median six month average daily volume of the components is 6.64 million shares, (e) the average of six month average daily volumes of the five most heavily traded components is 49.40 million shares (Microsoft Corp., Intel Corp., Cisco Systems, Inc., Oracle Corp. & General Electric, Co.), and (f) 100% of the components had a six month average daily volume of at least 50,000; (vii) regarding option eligibility, (a) 100% of the components are options eligible, as measured by weighting, and (b) 100% of the components are options eligible as measured by number.

Index Calculation and Index Maintenance

The base index level of the ISE 250 Index, the ISE 100 Index, and the ISE 50 Index, as of December 31, 1998, was 250, 100 and 200, respectively. On January 3, 2005, the index level of the ISE 250 Index, the ISE 100 Index and the ISE 50 Index was 227.48, 86.32, and 156.98, respectively. the Exchange proposes to base trading in options on both full-size ISE Indexes and on fractions of Full-size ISE Indexes. In particular, the Exchange proposes to list options on Mini ISE Indexes that are based on one tenth of the value of full-size ISE Indexes. The Exchange believes that listing options on reduced values will attract a greater source of customer business than if options were based only on the full value of the ISE Indexes. The Exchange further believes that listing options on reduced values will provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the ISE Indexes. Additionally, by reducing the values of the ISE Indexes, investors will be able to use this trading vehicle while extending a smaller outlay of capital. The Exchange believes that this should attract additional investors, and, in turn, create a more active and liquid trading environment.[8]

The Full-size ISE Indexes' and the Mini ISE Indexes' level shall each be calculated continuously, using the last sale price for each component stock in the ISE Indexes, and shall be disseminated every 15 seconds throughout the trading day.[9] To calculate the value of the Full-size ISE Indexes, the sum of the market value of the stocks in this ISE Indexes is divided by the base period market value (divisor). To calculate the value of the Mini ISE Indexes, the full value of the ISE Indexes is divided by ten. In order to provide continuity for the ISE Indexes' value, the divisor is adjusted periodically to reflect such events as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings and other capitalization changes.

The settlement values for purposes of settling both Full-size ISE Indexes ("Full-size Settlement Value") and Mini ISE Indexes ("Mini Settlement Value") shall be calculated on the basis of opening market prices on the business day prior to the expiration date of such options ("Settlement Day").[10] The Settlement Day is normally the Friday preceding "Expiration Saturday."[11] In the event a component security in the ISE Indexes does not trade on Settlement Day, the closing price from the previous trading day will be used to calculate both Full-size Settlement Value and Mini Settlement Value. Accordingly, trading in the ISE Indexes will normally cease on the Thursday preceding an Expiration Saturday. S&P shall calculate and the Exchange shall disseminate, both Full-size Settlement Value and Mini Settlement Value in the same manner as S&P shall calculate, and the Exchange shall disseminate, both Full-Size ISE Indexes' and Mini ISE Indexes' level.

S&P will monitor and maintain the ISE Indexes pursuant to ISE's methodology and instructions. S&P is responsible for making all necessary adjustments to the ISE Indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components. The number of common shares outstanding for each component stock will be reviewed every Friday. Share changes of less than 5% will be updated on a quarterly basis, becoming effective after the close on the third Friday of March, June, September and December of each calendar year. The index divisor is adjusted at that time to compensate for the share changes. Share changes greater than 5% will be adjusted after the close on the Wednesday of the following week. The index divisor change also becomes effective after the close on that day. Changes will be announced on the Exchange's publicly available website prior to the effective date. Unscheduled share changes due to corporate actions

[8] The concept of listing reduced value options on an index is not a novel one. *See, e.g,* Securities Exchange Act Release Nos. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (order approving File No. SR–CBOE–93–12) (approving the listing and trading of options based on one-tenth the value of the S&P 500 Index); 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (notice of filing and immediate effectiveness of File No. SR–CBOE–00–15) (listing and trading of options based on one-tenth of the value of the Nasdaq 100 Index); and 48681 (October 22, 2003), 68 FR 62337 (November 3, 2003) (order approving File No. SR–CBOE–2003–4) (approving the listing and trading of options based on one-tenth of the value of the NYSE Composite Index).

[9] The ISE Index levels shall be calculated by S&P, on behalf of the Exchange, and disseminated to the Options Price Reporting Authority ("OPRA") by the Exchange. The Exchange shall also disseminate these values to its members. The ISE Indexes will be published daily on the Exchange's publicly available website and through major quotation vendors, such as Reuters.

[10] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[11] For any given expiration month, options on the ISE Indexes will expire on the third Saturday of the month.

may be processed the same day they are announced, depending on the time the details are received by S&P. In such cases, the index divisor changes may become effective that same day and immediately announced on the Exchange's publicly available website.

The eligibility of each component of the ISE Indexes will be reviewed in June and December of each calendar year. Components that fail to meet the eligibility requirements are replaced with new component companies. Component changes may also occur between review periods if a specific corporate action makes an existing component ineligible. The Exchange maintains a Component Replacement Pool ("CRP") for the ISE Indexes at all times for contingency purposes. The CRP contains at least ten companies that meet the eligibility requirements for the ISE Indexes, ranked by market capitalization for the ISE 250 Index and the ISE 50 Index, and six-month average trading volume for the ISE 100 Index. Components removed from the ISE Indexes are replaced with those from the CRP. Component changes are made after the close on the third Friday of June and December of each calendar year, and become effective at the opening on the next trading day. All such changes will be announced on the Exchange's publicly available website at least five trading days prior to the effective date.

The Exchange represents that the ISE Indexes currently satisfy the maintenance criteria and further states that it will monitor and maintain the ISE Indexes on a quarterly basis, at which point the Exchange will notify the Market Regulation Division of the Commission if: (i) The number of securities in the ISE Indexes drops by ⅓ or more; (ii) 10% or more of the weight of 262 the ISE Indexes is represented by component securities having a market value of less than $75 million; (iii) less than 80% of the weight of the ISE Indexes is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (iv) 10% or more of the weight of the ISE Indexes is represented by component securities trading less than 20,000 shares per day; or (v) the largest component security accounts for more than 15% of the weight of the ISE Indexes or the largest five components in the aggregate account for more than 40% of the weight of the ISE Indexes: [12] In the event the Indexes fail at any time to satisfy the maintenance criteria, the ISE will not open for trading any additional series of options on the Indexes unless such failure is determined by the Exchange not to he significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.[13]

Contract Specifications

The contract specifications for options on the ISE Indexes are set forth in Exhibit 3 to the proposal. The ISE Indexes are each broad-based indexes, as defined in ISE Rule 2001(j).[14] Options on the ISE indexes as European-style and A.M. cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in ISE Rule 2008(a), will apply to the ISE Indexes. Exchange rules that are applicable to the trading of options on broad-based indexes will apply to both Full-size ISE Indexes and Mini ISE indexes.[15] Specifically, the trading of Full-size ISE Indexes and Mini ISE Indexes will be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For each of the Full-size ISE Indexes, the Exchange proposes to establish aggregate position and exercise limits at 50,000 contracts on the same side of the market, provided no more than 30,000 of such contracts are in the nearest expiration month series. For position and exercise limit purposes, Full-size ISE Indexes contracts shall be aggregated with Mini ISE Indexes contracts, where ten (10) Mini ISE Indexes contracts equal one (1) Full-size ISE Index contract.

The Exchange proposes to apply index margin requirements for the purchase and sale of options on the ISE Indexes. Accordingly, purchases of put or call options with 9 months or less until expiration must be paid for in full. Writers of uncovered put or call options must deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set strike price intervals at 2½ points for certain near-the-money series in near-term expiration months when each of the ISE Indexes is at a level below 200, and 5 point strike price intervals for other options series with expirations up to one year, and 10 point strike price intervals for longer-term options. The minimum tick size for series trading below $3 shall be 0.05, and for series trading at or above $3 shall be 0.10.

The Exchange proposes to list options on the ISE Indexes in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[16] In addition, longer-term option series ("LEAPS") having up to thirty-six (36) months to expiration may be traded.[17] The interval between expiration months on the ISE Indexes shall not be less than six months. The trading of any long-term ISE Indexes shall be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, trading rules and position and exercise limits.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the ISE Indexes, and intends to apply those same program procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets; the Amex, the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange ("CBOE"), the Chicago Stock Exchange, Inc. ("CSE"), the National Stock Exchange, Inc. ("NSE"), the NASD, the NYSE, the Pacific Stock Exchange, Inc. ("PSE") and the Philadelphia Stock Exchange, Inc. ("PHLX"). The ISG members work together to coordinate surveillance and investigative

[12] The timeframe for monitoring the ISE Indexes was changed from an annual to a quarterly basis. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Mia Zur, Attorney, Division of Market Regulation ("Division"), Commission (March 22, 2005).

[13] Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and MIA Zur, Attorney, Division, Commission (March 22, 2005).

[14] ISE Rule 2001(j) defines a "market index" or a "broad-based index" to mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

[15] *See* ISE Rules 2000 through 2012.

[16] *See* ISE Rule 2009(a)(3).

[17] *See* ISE Rule 2009(b)(1). LEAPS will be available on the Full and Reduced Value ISE Indexes. However, the Exchange is not listing reduced value LEAPS on the Reduced Value ISE Indexes pursuant to ISE Rule 2009(b)(2). Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Mia Zur, Attorney, Division, Commission (March 11, 2005).

information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange represents that it has the system capacity to adequately handle all series that would be permitted to be added by this proposal (including LEAPS). The Exchange provided to the Commission information in a confidential submission that supports its system capacity representations that will result from the introduction of both Full-size ISE Index and Mini ISE Indexes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it will permit options trading in Full-size ISE Indexes and Mini ISE Indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principals of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from member or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations 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.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2004–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–28. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–28 and should be submitted by April 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51457; File No. SR–NASD–2004–135]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Disclosure and Consent Requirements When Trading on a Net Basis With Customers

March 31, 2005.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 1, 2004, 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 February 16, 2005, NASD filed Amendment No. 1 to the proposed rule change.[4] On February 25, 2005, NASD filed Amendment No. 2 to the proposed rule change.[5] On March 21, 2005, NASD filed Amendment No. 3 to the proposed rule change.[6] 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 filing a proposed rule to require disclosure and consent when trading on a net basis with customers. Proposed new language is in *italics*.

* * * * *

2441. Net Transactions With Customers

(a) Prior to executing a transaction with a customer on a "net" basis as defined in paragraph (d) below, a member must provide disclosure to and obtain consent from the customer as provided in this Rule.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, among other things, NASD deleted each instance of the words "or similar" in the phrase "on a 'net' or similar basis" in proposed new Rule 2441.

[5] In Amendment No. 2, NASD removed underlining that inadvertently had been applied to paragraph (e) of proposed new Rule 2441 as it appeared in Exhibit 4 to Amendment No. 1.

[6] In Amendment No. 3, among other things, NASD modified proposed new Rule 2441 by substituting "adviser" for "advisor" in paragraph (b) and substituting "customer whose account qualifies" for "customer that qualifies" in paragraph (d).

(b) With respect to non-institutional customers, the member must obtain the customer's written consent on an order-by-order basis prior to executing a transaction for or with the customer on a "net" basis and such consent must evidence the customer's understanding of the terms and conditions of the order. For those non-institutional customers that have granted trading discretion to a fiduciary (e.g. an investment adviser), a member is permitted to obtain such consent from the fiduciary.

(c) With respect to institutional customers, a member may obtain customer consent through the use of a negative consent letter prior to executing a transaction for or with the customer on a "net" basis. If evidencing the consent of an institutional customer through the use of a negative consent letter, before obtaining such consent, a member must clearly disclose to the institutional customer in writing the terms and conditions for handling the customer order(s) and provide the institutional customer with a meaningful opportunity to object to the execution of transactions on a net basis. If no objection from the customer is received, then the member may reasonably conclude that the institutional customer has consented to the member trading on a "net" basis with the customer and the member may rely on such letter for all of the customer's orders (unless instructed otherwise) pursuant to this Rule.

(d) For purposes of this Rule, (1) "institutional customer" shall mean a customer whose account qualifies as an "institutional account" under Rule 3110(c)(4); and (2) "net" transaction shall mean a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price.

(e) Members must retain and preserve all documentation relating to consent obtained pursuant to this Rule in accordance with Rule 3110(a).

* * * * *

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

A riskless principal transaction is a transaction in which a member, after having received a customer order executes an offsetting transaction, as principal, with another customer or broker-dealer to fill that customer order and both transactions are executed at the same price. NASD announced amendments to the trade reporting rules that required qualifying riskless principal transactions of market makers to be the subject of a single trade report.[7] Prior to these amendments, both legs of a riskless principal transaction were reported. The amendments stipulated that a riskless principal transaction qualified for a single trade report where each side of the trade was executed at the same price, exclusive of any mark-up, mark-down, commission equivalent or other fee. The trade reporting amendments in connection with riskless principal transactions were important for several reasons including the accuracy of the order audit trail and the transactional integrity of the volume of last sales reported to the consolidated tape.

In view of the purpose and importance of these amendments, NASD also addressed the treatment of net trading.[8] Net trading is generally defined as a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price. The difference between the execution price given to the customer in a net transaction and the price of the offsetting transaction to the contra-side (other customer or broker-dealer) is in effect the market maker's compensation.[9] In sum, net trading is the transactional equivalent of a riskless principal transaction with the exception that the prices reported on both sides of the transactions are not the same. Consequently, each side of a net transaction is trade reported at its respective price.

In view of the regulatory interest in fostering a single trade report for riskless principal transactions, NASD announced that a member "working an order" (that is, finding an offsetting execution or series of executions for a customer order that the member holds) for an institutional account or in connection with a block-size order, would be presumed to be handling the worked order on a qualifying riskless principal basis with the order matched off on each side at the same price (exclusive of any mark-up or mark-down, commission equivalent or other fee) unless the customer has specifically requested that the order be traded on a net basis, at a different price.[10] Accordingly, NASD and Nasdaq recognized that there are times when a market maker will trade on a net basis with an institution and that such market maker is not precluded from accumulating a position at one price and executing the offsetting trade with the customer at another price, provided that the customer has requested that the order be traded on a net basis and such arrangement satisfies the member's best execution obligation and is consistent with SEC and NASD statements regarding the matching of limit and market orders.

In response to this guidance provided by NASD and Nasdaq, members were concerned that the presumption to trade at the same price did not reflect the fact that institutional customers have historically expected firms to trade with them on a net basis. Members also were concerned that such a presumption would place them in the difficult position of having to rebut it on nearly every institutional trade. Members requested guidance on how to document this understanding, and asked for permission to use "negative consent" letters, citing logistical difficulties with obtaining affirmative consent from customers. In response, Nasdaq, after consultation with both the SEC and NASD regulatory staff, stated that members may use negative consent letters to evidence a customer's request to trade on a net basis, as long as the letter met specified conditions, including that the letter clearly disclosed the terms and conditions for handling the order and the customer was provided a meaningful opportunity to object to the letter.[11]

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[7] *See Notice to Members* 99–65 (August 1999).

[8] *Id. See also Notice to Members* 01–85 (December 2001) (Question & Answer No. 4).

[9] Exchange Act Rule 10b–10(a)(2)(ii)(B) does not require such compensation to be separately disclosed on the customer confirmation by market makers.

[10] *Id.*

[11] *See* SEC Release No. 34–43103 (August 1, 2000); 65 FR 48774 (August 9, 2000). *See also Notice to Members* 00–79 (November 2000).

Because it has been the NASD staff's understanding that net trading typically only occurs at the request of institutional customers, NASD has not addressed specifically in prior Notices to Members a member's obligations when trading on a net basis with respect to non-institutional customers. However, given that there is a presumption that a member cannot trade on a net basis with a customer unless the customer has specifically requested it, NASD staff has taken the position that members may only trade with non-institutional customers on a net basis after obtaining their informed consent on an order-by-order basis.

To clarify and codify the NASD staff's positions, both with respect to institutional and non-institutional customers, the proposed rule change would require a member to obtain consent from a customer prior to executing a transaction with a customer on a "net" basis. Members would be required to retain and preserve all documentation relating to the consent obtained pursuant to the proposed rule in accordance with Rule 3110(a).

With respect to non-institutional customers,[12] the member must obtain the customer's written consent on an order-by-order basis prior to executing a transaction for or with the customer on a "net" basis and such consent must evidence the customer's understanding of the terms and conditions of the order. For those non-institutional customers that have granted trading discretion to a fiduciary, such as an investment adviser, a member would be permitted to obtain such consent from the fiduciary.

With respect to institutional customers, a member also must obtain consent, but it may be evidenced through the use of a negative consent letter. If using a negative consent letter, the member must clearly disclose to the institutional customer in the letter the terms and conditions for handling the customer order(s) and provide the institutional customer with a meaningful opportunity to object to the execution of transactions on a net basis in the letter. If no objection is received, then the member may reasonably conclude that the institutional customer has consented to the terms and conditions in the letter and requested that the member trade on a net basis and the member may rely on such letter for all of the customer's orders (unless instructed otherwise).

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's 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 that the proposed rule will promote investor protection by codifying the requirement that members provide disclosure and obtain customer consent when trading on a net basis.

(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 No. SR–NASD–2004–135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–NASD–2004–135. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, please use only one method. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2004–135 and should be submitted on or before April 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1554 Filed 4–5–05; 8:45 am]

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[12] For purposes of the proposed rule, "institutional customer" shall mean a customer whose account qualifies as an "institutional account" under Rule 3110(c)(4). A non-institutional customer, therefore, would be a customer whose account does not qualify as an institutional account under Rule 3110(c)(4).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51449; File No. SR–NASD–2005–034]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Provide Limited Compensation for Losses Due to Malfunctions of the Order-Execution Systems of the Nasdaq Market Center or Nasdaq's Brut Facility

March 30, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by Nasdaq. On March 24, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has filed the proposal pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to provide limited compensation for losses due to malfunctions of the order-execution systems of the Nasdaq Market Center or Nasdaq's Brut facility. Nasdaq has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change, as amended, is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

4705. Nasdaq Market Center Participant Registration

(a) through (h) No Change.

(i) *Except as provided for in paragraph (j) below,* [T]the Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Any losses, damages, or other claims, related to a failure of the Nasdaq Market Center to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq Market Center shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Nasdaq Market Center.

(j) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center or Nasdaq's Brut order execution system for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center, or Brut system, as applicable, has acknowledged receipt of the order, Quote/Order, message, or data.

(1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability shall not exceed the larger of $100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy.

(2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability shall not exceed the larger of $250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(3) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system during a single calendar month, Nasdaq's liability shall not exceed the larger of $500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(4) In the event all of the claims arising out of the use of the Nasdaq Market Center or Brut system cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising on a single trading day, or during a single calendar month, as applicable.

(5) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Nasdaq Market Center or the Brut system gave rise to the such claims. Nothing in this rule shall obligate Nasdaq or Brut to seek recovery under any applicable insurance policy.

* * * * *

4913. Limitation of Liability

Except as provided for in Rule 4705(j), [T]the Association and its subsidiaries, as well as Nasdaq and Brut and their subsidiaries, shall not be liable for any losses, damages, or other claims arising out of the System or its use. Any losses, damages, or other claims, related to a failure of the System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the System.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to provide a limited exception to its general limitation of liability rules to allow for payments of claims to users for order processing failures in the Nasdaq Market Center and Nasdaq's Brut system. Current limitation of liability rules provide that Nasdaq and Brut are not liable for any losses, damages, or claims arising out of the Nasdaq Market Center or the Brut system or their use

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made technical corrections to the propose rule text of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)

[5] 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 240.19b–4(f)(6)(iii).

and that any such losses, damages, or claims related to a failure of the Nasdaq Market Center or the Brut system must be absorbed by the member that entered the order into the Nasdaq Market Center or Brut system or that sponsored that customer entering that order.[7]

Under the proposal, Nasdaq would compensate users of either the Nasdaq Market Center or Brut for failures of the order-execution portion of either system to correctly process an order, Quote/Order, message, or other data (Order) transmitted by a market participant into it, provided receipt of the entry has been acknowledged by that system. Payments under the proposal shall be subject to the following limits:

(1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center or Brut system on a single trading day, compensation would be limited to the larger of $100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy; [8]

(2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system on a single trading day, compensation will be limited to the larger of $250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy; and

(3) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system during a single calendar month, compensation will be limited to the larger of $500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

If all of the claims arising out of the use of the Nasdaq Market Center or Brut system cannot be fully satisfied because together they exceed the maximum amount of compensation dollars available, then available monies will be allocated on a proportional basis among all such claims arising on a single trading day or during a single calendar month, as applicable. All claims for compensation must be made in writing and submitted to Nasdaq no later than the opening of trading on the next business day after the day on which the use of Nasdaq's facilities gave rise to the compensation claim.

Nasdaq states that it will apply the proposed rule in a non-discriminatory manner, and believes that the proposed rule change provides a uniform non-discriminatory method to compensate Nasdaq Market Center and Brut system users for losses arising from system malfunctions in the order execution process. Nasdaq believes that the potential availability of such compensation engenders confidence in Nasdaq market systems, and may encourage greater use of those systems thereby increasing beneficial liquidity for all system users. Finally, Nasdaq notes that another market center has a similar rule in place to likewise provide limited compensation for system malfunctions.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[10] in general, and with section 15A(b)(6) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, is subject to section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder [13] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq satisfied the five-day pre-filing requirement. In addition, Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq believes that additional benefits and protections offered to users of Nasdaq and Brut, including public customers, impacted by system malfunctions should not be delayed. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will permit users of the Nasdaq Market Center and Brut system to avail themselves of the benefits of these provisions immediately. In addition, the Commission notes that the proposed rule is substantially similar to a rule currently in place at another market center.[14] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[16]

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–2005–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

[7] *See* NASD Rules 4705(i) and 4913.

[8] The decision to seek recovery under any applicable insurance policy for any claim shall be within Nasdaq's sole discretion. *See* NASD Rule 4705(j)(5).

[9] *See* PCXE Rule 13.2.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* PCXE Rule 13.2.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–034. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–034 and should be submitted on or before April 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1555 Filed 4–5–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51458; File No. SR–NSCC–2004–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish a Comprehensive Standard of Care and Limitation of Liability to Its Members

March 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 8, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 15, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to establish a comprehensive standard of care and limitation of liability with respect to its members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC is seeking to establish a comprehensive standard of care and limitation of liability with respect to its members. Historically, the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions.[3] The Commission has reviewed clearing agency services on a case-by-case basis and in determining the appropriate standard of care has balanced the need for a high degree of clearing agency care with the effect the resulting liabilities may have on clearing agency operations, costs, and safekeeping of securities and funds.[4] Because standards of care represent an allocation of rights and liabilities between a clearing agency and its members, which are sophisticated financial entities, the Commission has refrained from establishing a unique federal standard of care and generally has allowed clearing agencies and other self-regulatory organizations and their members to establish their own standard of care.[5] In addition, the Commission has recognized that a gross negligence standard of care is appropriate for certain noncustodial functions where a clearing agency, its board of directors, and its members determine to allocate risk to individual service users.[6]

NSCC believes that adopting a uniform rule[7] limiting NSCC's liability

[17] CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release Nos. 20221 (September 23, 1983), 48 FR 45167 and 22940 (February 24, 1986), 51 FR 7169.

[4] *Id.*

[5] *Id.*

[6] Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556. NSCC's services provided to members are noncustodial in that, other than clearing fund deposits, it does not hold its members' funds or securities.

[7] The proposed language of new Section 2 of Rule 58 is as follows:

SEC. 2. Notwithstanding any other provision in the Rules:

(a) The Corporation will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill the Corporation's obligations to its Members including Settling Members, Settling Bank Only Members, Municipal Comparison Only Members, Insurance Carrier Members, TPA Members, Mutual Fund/Insurance Services Members, Non-Clearing Members, Fund Members and Data Services Only Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service or delivery service ("Third Party"), unless the Corporation was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action in selecting such Third Party.

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

(c) With respect to instructions given to the Corporation by a Special Representative/Index Recipient Agent, the Corporation shall have no responsibility or liability for any errors which may occur in the course of transmissions or recording of any transmissions or which may exist in any magnetic tape, document or other media so delivered to the Corporation.

(d) With respect to the Corporation's distribution facilities, the Corporation assumes no responsibility whatever for the form or content of any tickets, checks, papers, documents or other material (other than items prepared by it) placed in the boxes in its distribution facilities assigned to each Settling Member, Municipal Comparison Only Member, Insurance Carrier Member, TPA Member, Fund Member and Data Services Only Member, or otherwise handled by the Corporation; nor does the Corporation assume any responsibility for any improper or unauthorized removal from such boxes or from the Corporation's facilities of any such tickets, checks, papers, documents or other material, including items prepared by the Corporation.

(e) With respect to Fund/Serv transactions, the Corporation will not be responsible for the completeness or accuracy of any transaction or instruction received from or transmitted to a

to its members to direct losses caused by NSCC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action would: (1) Memorialize an appropriate commercial standard of care that will protect NSCC from undue liability;[8] (2) permit the resources of NSCC to be appropriately utilized for promoting the accurate clearance and settlement of securities; and (3) would be consistent with similar rules adopted by other self-regulatory organizations and approved by the Commission.[9]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder applicable to NSCC because it will permit the resources of NSCC to be appropriately utilized for promoting the accurate clearance and settlement of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NSCC has not solicited or received any written comments on this proposal. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 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–NSCC–2004–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NSCC–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal*. 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–NSCC–2004–09 and should be submitted on or before April 26, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1566 Filed 4–5–05; 8:45 am]

BILLING CODE 8010–01–P

Settling Member, Data Services Only Member, TPA Member, TPA Settling Entity, Mutual Fund Processor or Fund Member through Fund/Serv, nor for any errors, omissions or delays which may occur in the transmission of a transaction or instruction to or from a Settling Member, Data Services Only Member, TPA Member, TPA Settling Entity, Mutual Fund Processor or Fund Member.

(f) The Corporation will not be responsible for the completeness or accuracy of any IPS Data and Repository Data received from or transmitted to an Insurance Carrier Member, Member or Data Services Only Member through IPS nor for any errors, omissions or delays which may occur in the transmission of such IPS Data and Repository Data to or from an Insurance Carrier Member, or Data Services Only Member.

[8] NSCC has always operated under a gross negligence standard of care and both internal and external counsel have consistently advised members that this is the case. NSCC is seeking to eliminate any confusion due to the absence of a clear standard set forth in its rules and to memorialize its historical practice. In addition, NSCC has in effect a service agreement with the Fixed Income Clearing Corporation ("FICC") pursuant to which FICC provides services for NSCC's fixed income products. This service agreement provides for a gross negligence standard of care. In the absence of this proposed rule, NSCC could be in the position of having to pay for losses caused by FICC that are not recoverable under the agreement.

[9] *See, e.g.*, Securities Exchange Act Release Nos. 37421 (July 11, 1996), 61 FR 37513 [File No. SR–CBOE–96–02]; 37563 (August 14, 1996), 61 FR 43285 [File No. SR–PSE–96–21]; 48201 (July 21, 2003), 68 FR 44128 [File No. SR–GSCC–2002–10]; and 49373 (March 8, 2004), 69 FR 11921 [File No. SR–FICC–2003–09].

[10] 15 U.S.C. 78q–1.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51453; File No. SR–Phlx–2005–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Streaming Quote Trader Fees

March 30, 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 February 28, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Phlx. On March 30, 2005, Phlx filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified the proposed SQT fees in response to comments received from Commission staff.

Act [4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of fees to adopt a fee schedule for Streaming Quote Traders ("SQTs").[5] The complete text of the proposed rule change is available on Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, and at the Commission's Public Reference Room.

SQT fees and credits would apply as follows: [6]

Category I	No Charge.
SQT is eligible to trade: [6] • Up to 200 equity and index options issues. • Not eligible for a permit credit.	
Category II	$2200.00 per calendar month.
SQT is eligible to trade: • Up to 400 equity and index options issues. • Maximum permit credit is $2200.00 per calendar month.	
Category III	$3200.00 per calendar month.
SQT is eligible to trade: • Up to 600 equity and index options issues. • Maximum permit credit is $3200.00 per calendar month.	
Category IV	$4200.00 per calendar month.
SQT is eligible to trade: • Up to 800 equity and index options issues. • Maximum permit credit is $4200.00 per calendar month.	
Category V	$5200.00 per calendar month.
SQT is eligible to trade: • Up to 1000 equity and index options issues. • Maximum permit credit is $5200.00 per calendar month.	
Category VI	$6200.00 per calendar month.
SQT is eligible to trade: • Up to 1200 equity and index options issues. • Maximum permit credit is $6200.00 per calendar month.	
Category VII	$7200.00 per calendar month.
SQT is eligible to trade: • All listed equity and index options. • Maximum permit credit is $7200.00 per calendar month.	

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 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 adopt a fee schedule for SQTs in order to provide competitive fees for SQTs. The Exchange believes that the proposed SQT fee schedule creates an incentive for SQTs to remain on the Exchange's options floor, thereby providing the necessary liquidity for floor-brokered orders traded in-crowd. Currently, all Phlx listed equity options and index options trade on Phlx XL, and SQTs have had the opportunity to acclimate themselves to the electronic trading environment. Thus, the Exchange believes that it is now appropriate to assess the proposed SQT fees.

Each member organization will be assessed per month a SQT fee based on the total number of options in which all SQTs in the same member organization are assigned. A member organization will be assessed a SQT fee based on the aggregate amount of equity options and index options traded by the SQTs in that member organization. However, credits may be earned to offset the amount of the SQT fee assessed on the member organization. The amount of credit that can be earned by each member organization on a monthly basis is based on the number of permit holders, who are also SQTs, per member organization, subject to a maximum allowable permit credit applicable to each SQT category.[7] Thus, the member

[4] 15 U.S.C. 78s(b)(3)(A).

[5] A SQT is a Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with the Exchange's automated options market ("AUTOM") via an Exchange approved proprietary electronic quoting device in eligible options to which the SQT is assigned. *See* Exchange Rule 1014(b)(ii). In July 2004, the Exchange began trading equity options on Phlx XL, the Exchange's electronic trading platform for options, followed by index options in December 2004.

[6] A member organization will be assessed an SQT fee based on the aggregate amount of equity options and index options traded by the SQTs in that member organization.

[7] The amount of the credit is based on $1200 for the first ROT (acting as a SQT) permit and $1000 for each additional ROT (acting as a SQT) permit, subject to the maximum permit credit allowed for each category. For example, if a member organization is assessed a monthly Category II SQT fee of $2200.00 per calendar month, that member organization would be eligible to receive a permit credit against the $2200.00 SQT fee depending on the number of permits held by ROTs acting as SQTs within that member organization. Thus, if the member organization only had one SQT, it would receive a credit of $1200 per calendar month and would be assessed a reduced SQT fee of $1000.00 for that calendar month. However, if the member organization had two SQTs within its organization, it would receive a total credit of $2200.00 per calendar month ($1200 for the first ROT acting as a SQT and $1000 for the second ROT acting as a SQT) and would be charged a reduced SQT fee of $0.00 for that calendar month. A member organization may receive credit only for an ROT permit fee when such ROT is acting as a SQT

organization will be eligible to receive credit against the SQT fee for the number of actual permits issued to the member organization that are utilized by an SQT, resulting in a reduced SQT fee.

The proposed SQT fees and corresponding credits will be assessed on a monthly basis. The highest applicable SQT fee will be assessed based on the highest SQT category level in which the SQT was qualified at any time during a particular calendar month. For example, if a SQT is eligible to trade at any time in a given calendar month as a Category I SQT, and sometime during that same calendar month becomes qualified and eligible to trade as a Category II SQT, the SQT member organization will be assessed the fee applicable to a Category II SQT, regardless of when such SQT became eligible to trade at the Category II level, and regardless if, during that same calendar month, the SQT resumed eligibility as a Category I SQT.[8]

SQTs are assigned to trade options by the Exchange's Options Allocation, Evaluation, and Securities Committee ("OAESC").[9] Once assigned in an option by the OAESC, the Exchange's Financial Automation Department[10] activates the connections necessary for access to the Exchange's systems respecting the option symbol(s) assigned to the SQT. Thus, a SQT could not trade options in which it is not assigned, and could not thereby function as a SQT in a higher category level without being assessed the appropriate SQT fee.

All other applicable Exchange fees will continue to apply, such as transaction and comparison charges. The proposed SQT fees are scheduled to become effective for transactions settling on or after March 1, 2005.

The Exchange is also proposing to make minor technical changes to renumber certain footnotes. The purpose of renumbering the footnotes is to update the fee schedule to reflect certain footnotes that were recently added to the exchange's fee schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with section 6 of the Act,[11] in general, and furthers the objectives of section 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable fees among its members. The proposed SQT fees are lower than RSQT fees[13] because SQTs have more out-of-pocket costs associated with their streaming quote systems. For example, SQTs generally have to purchase additional software programs and hardware from outside vendors to support their streaming quote systems, in addition to incurring additional costs associated with market data (known as Hyperfeed) to enable them to price options within their particular options pricing model.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[14] and subparagraph (f)(2) of Rule 19b–4 thereunder.[15] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such 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 purpose of the Act.[16]

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–Phlx–2005–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2005–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change 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

because the Exchange has determined, based on current permit statistics, that member organizations with ROT permits do not apply for other types of permits, unlike the Remote Streaming Quote Trader ("RSQT") fee and corresponding credit. *See* Securities Exchange Act Release No. 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR–Phlx–2005–12).

[8] For example, if a member organization's SQT is eligible to trade up to 200 equity and index options issues at any time in a given month, and is thus qualified as a Category I SQT, and sometime during that month becomes eligible to trade up to 400 equity and index options issues during that same month, and is thus qualified as a Category II SQT, the member organization employing that SQT will be assessed the fee applicable to a Category II SQT, regardless of when, during that month, the SQT became eligible to trade at the Category II level.

[9] *See* Exchange Rule 507. The OAESC has jurisdiction over the allocation, retention and transfer of the privileges to deal in all options to, by and among members on the options and foreign currency options trading floors. *See* Exchange By-Law Article X, Section 10–7.

[10] The Exchange's Financial Automation Department is responsible for the design, development, implementation, testing and maintenance of the Exchange's automated trading systems, surveillance systems, and back office systems, and for monitoring the quality of performance and operational readiness of such systems, in addition to user training and validation of user technology as it pertains to such users' interfacing with the Exchange's systems.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] A RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. A RSQT may only submit such quotations electronically from off the floor of the Exchange. A RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Exchange Rule 1014(b)(ii)(B). *See* Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR–Phlx–2004–90) and 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR–Phlx–2005–12).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on March 30, 2005, the date the Phlx filed Amendment No. 1.

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–2005–16 and should be submitted on or before April 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1553 Filed 4–5–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5039]

60-Day Notice of Proposed Information Collection: Form DS–3053, Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14, OMB Control Number 1405–0129

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14.

OMB Control Number: 1405–0129.

Type of Request: Revision of a currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State, Passport Services, Office of Field Operations, Field Coordination Division. CA/PPT/FO/FC.

Form Number: DS–3053.

Respondents: Individuals or Households.

Estimated Number of Respondents: 525,000 annually.

Estimated Number of Responses: 525,000 annually.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 525,000 hours annually.

Frequency: On occasion.

Obligation to Respond: Required to Obtain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from April 6, 2005.

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

E-mail: *Cowlishawsc@state.gov*. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.

Mail (paper, disk, or CD–ROM submissions): Susan Cowlishaw, US Department of State, CA/PPT/FO/FC, 2100 Pennsylvania Avenue, NW, 3rd Floor/Room 3040/SA–29, Washington DC 20037.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Susan Cowlishaw, U.S. Department of State, CA/PPT/FO/FC, 2100 Pennsylvania Avenue, NW., 3rd Floor/ Room 3040/ SA–29, Washington DC 20037, who may be reached on 202–261–8957 or *Cowlishawsc@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14 is used by the parent(s) or legal guardian(s) of a minor U.S. citizen or non-citizen national under the age of 14 to document the written notarized consent to issuance of a U.S. passport to the minor of a parent or legal guardian who is not present at the time the application is made, or to document the existence of exigent or special family circumstances. This form is used in conjunction with Form DS–11, Application for a U.S. Passport or Registration.

Methodology: Passport Services collects the information from U.S. citizens or non-citizen nationals when they voluntarily complete and submit the Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14. Passport applicants can either download the form from the Internet or pick one up from an Acceptance Facility/Passport Agency. The form must be completed and then signed in the presence of a notary. The notary will complete his/her portion of the form and affix the notary seal. The form is then submitted along with the Form DS–11 Application for a U.S. Passport.

Dated: February 16, 2005.

Frank Moss,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 05–6936 Filed 4–5–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5038]

Guidelines for the Exercise of the Law Enforcement Authorities by Special Agents of the Diplomatic Security Service

SUMMARY: In accordance with section 202 (c) of the Foreign Relations Authorization Act, Fiscal Year 2003, which amended section 37 of the State Department Basic Authorities Act (22 U.S.C. 2709), notice is hereby given that pursuant to letters dated March 7, 2005, the State Department advised appropriate congressional committee members that the Secretary of the Department of Homeland Security and the Attorney General approved the Guidelines for the Exercise of Law Enforcement Authorities by Special Agents of the Diplomatic Security Service. This new subsection of 22 U.S.C. 2709 expands authority for special agents of the Department of State and the Foreign Service to obtain and execute subpoenas and arrest warrants and to make arrests without warrant subject to guidelines approved by the Secretary of State, the Secretary of Treasury (and now the Secretary of Homeland Security per the Homeland Security Act of 2002) and the Attorney General. The approved set of guidelines constitutes a statement of policy that will govern such activities by special agents of the Bureau of Diplomatic Security to the United States pursuant to 22 U.S.C. 2709.

[17] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Jenna M. Litschewski, Attorney Adviser, L/LM/DS, at 571–345–2955 or *litschewskij@state.gov*.

Dated: March 30, 2005.

Joe D. Morton,

Acting Assistant Secretary for Diplomatic Security Service, Department of State.

[FR Doc. 05–6822 Filed 4–5–05; 8:45 am]

BILLING CODE 4710–43–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Addendum Notice Regarding Competitive Need Limitations in the 2004 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) released a notice on February 25, 2005, to announce the product petitions that were accepted for further review in the 2004 GSP Annual Review, and set forth the schedule for comment and public hearing on these petitions, for requesting participation in the hearing, and for submitting pre-hearing and post-hearing briefs. This addendum is to inform the public of the addition of several self-initiated competitive need limitation (CNL) waiver requests and sets forth a schedule for public participation.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act states that the President must terminate GSP duty-free treatment for an article from a beneficiary developing country by July 1 of the next calendar year if the import value of that article exceeds a set amount ($115 million in 2004) or exceeds 50 percent of total U.S. imports of the article from all countries. The President has the authority to grant CNL waivers, as set forth in section 503(d) of the 1974 Act (19 U.S.C. 2463(d)).

Modifications to the list of articles eligible for duty-free treatment under the GSP and CNL waivers resulting from the 2004 Annual Review will be announced on or about June 30, 2005, in the **Federal Register**, and any changes will take effect on the effective date announced.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to any proposed CNL waiver which is included in this addition to the Annual Review (Annex II). Submissions should comply with 15 CFR part 2007, except as modified below. All submissions should identify the proposed CNL waiver(s) in terms of the HTS subheading number and country of origin as shown in Annex II. The GSP regulations (15 CFR part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. This notice specifies the schedule for public comment and hearings on the proposed CNL waivers, set out in Annex I.

Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single copy transmissions in English with the total submission not to exceed 50 single-spaced standard letter-size pages. E-mail submissions should use the following subject line: "Comments on 2004 CNL Review" followed by the HTS subheading number and the country of origin found in the Annex II and, as appropriate "Written Comments", "Notice of Intent to Testify", "Pre-hearing brief", "Post-hearing brief" or "Comments on USITC Advice". Documents must be submitted in English in one of the following formats: WordPerfect (.WPD), MSWord (.DOC) , or text (.TXT) files. Documents may not be submitted as electronic image files or contain imbedded images (for example, ".JPG", ".TIF", ".PDF", ".BMP", or ".GIF"). E-mail submissions containing such files will not be accepted. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files, formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either "PUBLIC VERSION" or "NON-CONFIDENTIAL"). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's e-mail address and other identifying information. The e-mail address for these submissions is *FR0441@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for review shortly after the due date, by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Notice of Public Hearings

Hearings will be held by the GSP Subcommittee of the TPSC on May 2, 2005, beginning at 10 a.m. at the White House Conference Center, Truman Room, 726 Jackson Place, NW., Washington, DC. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased

from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearings must submit, following the above "Requirements for Submissions", the name, address, telephone number, and facsimile number and e-mail address, if available, of the witness(es) representing their organization to the Chairman of the GSP Subcommittee by 5 p.m., April 28, 2005. Requests to present oral testimony in connection with the public hearings must be accompanied by a written brief or statement, in English, and also must be received by 5 p.m., April 28, 2005. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted, in English, by 5 p.m., May 27, 2005. Parties not wishing to appear at the public hearings may submit post-hearing written briefs or statements, in English, by 5 p.m., May 27, 2005.

In accordance with sections 503(a)(1)(A) and 503(e) of the 1974 Act and the authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, the U.S. Trade Representative has requested that the USITC provide its advice on the probable economic effect of the proposed CNL waivers. Comments by interested persons on the USITC Report prepared as part of the product review should be submitted by 5 p.m., 5 days after the date of USITC publication of its report.

Jon Rosenbaum,

Acting Executive Director for GSP, GSP Subcommittee of the Trade Policy Staff Committee.

BILLING CODE 3190–W5–P

Annex I

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

COMPETITIVE NEED LIMITATION ADDENDUM TO THE 2004 GSP ANNUAL REVIEW PUBLIC COMMENT AND HEARING SCHEDULE

April 28, 2005	Due Date for Requests to Appear at Public Hearings and Submission of Pre-hearing Briefs.
April 28, 2005	Due Date for Providing the Name, Address, Telephone, Fax, Email Address and Organization of Witnesses.
May 2, 2005	USTR's TPSC GSP Subcommittee Public Hearings to Be Held at White House Conference Center, Truman Room, 726 Jackson Place, N.W. (Between H Street and Pennsylvania Avenue on Lafayette Square), Washington D.C.
May 27, 2005	Due Date for Submission of Post-hearing and Rebuttal Briefs.
June 2005	USITC Scheduled to Publish Report to the President.
	Comments on the USITC Report to the President due 5 days after USITC date of publication.
June 30, 2005	Annual Review Decisions Scheduled to Be Announced on or about this Date.

For Further Information Contact GSP Information Center, Office of the U.S. Trade Representative, 1724 F Street, N.W., Washington, D.C. 20508 Telephone: 202-395-6971

For Public Documents Related to this Review: USTR Public Reading Room, 1724 F Street N.W., Washington, D.C. Appointments May Be Made from 9:30 A.M. to Noon and 1 P.M. to 4 P.M., Monday Through Friday by Calling (202) 395-6186.

Notification of Any Changes Will Be Given in the *Federal Register*.

Annex II
Possible CNL Waivers

Case Number	Country	HTS subheading	Description	MFN Tariff	2004 Imports ($1,000)	2003 % of Total Imports
Adden 2004-19	Indonesia	4412.13.40	Plywood sheets n/o 6 mm thick	8%	160,201	32.5%
Adden 2004-20	Thailand	7113.11.50	Silver jewelry, valued over $18 per dozen	5%	174,083	23.2%
Adden 2004-21	Indonesia	9001.30.00	Contact lenses	2%	127,043	32.3%
Adden 2004-22	Thailand	9009.12.00	Electrostatic photocopying apparatus	3.7%	22,090	51%
	Total Imports (CNLs)				483,417	

[FR Doc. 05–6935 Filed 4–5–05; 8:45 am]
BILLING CODE 3190–W5–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 18, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–20676.
Date Filed: March 16, 2005.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 MATL–EUR 0093 dated 11 February 2005
Mid Atlantic-Europe Resolutions, r1–r11
PTC12 MATL–EUR 0095 dated 16 March 2005
PTC12 MATL–EUR Fares 0040 dated 15 February 2005
Mid Atlantic-Europe Specified Fares Tables
PTC12 MATL–EUR 0094 dated 18 March 2005
Amendment to Commencement of Filing Period
Intended effective date: 1 April 2005.

Docket Number: OST–2005–20677.
Date Filed: March 16, 2005.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0130 dated 11 February 2005
South Atlantic-Europe Resolutions r1–r11
PTC12 SATL–EUR 0132 dated 16 March 2005
PTC12 SATL–EUR 0041 dated 11 February 2005
South Atlantic-Europe Specified Fares Tables
PTC12 SATL–EUR Fares 0042 dated 22 February 2005
Correction to Memorandum Number
PTC12 SATL–EUR 0131 dated 18 March 2005
Amendment to Commencement of Filing Period
Intended effective date: 1 April 2005.

Docket Number: OST–2005–20678.
Date Filed: March 16, 2005.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 MEX–EUR 0070 dated 11 February 2005

Mexico-Europe Resolutions r1–r13
PTC12 MEX–EUR 0072 dated 16 March 2005
PTC12 MEX–EUR Fares 0032 dated 18 February 2005
Mexico-Europe Specified Fares Tables
PTC12 MEX–EUR 0071 dated 18 March 2005
Amendment to Filing Period
Intended effective date: 1 May 2005.

Docket Number: OST–2005–20702.
Date Filed: March 15, 2005.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/122 dated March 4, 2005
Finally Adopted Resolutions & Recommended Practices r1–28
PSC/Mins/011 dated March 4, 2005
Intended effective date: June 1, 2005.

Docket Number: OST–2005–20703.
Date Filed: March 18, 2005.
Parties: Members of the International Air Transport Association.
Subject:
MV/PSC/014 dated 07 February 2005
Mail Vote Number S 081
Recommended Practice 1720a—Standard Thirteen Digit Numbering System for Traffic Documents
Intended effective date: 1 April 2005.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–6724 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 18, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7655.
Date Filed: March 18, 2005.
Due Date for Answers, Conforming Applications, or Motion To Modify Scope: April 11, 2005.

Description: Application of Delta Air Lines, Inc., requesting renewal of its certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail between Atlanta, GA and Bogota, Columbia.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–6725 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2005–20112]

Regulatory Review

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice of public meeting.

SUMMARY: On January 26, 2005, the Department of Transportation (DOT) published a notice of regulatory review explaining its intent to conduct a review of its existing regulations and its current Regulatory Agenda. As part of this review, the Department announced that it would hold a public meeting to discuss and consider the public's comments. We are now publishing the agenda for that meeting.

DATES: The public meeting will be on April 12, 2005, in Washington, DC, beginning at 9:30 a.m. The comment period for this regulatory review closes on April 29, 2005.

ADDRESSES: The public meeting will be held at the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, in room 2230.

FOR FURTHER INFORMATION CONTACT: Karen Starring, Attorney Advisor, Office of General Counsel, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590–0001. Telephone (202) 366–4723. E-mail *karen.starring@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

We published a notice of regulatory review on January 26, 2005 (70 FR 3761) that invited public comment on how we could (1) improve our rules to be more effective and less costly or burdensome, (2) identify rules no longer needed and/or new rules that may be needed, and (3) help prioritize our current rulemaking activities, which are set forth in our semi-annual Regulatory Agenda (69 FR 73492, Dec. 13, 2004). We also announced that we would hold a public meeting in Washington, DC, on April 12 and 19, 2005, to further facilitate this process. Based on the requests for participation, we have determined that all participants can be accommodated in one day. Therefore, we will hold the public meeting on April 12, 2005.

Public Meeting Procedures

1. The meeting will be open to all persons who have requested in advance to participate. Seats for other attendees will be available on a first-come, first-serve basis. Please note that seats may become available throughout the public meeting as attendees come and go.

2. This public meeting is being held at the Department of Transportation Headquarters and, therefore, all participants and attendees are subject to federal security screening. All participants and attendees must enter through the Southwest entrance (corner of Seventh and E Street) and bring photo identification. Participants or attendees who have Federal government identification will still need to check in, but will not be required to sign-in. To facilitate security screening, all participants and attendees are encouraged to limit the bags and other items that they bring into the building. Anyone exiting the building for any reason will be required to re-enter through the security checkpoint at the Southwest entrance.

3. The Department's General Counsel will preside over the public meeting. Senior officials of the Department's operating administrations also will attend this meeting.

4. Participants must limit their presentations and submissions of data to the issues discussed in their comments submitted in preparation for the public meeting.

5. We currently plan to make a record of the meeting available in the Department's Internet accessible public docket as soon as possible following the public meeting.

6. We will review and consider all information presented at the public meeting. Position papers or materials presenting views or information related to the issues discussed at the public meeting may be accepted at the discretion of the presiding officer. Please provide 5 copies of all material that you present at the public meeting so we will have copies for all panel members. You may provide additional

copies for staff and the audience at your discretion.

7. The meeting is designed to solicit public views and gather additional information for our regulatory review. Therefore, the meeting will be conducted in an informal and non-adversarial manner. No individual will be subject to cross-examination by any other participant; however, DOT representatives may ask questions. In developing prepared remarks, participants should leave time for questions and discussion by the panel during their remarks.

8. We will consider all comments made at the public meeting and those written comments submitted to the docket before publishing a report providing at least a brief response to the comments we have received, including a description of any further action we intend to take.

9. We have tried to accurately allocate time to the participants based on the issues raised in their initial comments and requests for participation. However, we intend to keep the public meeting flowing so participants and others interested in a specific agenda item should arrive early.

Public Meeting Agenda

9:30 a.m. Opening Remarks.
9:40–10 a.m. Electronic Recordkeeping; Locomotive Inspections.
Administration: Federal Railroad Administration.
Participant: Association of American Railroads.
10–10:40 a.m. Hours of Service.
Administration: Federal Motor Carrier Safety Administration.
Participants: Association of American Railroads; American Road & Transportation Builders Association; American Trucking Associations.
10:40–11 a.m. Controlled Substances Testing Requirements; Commercial Vehicle Lighting; Safety Requirements for Intermodal Equipment Providers.
Administrations: Federal Motor Carrier Safety Administration; Office of the Secretary of Transportation; National Highway Traffic Safety Administration.
Participant: American Trucking Associations.
11–11:30 a.m. Regulatory Reform.
Administration: National Highway Traffic Safety Administration.
Participant: Alliance of Automobile Manufacturers Association.
11:30–11:50 a.m. Environmental Streamlining; Clean Air Act Conformity; Historic Preservation.
Administration: Federal Highway Administration.
Participant: American Road & Transportation Builders Association.
11:50–12:10 p.m. Disadvantaged Business Enterprise Program.
Administration: Office of the Secretary of Transportation.
Participant: American Road & Transportation Builders Association.
12:10–1:30 p.m. Lunch.
1:30–2:15 p.m. Dangerous Goods/ Hazardous Materials and Safety.
Administrations: Pipeline and Hazardous Materials Safety Administration; Federal Aviation Administration; Federal Motor Carrier Safety Administration.
Participants: Federal Express Corporation; American Trucking Associations.
2:15–2:30 p.m. DOT Reporting Regulations.
Administration: Office of the Secretary of Transportation.
Participant: Federal Express Corporation; United Air Lines.
2:30–2:45 p.m. Cost/Benefit Analysis—FAA Regulations.
Administration: Federal Aviation Administration.
Participant: Federal Express Corporation.
2:45–3 p.m. Lap Child Safety.
Administration: Federal Aviation Administration.
Participant: Baby B'Air Flight Vests.
3–3:15 p.m. Airport Access to Low Fare Carriers.
Administration: Federal Aviation Administration.
Participant: Air Carrier Association of America.
3:15–4 p.m. General Rulemaking.
Administration: Department of Transportation.
Participants: Air Transport Association of America, Inc.; Air Carrier Association of America; United Air Lines, Inc.
4–4:15 p.m. Rates and Tariffs; Code-Share Requirements; Joint-Venture Agreements.
Administration: Office of the Secretary of Transportation.
Participant: United Air Lines, Inc.
4:15–4:30 p.m. Interpretations of Regulations/Enforcement—Aviation.
Administration: Office of the Secretary of Transportation.
Participants: American Society of Travel Agents, Inc.; Air Carrier Association of America.

The Department appreciates the efforts and the information provided by all of the participants in this process. We continue to welcome and encourage comments until April 29, 2005, and those comments will be taken into consideration in our final report.

Regulatory Notices

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

Authority: 5 U.S.C. 610; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

Issued this 30th day of March, 2005, in Washington, DC.

Rosalind A. Knapp,

Deputy General Counsel.

[FR Doc. 05–6723 Filed 4–5–05; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–18]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair (425–227–1556), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 31, 2005.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2004–16969.

Petitioner: Israel Aircraft Industries, Ltd.

Sections of 14 CFR Affected: 14 CFR 25.810(a)(1), 25.857(e), and 25.1447(c)(1)

Description of Relief Sought/Disposition: To allow carriage of three non-crewmembers (commonly referred to as supernumeraries) located aft of the flight deck on Boeing Model 767–200 airplanes which have been converted from a passenger to a freighter configuration.

Grant of Exemption, 03/28/2005, Exemption No. 8350A

[FR Doc. 05–6728 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20560]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 30 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before May 6, 2005.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2005–20560.

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

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 30 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Edmund J. Barron

Mr. Barron, age 36, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "Based on this examination, it is my medical opinion that Mr. Barron has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Barron submitted that he has driven straight trucks for 1 year, accumulating 40,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.2 million miles. He holds a Class A commercial driver's license (CDL) from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

2. Eddie M. Brown

Mr. Brown, 47, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2004 and stated, "I would like to certify that in my medical opinion Mr. Eddie Brown has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Brown submitted that he has driven straight trucks for 20 years, accumulating 1.0 million miles, and tractor-trailer combinations for 19 years, accumulating 345,000 miles. He holds a Class AM CDL from South Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

3. Tony Cook

Mr. Cook, 38, has central field loss in his right eye due to an injury in 1987. His best-corrected visual acuity in the

right eye is light perception and in the left, 20/15. Following an examination in 2004, his optometrist certified, "Based upon my findings and medical expertise, I hereby certify Tony Cook to be visually able to safely operate a commercial motor vehicle." Mr. Cook submitted that he has driven straight trucks for 8 years, accumulating 624,000 miles. He holds a Class D driver's license from Kentucky. His driving record for the last 3 years shows two crashes and one conviction for a moving violation in a CMV. According to police report for the first crash, another driver crossed the center line and struck Mr. Cook's vehicle. The report indicated that inattention by the other driver was a contributing factor in the crash. Neither driver was cited. According to the police report for the second crash, Mr. Cook was attempting to back a tractor-trailer onto private property from a roadway when another driver collided with his vehicle. The other driver was cited; Mr. Cook was not cited. The moving violation, which occurred on a separate occasion, was exceeding the speed limit by 15 mph.

4. Jeffery W. Cotner

Mr. Cotner, 42, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2004, his optometrist certified, "It is my medical opinion that Mr. Cotner does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Cotner reported that he has driven tractor-trailer combinations for 13 years, accumulating 230,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

5. John K. Fank

Mr. Fank, 43, had a retinal detachment in his right eye 15 years ago. The best-corrected visual acuity in his right eye is 20/150 and in the left, 20/20. His optometrist examined him in 2004 and stated, "This patient appears to have sufficient sight and peripheral vision to continue driving his commercial vehicle as safely as demonstrated over previous years." Mr. Fank reported that he has driven straight trucks for 11 years, accumulating 247,000 miles, and tractor-trailer combinations for 10 years, accumulating 195,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

6. Bobby G. Fletcher

Mr. Fletcher, 38, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2004 and noted, "In my professional opinion this patient should have sufficient vision with corrective lenses to operate a commercial vehicle." Mr. Fletcher reported that he has driven tractor-trailer combinations for 10 years, accumulating 600,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

7. Lonny L. Ford

Mr. Ford, 58, has had a macular scar in his right eye since age 8. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his ophthalmologist noted, "It is my medical opinion this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ford reported that he has driven straight trucks for 34 years, accumulating 2.8 million miles. He holds a Class D driver's license from Tennessee. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

8. Larry G. Garcia

Mr. Garcia, 52, had a retinal detachment in his right eye in 1995. The visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2004 his optometrist stated, "It is my opinion, Larry Garcia has sufficient vision and visual field to perform driving tasks required for operating a commercial vehicle." Mr. Garcia reported that he has driven straight trucks for 25 years, accumulating 1.2 million miles, and tractor-trailer combinations for 10 years, accumulating 780,000 miles. He holds a Class C driver's license from Oregon. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 17 mph.

9. Robert E. Hendrick

Mr. Hendrick, 63, has corneal damage in his right eye due to an injury in 1964. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2004, his optometrist noted, "I certify that Mr. Hendrick has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hendrick submitted that he has driven straight trucks for 45 years, and tractor-trailer combinations for 30 years, accumulating 900,000 miles in each. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

10. Jonah G. Higdon

Mr. Higdon, 34, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2004, his optometrist certified, "It is my professional opinion that Mr. Higdon has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Higdon reported that he has driven straight trucks for 14 years, accumulating 250,000 miles. He holds a driver's license from Mississippi. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

11. Daniel J. Hillman

Mr. Hillman, 61, experienced a retinal detachment in his right eye in November 2001. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "In my opinion Mr. Hillman retains sufficient vision to perform as a commercial driver." Mr. Hillman reported that he has driven straight trucks for 7 years, accumulating 602,000 miles, and tractor-trailer combinations for 26 years, accumulating 2.3 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, Mr. Hillman's vehicle collided with an oncoming vehicle, and the investigating officer was unable to determine which vehicle was over the double center line. Neither driver was cited.

12. Ronald A. Johnsón

Mr. Johnson, 55, had cataract surgery followed by infection and loss of his left eye in the year 2000. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2004, his optometrist noted, "In my opinion he has adequate vision to drive and is safe to drive a commercial vehicle with proper side mirrors." Mr. Johnson reported that he has driven tractor-trailer combinations for 25 years, accumulating 2.7 million miles. He holds a Class DA CDL from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

13. Clyde H. Kitzan

Mr. Kitzan, 47, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/15. His optometrist examined him in 2004 and certified, "Because of his past history of successfully operating trucks and equipment, and because his vision has been stable for approximately 35 years, it is my opinion Mr. Kitzan is visually capable of operating a commercial vehicle." Mr. Kitzan reported that he has driven straight trucks and tractor-trailer combinations for 15 years, accumulating 750,000 miles in each. He holds a Class AM CDL from North Dakota. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 12 mph.

14. Joe S. Lassiter, III

Mr. Lassiter, 62, lost his right eye due to an injury 37 years ago. The best-corrected visual acuity in his left eye is 20/20. Following an examination in 2004, his optometrist noted, "I certify in my opinion, Mr. Lassiter has sufficient vision in his left eye to operate a commercial vehicle." Mr. Lassiter submitted that he has driven straight trucks for 39 years, accumulating 1.1 million miles, and tractor-trailer combinations for 12 years, accumulating 600,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

15. Gene A. Lesher, Jr.

Mr. Lesher, 30, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. Following an examination in 2004, his optometrist certified, "Based on his display of 20/20 binocular vision, his good depth perception, the presence of a full visual field, and his previous driving history with the longstanding nature of his visual condition, it is my opinion that Mr. Lesher has sufficient vision to perform the driving tasks associated with operating a commercial vehicle." Mr. Lesher reported that he has driven tractor-trailer combinations for 8 years, accumulating 936,000 miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 13 mph.

16. Eugene A. Maggio

Mr. Maggio, 62, lost his right eye due to an injury in 2001. The best-corrected visual acuity in his left eye is 20/20. His optometrist examined him in 2004 and noted, "In my medical opinion, Mr. Maggio has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Maggio reported that he has driven straight trucks for 2 years, accumulating 2,000 miles, and tractor trailer-combinations for 38 years, accumulating 4.1 million miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

17. Anthony R. Miles

Mr. Miles, 40, lost his left eye due to trauma 15 years ago. His visual acuity in the right eye is 20/20. Following an examination in 2004, his optometrist certified, "In my opinion, Mr. Miles has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Miles submitted that he has driven straight trucks for 18 years, accumulating 250,000 miles, and tractor-trailer combinations for 9 years, accumulating 630,000 miles. He holds a Class AM CDL from Nevada. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

18. Raymond E. Morelock

Mr. Morelock, 54, has no vision in the right eye due to trauma from childhood. His visual acuity in the left eye is 20/20. Following an examination in 2005, his optometrist certified, "It is my professional opinion that the defect in Mr. Morelock's right eye will not affect the safe operation of a motor vehicle, whether private or commercial." Mr. Morelock submitted that he has driven straight trucks for 14 years, accumulating 100,000 miles. He holds a Class D driver's license from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

19. Kenneth L. Nau

Mr. Nau, 47, has had a macular scar in his left eye since birth. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2004, his ophthalmologist noted, "Mr. Nau has maintained a safe driving record for many years and has always driven with mild visual disability of the left eye. Since it has always been present, he has functioned well, and his peripheral visual acuity is excellent, there is no reason to believe that he cannot continue to operate commercial vehicles." Mr. Nau submitted that he has driven straight trucks for 25 years, accumulating 2.0 million miles. He holds a Class AM CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

20. David L. Peebles

Mr. Peebles, 52, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2005 and certified, "To the best of my opinion, I would think that visually he can continue to drive commercial vehicles with little or no problems." Mr. Peebles submitted that he has driven straight trucks for 3 years, accumulating 180,000 miles, and tractor-trailer combinations for 21 years, accumulating 2.6 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. David W. Peterson

Mr. Peterson, 26, has amblyopia in his right eye. The visual acuity in his right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2004 and certified, "His vision is more than adequate to perform the tasks required of him while driving and should remain stable over the next several years." Mr. Peterson submitted that he has driven tractor-trailer combinations for 6 years, accumulating 600,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 9 mph.

22. Frederick G. Robbins

Mr. Robbins, 50, has had a retinal scar in his right eye since 1998. The best-corrected visual acuity in his right eye is 20/70 and in the left, 20/20. His ophthalmologist examined him in 2004 and noted, "His vision is sufficient to drive a commercial vehicle." Mr. Robbins reported that he has driven tractor-trailer combinations for 27 years, accumulating 1.3 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows one crash and one conviction for a moving violation in a CMV. According to the police report, Mr. Robbins' vehicle collided with another vehicle traveling in the same direction, but the investigating officer did not determine how the crash happened. The other driver was cited; Mr. Robbins was not cited.

23. Jose C. Sanchez-Sanchez

Mr. Sanchez-Sanchez, 37, lost his left eye due to an injury 25 years ago. The visual acuity in his right eye is 20/25.

His optometrist examined him in 2004 and certified, "I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Sanchez-Sanchez submitted that he has driven straight trucks for 16 years, accumulating 160,000 miles, and tractor-trailer combinations for 10 years, accumulating 130,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

24. Boyd D. Stamey

Mr. Stamey, 43, has a macular scar in the left eye due to injury in 2001. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. Following an examination in 2004, his ophthalmologist certified, "It is my opinion that you have very stable vision in the eye and indeed the left eye continues to improve. I see no reservation with your having a commercial driver's license. You should be able to perform with the restrictions you have with this left eye, in keeping with the slightly reduced vision." Mr. Stamey reported that he has driven tractor-trailer combinations for 10 years, accumulating 960,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, Mr. Stamey was stopped in traffic when his vehicle was struck on the side by another driver who was trying to avoid rear-ending a vehicle in front of him. Neither Mr. Stamey nor the driver of the vehicle which struck his was cited.

25. Scott C. Teich

Mr. Teich, 40, has had astigmatism in his left eye since childhood. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2004, his optometrist certified, "In my opinion, Mr. Teich possesses sufficient vision to safely operate a commercial vehicle and perform the driving tasks that are required." Mr. Teich reported that he has driven tractor-trailer combinations for 10 years, accumulating 900,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 5 mph.

26. Emerson J. Turner

Mr. Turner, 60, has a central vision deficit in his right eye due to trauma 15 years ago. His best-corrected visual acuity in the right eye is finger counting and in the left, 20/20. Following an examination in 2004, his optometrist certified, "In my medical opinion, Mr. Turner appears to have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Turner reported that he has driven tractor-trailer combinations for 3 years, accumulating 348,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and two convictions for moving violations in a CMV. The moving violations were "failure to obey traffic control device" and exceeding the speed limit by 15 mph.

27. Daniel E. Watkins

Mr. Watkins, 41, underwent a congenital cataract operation in his left eye in 1964. The visual acuity in his right eye is 20/20 and in the left, finger counting. His ophthalmologist examined him in 2004 and stated, "It is my medical opinion that Mr. Watkins has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Watkins reported that he has driven straight trucks and tractor-trailer combinations for 5 years, accumulating 625,000 miles in each. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 11 mph.

28. Dean E. Wheeler

Mr. Wheeler, 51, had a corneal transplant in his right eye prior to 1996. The best-corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "I feel in my medical opinion that Mr. Dean Wheeler has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wheeler reported that he has driven straight trucks for 5 years, accumulating 60,000 miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

29. Michael C. Williams, Sr.

Mr. Williams, 36, lost the vision in his left eye due to an injury in 1992. His visual acuity in the right eye is 20/20. Following an examination in 2004, his optometrist noted, "In summary, the eye health is normal and vision is clear and normal. There appears to be no concern or limit to his visual ability to drive in general or to drive commercially." Mr. Williams reported that he has driven straight trucks for 7 years, accumulating 350,000 miles, and tractor-trailer combinations for 9 years, accumulating 720,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

30. Louie E. Workman

Mr. Workman, 55, has amblyopia in his right eye. His best-corrected visual acuity in his right eye is 20/70 and in the left, 20/30. His ophthalmologist examined him in 2004 and noted, "In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Workman submitted that he has driven straight trucks for 30 years, accumulating 1.5 million miles, and tractor-trailer combinations for 15 years, accumulating 75,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: March 31, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–6804 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Pipeline and Hazardous Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer Billings, Office of Hazardous

Materials Exemptions and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Applications Number Suffixes

N—New application.
M—Modification request.
X—Renewal.
PM—Party to application with modification request.

Issued in Washington, DC, on April 1, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

New Exemption Applications

Application number	Applicant	Reason for delay	Estimated date of completion
13054–N	CHS Transportation, Mason City, IA	4	04–30–2005
13183–N	Becton Dickinson, Sandy, UT	4	04–30–2005
13188–N	General Dynamics, Lincoln, NE	3	04–30–2005
13281–N	The Dow Chemical Company, Midland, MI	4	04–30–2005
13309–N	OPW Engineered Systems, Lebanon, OH	4	04–30–2005
13295–N	Taylor-Wharton, Harrisburg, PA	1	04–30–2005
13266–N	Luxfer Gas Cylinders, Riverside, CA	1	04–30–2005
13422–N	Puritan Bennett, Plainfield, IN	3	04–30–2005
13314–N	Sunoco Inc., Philadelphia, PA	4	04–30–2005
13958–N	Department of Defense, Fort Eustis, VA	1	04–30–2005
13957–N	T.L.C.C.I., Inc., Franklin, TN	4	05–31–2005
13960–N	Terumo Heart, Inc., Ann Arbor, MI	4	05–31–2005
13858–N	U.S. Ecology Idaho, Inc. (USEI), Grand View, ID	1	04–30–2005
13776–N	MHF Logistical Solutions, Cranberry Twp., PA	4	04–30–2005
13636–N	Timberline Environmental Services, Cold Springs, CA	4	04–30–2005
13582–N	Linde Gas LLC (Linde), Independence, OH	4	04–30–2005
13563–N	Applied Companies, Valencia, CA	4	04–30–2005
13547–N	CP Industries, McKeesport, PA	4	04–30–2005
13346–N	Stand-By-Systems, Inc., Dallas, TX	1	04–30–2005
13347–N	ShipMate, Inc., Torrance, CA	4	04–30–2005
13341–N	National Propane Gas Association, Washington, DC	1	04–30–2005
13302–N	FIBA Technologies, Inc., Westboro, MA	4	04–30–2005

Modification to Exemptions

Application number	Applicant	Reason for delay	Estimated date of completion
7277–M	Structural Composites Industries, Pomona, CA	3	04–30–2005
11241–M	Rohm and Haas Co., Philadelphia, PA	1	05–31–2005
11526–M	BOC Gases Americas, Murray Hill, NJ	4	05–31–2005
10319–M	Amtrol, Inc., West Warwick, RI	4	05–31–2005
12284–M	The American Traffic Safety Services Assn. (ATSSA), Fredericksburg, VA	1	04–30–2005
6263–M	Amtrol, Inc., West Warwick, RI	4	05–31–2005
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	05–31–2005
10915–M	Luxfer Gas Cylinders (Composite Cylinder Division), Riverside,CA	1	05–31–2005
7280–M	Department of Defense, Ft. Eustis, VA	4	05–31–2005
10878–M	Tankcon FRP Inc., Boisbriand, Qc	1,3	05–31–2005
12022–M	Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA	4	04–30–2005
10019–M	Structural Composites Industries, Pomona, CA	3	04–30–2005
8162–M	Structural Composites Industries, Pomona, CA	3	04–30–2005
8718–M	Structural Composites Industries, Pomona, CA	3	04–30–2005
9649–X	U.S. Department of Defense, Fort Eustis, VA	1	04–30–2005

[FR Doc. 05–6803 Filed 4–5–05; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety: Strapping Table Calibration for Pipeline Breakout Tank Operators

AGENCY: Office of Pipeline Safety (OPS), Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: This advisory notice alerts pipeline operators of all hazardous liquid pipeline facility systems about the need to validate the accuracy of breakout tank strapping tables. Under certain circumstances, strapping table errors can potentially lead to dangerous conditions.

FOR FURTHER INFORMATION CONTACT: Joy Kadnar by phone at (202) 366–0568, by fax at (202) 366–4566, or by e-mail, *joy.kadnar@dot.gov*. General information about the Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (OPS) programs may be obtained by accessing the home page at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A breakout tank exploded and subsequently ignited in Glenpool, Oklahoma on April 7, 2003. The accident involved an 80,000-barrel breakout tank that exploded and burned as it was being filled with diesel. The resulting fire burned for over 20 hours and damaged two other nearby breakout tanks. While there were no injuries or fatalities, the cost of the accident exceeded two million dollars, residents adjacent to the accident site were evacuated, and area schools were closed for two days.

The National Transportation Safety Board (NTSB) conducted an investigation into the accident and subsequently published a Pipeline Accident Report titled "Storage Tank Explosion and Fire in Glenpool, Oklahoma." In its findings adopted on October 13, 2004, the NTSB issued a recommendation to OPS to issue an advisory bulletin to liquid pipeline operators to validate the accuracy of their tank strapping tables.

The breakout tank that exploded contained an internal floating roof system equipped with pontoons that float on top of the product at a certain level. The tank also had legs that supported the roof whenever the product was drained and the volume of liquid in the tank decreased to the level at which the roof no longer floated. Additionally, the tank had two Supervisory Control and Data Acquisition System (SCADA) alarms to alert controllers when the volume was nearing the level at which the roof would no longer float. The alarm set points were based on the landed height of the floating roof assumed in the operator's strapping table.

NTSB determined that based on the height measurement of the floating roof documented on the construction inspection report, and based on measurements investigators made after the accident, the strapping table was incorrect. Specifically, the distance from the bottom of the pontoon to the datum plate was found to be higher than indicated on the pre-accident strapping table. The surface of the charged diesel was within approximately two inches of the pontoons at the time of the explosion. This, according to NTSB, is the most likely time for a static discharge to occur. Based on this finding, as well as other contributing factors, the NTSB determined that an incorrect measurement on the strapping table contributed to the cause(s) of the accident.

II. Advisory Bulletin ADB–05–02

To: Owners and Operators of All Pipeline Facilities Who Rely on Strapping Tables to Determine Volume Based on Measured Height For Product Level.

Subject: Validation of Strapping Tables to Reduce the Likelihood of Errors That May Lead to Dangerous Conditions in Breakout Tanks.

Purpose: To advise owners and operators of all hazardous liquid pipeline facilities about the need to validate strapping tables.

Advisory: Strapping Tables are commonly used to determine the commodity volume based on product level within breakout tanks. If the strapping table is incorrect, operators may expose themselves and the community to unnecessary risks.

OPS seeks to advise operators that they should review and, if necessary, revise their breakout tank operating procedures to minimize risk. The strapping tables should be validated to reduce the potential for errors that may lead to dangerous conditions, such as static discharge inside a tank after a floating roof has been either intentionally or unintentionally landed. Pipeline operators, therefore, may need to adjust the measurements on their strapping tables to ensure accuracy.

Issued in Washington, DC, on March 18, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–6729 Filed 4–5–05; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–04–19914; Notice 1]

Pipeline Safety: Petition for Waiver; Enstar Natural Gas Company

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice; Petition for Waiver.

SUMMARY: Enstar Natural Gas Company (Enstar) has petitioned the Office of Pipeline Safety (OPS) for a waiver of the pipeline safety regulation that prohibits tracer wire from being wrapped around the pipe.

DATES: Persons interested in submitting written comments on the waiver request described in this Notice must do so by May 6, 2005. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov*.

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov*, click on "Comment/Submissions." You can also read comments and other material in the docket. General information about the Federal pipeline safety program is available at *http://ops.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, PHMSA, Office of Pipeline Safety, 400 7th Street, SW., Washington, DC 20590, or by e-mail at *james.reynolds@dot.gov.*

SUPPLEMENTARY INFORMATION: The pipeline safety regulation at 49 CFR 192.321(e), Installation of plastic pipe, requires plastic pipe that is not encased to have an electrically conducting wire or other means of locating the pipe while it is underground. Tracer wire may not be wrapped around the pipe and contact with the pipe must be minimized but is not prohibited. Tracer wire or other metallic elements installed for pipe locating purposes must be resistant to corrosion damage, either by use of coated copper wire or by other means.

Enstar is requesting a waiver from § 192.321(e) because lightning strikes are rare in their service area, and Enstar believes there will be more, not fewer, incidents on their pipeline if they are forced to discontinue the practice of wrapping tracer wire around their plastic pipe.

According to Enstar, the Bureau of Land Management (BLM) tracks occurrences of lightning strikes to monitor forest fire activity. BLM has lightning detection systems throughout Alaska in locations were lightning strikes are frequent, mainly north and west of the Alaska Range. Lightning strikes are recorded by electrical sensors at nine stations in Alaska. Where lightning strikes are not common, such as south and east of the Alaska Range, lightning detection systems are not installed. Enstar's service area is in south central Alaska, an area without lightning detection systems. Since 1972, Enstar's standard practice has been to wrap tracer wire around their plastic pipe. Because of the unique geographical and climatic conditions of the area, lightning strikes on their plastic pipe system are extremely rare. In 32 years, Enstar has recorded only one confirmed incident due to lightning strikes.

Enstar contends that their pipeline will suffer more damages if they are not allowed to wrap tracer wire around their pipeline. Enstar performs approximately 500 excavations per year due to third party damages and 17,000 to 18,000 line locates each year. Enstar contends that this regulation is designed to redress a problem that does not exist within the Enstar pipeline service area.

For the reasons cited above, Enstar is requesting a waiver from the pipeline requirements at § 192.321(e). Enstar's waiver request is available for review in the docket. OPS is seeking comments on the Enstar's waiver request. After the comments have been received and the comment period has ended, OPS will consider each comment and make a decision whether to grant or deny Enstar's waiver request. OPS' decision will be published in the **Federal Register**.

Authority: 49 U.S.C. 60118 (c) and 49 CFR 1.53.

Issued in Washington, DC, on March 17, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–6730 Filed 4–5–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8878–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8878–A, IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.

DATES: Written comments should be received on or before June 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRS e-file Electronic funds Withdrawal Authorization for Form 7004.

OMB Number: 1545–1927.

Form Number: 8878–A.

Abstract: Form 8878–A is used by a corporate officer or agent and an electronic return originator (ERO) to use a personal identification number (PIN) to authorize an electronic funds withdrawal for a tax payment made with a request to extend the filing due date for a corporate income tax return.

Current Actions: There are no changes being made to the form at this time..

Type of Review: This is a new collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 140,000.

Estimated Time Per Respondent: 3 hours, 37 minutes.

Estimated Total Annual Burden Hours: 505,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–6834 Filed 4–5–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 3319

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 3319, Low-Income Taxpayer Clinics—2002 Grant Application Package and Guidelines.

DATES: Written comments should be received on or before June 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of publication should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Taxpayer Clinics—2005 Grant Application Package and Guidelines.

OMB Number: 1545–1648.

Publication Number: Publication 3319.

Abstract: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award. The IRS will review the information provided by applicants to determine whether to award grants for the Low-Income Taxpayer Clinics.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not for-profit institutions.

Estimated Number of Respondents: 825.

Estimated Time For Program Sponsors: 60 hours.

Estimated Time For Student and Program Participants: 2 hours.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–6835 Filed 4–5–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3975

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3975, Tax Professionals Annual Mailing List Application and Order Blank.

DATES: Written comments should be received on or before June 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6519, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax Professionals Annual Mailing List Application and Order Blank.

OMB Number: 1545–0351.

Form Number: Form 3975.

Abstract: Form 3975 allows a tax professional a systematic way to remain on the Tax Professional Mailing File and to order copies of tax materials.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 320,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 16,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–6836 Filed 4–5–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8848

AGENCY: Internal Revenue Service (IRS). Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8848, Consent to Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

DATES: Written comments should be received on or before June 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

OMB Number: 1545–1407.

Form Number: 8848.

Abstract: Form 8848 is used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of temporary regulations sections 1.884–2T(a) during the tax year or (b) transferred their U.S. assets to a domestic corporation in a transaction described in Code section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 5 hours, 46 minute.

Estimated Total Annual Burden Hours: 28,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–6837 Filed 4–5–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106527–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106527–98 (TD 8902), Capital Gains, Partnership, Subchapter S, and Trusts Provisions (§ 1.1(h)-1(e)).

DATES: Written comments should be received on or before June 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Capital Gains, Partnership, Subchapter S, and Trusts Provisions.

OMB Number: 1545–1654.

Regulation Project Number: REG–106527–98.

Abstract: The regulation relates to sales, or exchanges of interests in partnerships, S corporations, and trusts. The regulations interpret the look-through provision of section 1(h), added by section 311 of the Taxpayer Relief

Act of 1997 and amended by sections 5001 and 6005(d) of the Internal Revenue Service Restructuring and Return Act of 1998, and explain the rules relating to the division of the holding period of a partnership interest. The regulations affect partnerships, partners, S corporations, S corporation shareholders, trusts, and trusts beneficiaries.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individual or households.

The burden estimates for requirement is reflected in the burden estimates for: Form 1040, U.S. Individual Income Tax Return; Form 1065, U.S. Partnership Return of Income; Form 1041, U.S. Income Tax Return for Estates and Trusts; and Form 1120S, U.S. Income Tax Return for an S Corporation.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–6839 Filed 4–5–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 2004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 2004 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29). The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the sale of fuel from nonconventional sources under section 29 during calendar year 2004.

DATES: The 2004 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 2004.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2004 is 2.1853.

Credit: The nonconventional source fuel credit for calendar year 2004 is $6.56 per barrel-of-oil equivalent of qualified fuels.

Reference Price: The reference price for calendar year 2004 is $36.75. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuels sold during calendar year 2004.

FOR FURTHER INFORMATION CONTACT:

For questions about how the inflation adjustment factor is calculated—Wu-Lang Lee, RAS:R:TSBR, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For all other questions about the credit or the reference price—Kelly Morrison-Lee, CC:PSI:7, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–3120 (not a toll-free number).

Dated: March 31, 2005.

Heather C. Maloy,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 05–6838 Filed 4–5–05; 8:45 am]

BILLING CODE 4830–01–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 on April 20, 2005, at the Canadaigua VA Medical Center, Building 5, Auditorium, 400 Hill Avenue, Canadaigua, NY 144224. The meeting will begin at 10:30 a.m. and is open to the public.

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 will include presentations on objectives of the CARES project and the project's timeframes. Additional presentations will focus on the VA-selected contractor's methodology and tools to develop business plan options, as well as the methodology for gathering and evaluating stakeholder input. The agenda will also accommodate public commentary on site-specific issues.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meeting, 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@hq.med.va.gov.*

Dated: March 30, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–6755 Filed 4–5–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
April 6, 2005

Part II

Department of Labor

Employee Benefits Security Administration

Voluntary Fiduciary Correction Program Under the Employee Retirement Income Security Act of 1974; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–AB03

Voluntary Fiduciary Correction Program Under the Employee Retirement Income Security Act of 1974

AGENCY: Employee Benefits Security Administration, DOL.

ACTION: Adoption of amended and restated Voluntary Fiduciary Correction Program.

SUMMARY: This Notice contains an update, which amends and restates the Employee Benefits Security Administration's Voluntary Fiduciary Correction Program (the VFC Program or Program). The VFC Program permits certain persons to avoid potential civil actions and civil penalties under the Employee Retirement Income Security Act (ERISA) by voluntarily taking steps to correct violations that would ordinarily give rise to such actions and penalties. Based on its experience since adoption of the VFC Program in March 2002, the Employee Benefits Security Administration (EBSA) has identified certain changes that will both simplify and expand the original VFC Program, thereby making the Program easier for, and more useful to, employers and others who wish to avail themselves of the relief provided by the Program. EBSA is inviting comments from interested persons on the revisions to the VFC Program described in this document. At the same time, EBSA is making the simplified and expanded Program available immediately to those who wish to rely on the revisions in seeking VFC Program relief.

DATES: This Notice is effective April 6, 2005.

Written comments on the Notice should be received by EBSA on or before June 6, 2005.

ADDRESSES: Comments on the amendments to the VFC Program (preferably at least three copies) should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5669, 200 Constitution Avenue NW., Washington, DC 20210, Attn: Voluntary Fiduciary Correction Program. Comments also may be submitted electronically to *e-ori@dol.gov* or to *http://www.regulations.gov*.

All comments received will be available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: For Questions Regarding the VFC Program Amendments: Contact Kristen L. Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8510.

For General Questions Regarding the VFC Program: Contact Caroline Sullivan, Office of Enforcement, Employee Benefits Security Administration, (202) 693–8463. (These are not toll-free numbers.)

For Questions Regarding Specific Applications Under the VFC Program: Contact the appropriate EBSA Regional Office listed in Appendix C.

SUPPLEMENTARY INFORMATION:

A. Background

The Voluntary Fiduciary Correction Program was adopted by EBSA of the Department of Labor (Department) on a permanent basis in March 2002 (the original VFC Program).[1] The VFC Program is designed to encourage employers and plan fiduciaries to voluntarily comply with ERISA and allows those potentially liable for certain specified fiduciary violations under ERISA to voluntarily apply for relief from enforcement actions and certain penalties, provided they meet the VFC Program's criteria and follow the procedures outlined in the VFC Program. Many workers have also benefited from the VFC Program as a result of the restoration of plan assets and payment of promised benefits.

The VFC Program describes: how to apply for relief; the specific transactions covered;[2] acceptable methods for correcting violations; and examples of potential violations and corrective actions. Eligible applicants that satisfy the terms and conditions of the VFC Program receive a "no-action letter" from EBSA and are not subject to civil monetary penalties. In 2002, the original VFC Program was further expanded to include a class exemption (PTE 2002–51) providing excise tax relief for four specific VFC Program transactions.[3]

While the original VFC Program has been very successful in encouraging and facilitating the correction of violations of ERISA's fiduciary responsibility and prohibited transaction rules, EBSA believes, based on its own experience to date, as well as comments from employee benefit plan practitioners, that changes to the Program are needed to further encourage utilization of the Program. These changes will improve administration of the Program by EBSA's Regional Offices by which the revised VFC Program will continue to be administered. To this end, EBSA is publishing in this Notice an updated and revised VFC Program containing several changes (the revised VFC Program), discussed below, on which EBSA is inviting public comment. As also discussed below, EBSA is making the revised VFC Program effective on publication of this Notice in order to enable employers, plan fiduciaries and others to avail themselves of the simplified processes and new covered transactions during the interim period until the adoption of final changes to the Program.

EBSA also is proposing amendments to PTE 2002–51 to accommodate a new transaction contained in the revised VFC Program. These amendments also appear in the Notice section of today's **Federal Register**. It is important to note that the excise tax relief afforded by the amendments to PTE 2002–51 is not available until such amendments are adopted in final form and, therefore, the amendments cannot be relied upon for relief during the interim period of the revised Program.

B. Overview of VFC Program Changes

Except as discussed below, the revised VFC Program, as set forth herein, is unchanged from the Program adopted in 2002. The Program is set forth in its entirety in this Notice to facilitate both utilization and review by interested persons. The following is an overview of changes applicable to the revised VFC Program.

1. Model Application Form

To encourage use of the Program, EBSA is making available a model VFC Program application form. This model form is set forth in Appendix E of this Notice. EBSA also will be making the model form available to the public on its Web site.[4] While use of the model form

[1] 67 FR 15062 (March 28, 2002). Prior to adoption in March 2002, the VFC Program was made available on an interim basis during which the Department invited and considered public comments on the Program: (*See* 65 FR 14164, March 15, 2000).

[2] EBSA acknowledges, based on its experience, that certain transactions may fit within one or more of the listed categories of transactions, even if not specifically named in the category, for example certain transactions involving contributions in kind under Section 7.D.1. of the Program. EBSA encourages potential applicants to discuss eligibility and similar issues with the appropriate regional VFC Program coordinator.

[3] PTE 2002–51 published at 67 FR 70623 (Nov. 25, 2002).

[4] The model form will be accessible to applicants on EBSA's Web site at *http://www.dol.gov/ebsa*.

is wholly voluntary, EBSA encourages applicants to consider using the form in order to avoid common application errors that frequently result in processing delays or rejections. Moreover, EBSA believes that use of the model form will enable the Regional Offices to provide a more expedient and consistent review of VFC Program applications.

In brief, the model form provides an outline for applicants of the information and supplemental documentation that must be included with the application to help ensure that the applications are correct and complete. The model form includes the Program's mandatory checklist, which is also separately set forth in Appendix B of this Notice. Use of the model form, however, is not a substitute for an applicant's careful review of Program conditions and requirements. For example, all applications must include a completed penalty of perjury statement.

2. Reduced Documentation

As part of its effort to streamline and simplify the VFC Program, EBSA reviewed the supporting documents required to be filed as part of the application process. On the basis of this review, EBSA concluded that document requirements could be reduced in certain instances without compromising EBSA's review of applications. In particular, EBSA has made the following changes to the documentation requirements.

Section 6 of the Program has been revised to eliminate the requirement that applicants provide certain information relating to the plan's fidelity bond.

With regard to the correction of delinquent participant contributions or loan repayments under Section 7.A.1. of the Program, the Program is being revised to permit applicants correcting breaches that involve (i) amounts below $50,000, or (ii) amounts greater than $50,000 that were remitted within 180 calendar days after receipt by the employer to provide summary documentation. EBSA believes that introducing more simplified documentation requirements in certain cases rather than the detailed information and copies of accounting and payroll records required under the original VFC Program will streamline the application process, increase the efficiency of EBSA's reviewers, and be less burdensome for applicants making smaller corrections. Based on EBSA's experience to date, the majority of VFC Program applicants, under the revised Program, would be able to avail themselves of this reduced documentation requirement.

3. Simplification of Correction Amount

In the course of EBSA's administration of the VFC Program, a number of applicants expressed concern about the complexities attendant to calculating amounts required for transaction corrections under the Program. In an effort to address applicant concerns and facilitate corrections for purposes of the revised Program, EBSA is simplifying the definitions of both Lost Earnings and Restoration of Profits set forth in Section 5(b) of the Program.[5] Additionally, EBSA is also providing a new Internet tool on its Web site, the Online Calculator, to automatically perform Program calculations. Use of the Online Calculator is discussed in detail below.

The Program has always required that Plan Officials determine the correction amount to be restored to the plan based on either the losses to the plan resulting from a breach or the profits gained from improper use of plan assets, as required by section 409 of ERISA. The correction amount generally consists of two components: (1) Principal Amount and (2) Lost Earnings or Restoration of Profits. In broad terms, the Principal Amount is the amount of plan assets that would have been available to the plan if the breach had not occurred. Plan Officials must always restore the Principal Amount to the plan.

(a) Lost Earnings Component

Under the original VFC Program, Plan Officials generally calculated Lost Earnings by comparing two hypothetical amounts that a plan might have earned on the Principal Amount between the date of the breach (the Loss Date) and the date the Principal Amount is restored to the plan (the Recovery Date), as well as any interest on such earnings because of payment of Lost Earnings after the Recovery Date. The first earnings amount assumed that the Principal Amount had been appropriately invested under ERISA, while the second assumed that the Principal Amount had earned interest at a rate defined in section 6621 of the Internal Revenue Code (Code). Utilizing this approach, Plan Officials were then required to restore the higher of these two hypothetical amounts to the plan.

In an effort to simplify this component of the correction amount, EBSA is revising the method of calculating Lost Earnings and interest, if any, to use factors provided under IRS Revenue Procedure 95–17.[6] These factors, which are displayed on EBSA's Web site in a tabular format, incorporate daily compounding of an interest rate over a set period of time.

First, applicants must determine the applicable corporate underpayment rate(s) established under section 6621(a)(2) of the Code for each quarter (or portion thereof) for the period beginning with the Loss Date and ending with the Recovery Date. These rates are displayed on EBSA's Web site and will be updated when necessary. Second, applicants must select the applicable factor(s) under IRS Revenue Procedure 95–17 for such quarterly underpayment rate(s) for each quarter (or portion thereof) of the period beginning with the Loss Date and ending with the Recovery Date. Third, applicants multiply the Principal Amount by the first applicable factor to determine the amount of earnings for the first quarter (or portion thereof). If the Loss Date and Recovery Date are within the same quarter, this initial calculation is complete. However, if the Recovery Date is not in the same quarter as the Loss Date, the applicable factor for each subsequent quarter (or portion thereof) must be applied to the sum of the Principal Amount and all earnings as of the end of the immediately preceding quarter (or portion thereof), until Lost Earnings have been calculated for the entire period, ending with the Recovery Date.

In situations when the Lost Earnings amount is paid to the plan after the Recovery Date, applicants must calculate an amount of interest that the Lost Earnings would have earned during the time period between the Recovery Date and such payment date. This calculation also has been simplified to use the factors provided under IRS Revenue Procedure 95–17. Applicants must use the same method as in calculating Lost Earnings, but referencing the period beginning on the Recovery Date and ending with the payment date and applying the first applicable factor to Lost Earnings instead of the Principal Amount. Under the original Program, the Plan Official would have had to calculate and compare two assumed amounts of interest that would have been earned if the Lost Earnings amount had been restored to the plan on the Recovery

[5] The Department notes that the Program's correction criteria represent EBSA enforcement policy with respect to applications under the Program and are provided for informational purposes to the public, but are not intended to confer enforceable rights on any person correcting a violation.

[6] Rev. Proc. 95–17, 1995–1 C.B. 556 (Feb. 8, 1995).

Date and then pay the greater of these two amounts.

If the sum of Lost Earnings and any interest on Lost Earnings exceeds $100,000, applicants must then re-determine the amount of Lost Earnings and any interest on Lost Earnings using the same method discussed above, but substituting the applicable underpayment rates under section 6621(c)(1) of the Code for the rates previously used under section 6621(a)(2). These rates also are displayed on EBSA's Web site and will be updated when necessary.

Applicants either may use the Online Calculator to facilitate the calculation of these Lost Earnings amounts, as explained below, or perform the calculation manually. In either case, information sufficient to verify the correctness of the amounts to be paid to the plan must be included as part of the VFC Program application.

(b) Restoration of Profits Component

In a limited set of circumstances, Plan Officials are required to determine Restoration of Profits as a correction amount component. Under the original VFC Program, Plan Officials generally calculated Restoration of Profits when a breach involved the use of the Principal Amount by a fiduciary, plan sponsor or other Plan Official for a specific purpose resulting in an actual profit that could be determined. Plan Officials were required to compare this actual profit to a second amount that assumed that the Principal Amount had earned interest at a rate defined in section 6621 of the Code. The higher of these two amounts was defined as Restoration of Profits. Plan Officials were then required to compare this Restoration of Profits amount to the Lost Earnings amount and restore the higher amount to the plan.

In an effort to simplify this component of the correction amount, EBSA is revising the Program to require the calculation of a Restoration of Profits amount only when the Principal Amount was used by a fiduciary, plan sponsor or other Plan Official for a specific purpose such that a profit resulting from the breach is determinable. EBSA's experience suggests that more commonly, the Principal Amount is commingled with other funds of the plan sponsor or a fiduciary, so that a profit from the use of the Principal Amount cannot definitively be determined. As a consequence, EBSA anticipates that applicants under the revised Program will be using the simplified Lost Earnings calculation more frequently than Restoration of Profits.

Under the revised Program, Restoration of Profits is defined to incorporate two amounts: (i) The amount of profit made on the use of the Principal Amount, and (ii) if the profit is restored to the plan on a date later than the date on which the profit was realized (*i.e.*, received or determined), the amount of interest earned on such profit from the date the profit was realized to the date on which the profit is restored to the plan. Under the original Program, Plan Officials would have had to calculate and compare two assumed amounts of interest and then include the greater of these two amounts in Restoration of Profits.

EBSA is simplifying the determination of Restoration of Profits under the revised Program to use factors provided under IRS Revenue Procedure 95–17 in calculating the interest amount. First, applicants must determine the applicable corporate underpayment rate(s) established under section 6621(a)(2) of the Code for each quarter (or portion thereof) for the period beginning with the date the profit was realized (*i.e.* received or determined) and ending with the date on which the profit is paid to the plan. Second, applicants must select the applicable factor(s) under IRS Revenue Procedure 95–17 for such quarterly underpayment rate(s) for each quarter (or portion thereof) of the period beginning with the date the profit was realized and ending with the date on which the profit is paid to the plan. Third, applicants multiply the profit on the Principal Amount, referred to above, by the first applicable factor to determine the amount of interest for the first quarter (or portion thereof). If the date the profit was realized and the date the profit is paid to the plan are within the same quarter, the initial calculation is complete. However, if the date the profit was realized is not in the same quarter as the date the profit was paid to the plan, the applicable factor for each subsequent quarter (or portion thereof) must be applied to the sum of the profit on the Principal Amount, and all interest as of the end of the immediately preceding quarter (or portion thereof), until interest has been calculated for the entire period, ending with the date the profit amount is paid to the plan.

If the Restoration of Profits amount exceeds $100,000, applicants must then recalculate the interest amount for Restoration of Profits using the same method discussed above, but substituting the applicable underpayment rates under section 6621(c)(1) of the Code for the rates previously used under section 6621(a)(2).

To more easily perform these interest amount calculations, applicants may use the Online Calculator. Applicants also may perform these calculations manually. In either case, information sufficient to verify the correctness of the amounts to be paid to the plan must be included as part of the VFC Program application.

In situations when the Restoration of Profits amount can be determined, the revised VFC Program requires the Plan Official to restore Restoration of Profits to the plan as a component of the correction amount only if Restoration of Profits exceeds the Lost Earnings amount plus interest, if any.

4. Online Calculator

To facilitate use of the Program, EBSA is providing an Online Calculator on its Web site, which is an Internet based compliance assistance tool that may be used by applicants to automatically calculate Lost Earnings and interest, if any, and the interest amount for Restoration of Profits. Use of the Online Calculator will provide accuracy, ensure consistency and expedite review of applications by EBSA. While EBSA anticipates that most applicants will use the Online Calculator under the revised Program, applicants also may perform a manual calculation, as explained above, using the applicable factors under IRS Revenue Procedure 95–17.

In using the Online Calculator to determine Lost Earnings and interest, if any, applicants input four data elements: the (1) Principal Amount, (2) Loss Date, and (3) Recovery Date, and if the final payment will occur after the Recovery Date, (4) the date of such final payment. The Online Calculator selects the applicable factors under Revenue Procedure 95–17 after referencing the underpayment rates over the relevant time period. The Online Calculator then automatically applies the factors to provide applicants with the amount of Lost Earnings and interest, if any, that must be paid to the plan.

In using the Online Calculator to determine the interest amount for Restoration of Profits, applicants input three data elements: (1) The amount of profit, (2) the date the amount of profit was realized (*i.e.* received or determined), and (3) the date of payment of the Restoration of Profits amount. The Online Calculator selects the applicable factors under Revenue Procedure 95–17 after referencing the underpayment rates over the relevant time period. The Online Calculator then automatically applies the factors to provide applicants with the interest

amount on the profit that must be paid to the plan.

5. New Covered Transactions

(a) Illiquid Assets

On the basis of EBSA's review of the VFC Program, EBSA believes it is appropriate to revise the Program to include a correction of a transaction that permits the plan to divest, rather than continuing to hold in its portfolio, a previously purchased asset that is currently classified as illiquid. This new transaction is described in Section 7.D.6. of the revised Program.

Specifically, the new transaction covers circumstances where a plan is holding an illiquid asset and a plan fiduciary has determined that continued holding of such asset is not in the best interest of the plan or the plan's participants and beneficiaries, and following reasonable efforts to dispose of the asset, the only available purchaser is a party in interest. The revised Program describes three scenarios for the plan's acquisition of the illiquid asset, each of which results in the plan's holding of the illiquid asset, for which the correction is determined to be necessary. In the first scenario, the plan purchases an asset at a price not greater than fair market value at that time, but because the acquisition was from a related party, it was nonetheless a prohibited transaction. In the second scenario, the plan purchases an asset from an unrelated third party in an acquisition that was not a prohibited transaction under ERISA, but the plan fiduciary failed to appropriately discharge his or her fiduciary duties with respect to the purchase. For example, the fiduciary's purchase of a limited partnership interest from an unrelated third party was imprudent and inconsistent with the objectives contained in the plan's investment guidelines. In the third scenario, the plan purchases an asset from an unrelated third party in an acquisition that was not a prohibited transaction under ERISA, and the plan fiduciary appropriately discharged his or her fiduciary duties with respect to the purchase.

Subsequent to an acquisition pursuant to one of the foregoing scenarios, the plan fiduciary concludes that the continued holding of the asset is not in the interest of the plan. To correct the transaction, the revised VFC Program requires the fiduciary to classify the asset as illiquid by making the following determinations: (1) That the asset has failed to appreciate, failed to provide a reasonable rate of return or has caused a loss to the plan; (2) that the sale of the asset is in the best interest of the plan; and (3) following reasonable efforts to sell the asset to a non-party in interest, that the asset cannot immediately be sold for its original purchase price, or its current fair market value, if greater. Illiquid assets, among other things, could include restricted and thinly traded stock, limited partnership interests, real estate and collectibles.

The required correction permits the sale of the illiquid asset to a party in interest, provided the plan is returned to a financial position that is no worse than if the acquisition had never taken place. Accordingly, a plan must receive the higher of the fair market value of the asset on the date of the correction or its original purchase price, plus incidental costs. For purposes of the Class Exemption, corrective relief would, upon adoption of the amendments, extend to both the acquisition of the asset by the plan, if that acquisition would otherwise have been a prohibited transaction, and the disposition of the illiquid asset by sale to a party in interest, which would itself be a prohibited transaction but for the exemption.

(b) Participant Loans

Often plans incorporate in their terms with respect to participant loan programs a provision that a participant loan will not exceed the limitations set by section 72(p) of the Code.[7] The statutory exemption from the prohibited transaction provisions for participant loans provided by section 408(b)(1) of ERISA contains a requirement that a participant loan be made in accordance with plan terms regarding such loans. A violation of the prohibited transaction provisions of ERISA, therefore, would occur when the section 72(p) loan limitations are exceeded. According to practitioners, these loan violations commonly occur and lack an approved correction method for the fiduciary breach involved. EBSA recognizes that plan loans to participants can result in prohibited transactions through no fault of the borrowers. For example, a data processing system or record-keeping error could result in a loan that fails to comply with the plan's written loan provisions, and the borrower agrees to the loan terms unaware of the error. To facilitate correction of such transactions, EBSA is expanding the Program with the addition of two new categories of transactions involving plan loans to participants. These transactions are being added in Section 7.C.1. and 2. of the revised Program.

[7] *See* Code section 72(p)(2)(A) and (B).

The new transactions describe situations when a plan extends a loan (i) to a participant who is a party in interest with respect to the plan based solely on his or her status as an employee, and (ii) either the amount or duration of the loan exceeds that permitted under the applicable plan provisions incorporating the limitations of section 72(p) of the Code. These loans are prohibited transactions that fail to qualify for the statutory exemption in section 408(b)(1) of ERISA because the loans were not made in accordance with the specific plan loan provisions.

To correct a loan that exceeded the amount limitation, the Program requires the participant to pay back to the plan the excess amount of the loan. For example, if on the date the loan was made, a participant should have received a loan no greater than $5,000, but the participant erroneously received a loan for $7,000, then the participant must pay $2,000 back to the plan on the date of correction. Then, Plan Officials must reform the loan to amortize the remaining principal balance as of the date of correction over the remaining duration of the original loan, making any required adjustments to the monthly repayment amount. Plan Officials otherwise must continue to enforce all other terms of the original loan agreement.

To correct a loan that exceeded the duration limitation, the Program requires that Plan Officials reform the duration of the loan to complete repayment within the maximum term permitted under the plan loan provisions. For example, if a loan should have been for a term of five years, but the participant erroneously received a loan with scheduled repayments over ten years, Plan Officials must reform the loan. The reformed loan must be paid back within five years from the date of loan origination, and Plan Officials must make any necessary changes to the monthly repayment amount. If more than five years has passed since the date of loan origination, then this correction is not available. Plan Officials otherwise must continue to enforce all other terms of the original loan agreement.

EBSA is aware that these plan loan transactions also have tax consequences; they require income tax reporting as a deemed distribution by the plan fiduciaries, which triggers income tax liabilities for participants. Informal discussion between EBSA and the staffs of the Internal Revenue Service (IRS) and Treasury Department have confirmed their intent to develop a coordinating Employee Plans

Compliance Resolution System [8] (EPCRS) correction for these plan loan transactions under which certain tax consequences may be alleviated.

(c) Delinquent Participant Loan Repayments

Subsequent to the publication of the original VFC Program, EBSA issued Advisory Opinion 2002–02A (May 17, 2002) relating to the time frames for repayment of participants' loans to pension plans. The Department then issued guidance in a question and answer format under the VFC Program stating that applicants could correct the failure to forward participant loan repayments to a plan in a timely fashion under the Program in the manner set forth in this Advisory Opinion. In conjunction with this guidance, the Department included, in its final class exemption providing relief for certain transactions described in the Program,[9] explicit language to cover the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer. Consistent with the Department's prior guidance,[10] EBSA is expanding the Program to explicitly include delinquent participant loan repayments as an eligible transaction in Section 7.A.1. of the Program.

6. Other Changes

In addition to the revisions described above, EBSA is making the following changes in an effort to further refine the scope of the Program and facilitate its administration of the Program via the Regional Offices.

(a) Scope of the Term "Under Investigation"

Eligibility to participate in the revised Program pursuant to Section 4 (VFC Program Eligibility), paragraph (a), is conditioned on neither the plan nor the applicant being "Under Investigation." For purposes of the revised VFC Program, EBSA has changed the definition of "Under Investigation" in Section 3(b)(3). Upon review of the prior definition, EBSA concluded that in some respects the definition was too broad and in other respects too narrow. For example, the original VFC Program provided that a person would be considered "Under Investigation" only if he or she were subject to an investigation under either section 504 of ERISA by EBSA or any criminal statute involving a transaction affecting the plan. EBSA believes that if another Federal agency (*e.g.*, IRS, SEC) is conducting an investigation involving the plan, applicant or plan fiduciary in connection with an act or transaction involving the plan, the acts or transaction at issue should be subject to closer scrutiny than might otherwise be the case in connection with the VFC Program, which is designed to deal with routine correction issues. Accordingly, the definition of "Under Investigation" includes investigations or examinations by other Federal agencies whether of a criminal or civil nature.

EBSA further modified the "Under Investigation" definition to include notice of a Federal agency's intent to conduct an investigation, recognizing that the parties to the transaction may actually be on notice of an agency's intent to conduct an investigation well in advance of the beginning of the actual investigation. Again, EBSA believes that, while mere contact by an agency official generally is insufficient, communications notifying the parties of a Federal agency's intent to conduct an investigation or examination should, for purposes of eligibility for the VFC Program, be the same as if the investigation had started. It should be noted, however, that the plan, the applicant or plan sponsor will be considered "Under Investigation" only if the investigation or examination at issue is in connection with an act or transaction involving the plan. For example, if a plan sponsor is notified by a Federal agency of an investigation of the company regarding a Federal contract, such notification would not affect the plan's eligibility to participate in the VFC Program because the investigation does not involve the plan or an act or transaction involving the plan.

(b) Modification of Penalty of Perjury Statement

For purposes of the revised VFC Program, EBSA also has modified the Penalty of Perjury Statement required by Section 6(g) of the Program. This amendment significantly simplifies the statement and more closely conforms the required representations to the revised Program's eligibility criteria. Under the revised Program, the statement will continue to require a declaration that the application and all supporting documents, based on knowledge and belief, are true, correct, and complete.

(c) Requests for Additional Documentation

For purposes of the revised VFC Program, EBSA has added a provision to the Application Procedures set forth in Section 6(j) of the Program, Submission of Additional Documentation. This provision is intended to make clear that EBSA retains the right to make written requests for any supplemental documentation necessary for a complete examination and review of the application under the Program. If an applicant fails to respond with the requested documentation within the specified time period, EBSA may suspend further review of the application and consider what, if any, other action may be appropriate with respect to the identified violations. EBSA believes that this new provision will improve the efficiency of the Program and encourage timely communications among Program applicants and EBSA reviewers.

7. Miscellaneous Issues

(a) 502(l) Penalty If Application Is Rejected Or Closed As Incomplete

If a person files an application under the VFC Program, but the corrective action falls short of a complete and acceptable correction, EBSA may reject the application and consider appropriate action, including assessment of a section 502(l) penalty. However, no section 502(l) penalty would be imposed on the basis of any amounts restored to the plan prior to filing a Program application. The penalty would only apply to the additional recovery amount, if any, paid to the plan pursuant to a court order or a settlement agreement with the Department.

(b) Actions By Parties Other Than the Department

Full correction under the VFC Program does not preclude any other person or governmental agency, including the IRS, from exercising any rights it may have with respect to the transactions that are the subject of the application. The IRS has indicated to the Department that the federal tax treatment of a breach and correction under the VFC Program (including the federal income and employment tax consequences to participants, beneficiaries, and plan sponsors) are determined under the Code and that, based on its review of the revised Program, except in those instances where the fiduciary breach or its correction involve a tax abuse, a correction under the VFC Program for a breach that constitutes a prohibited transaction under section 4975 of the Code generally will constitute correction for purposes of section 4975 and a correction under the VFC Program

[8] Rev. Proc. 2003–44, 2003–1 C.B. 1051.

[9] *See* infra 1.

[10] *See also* Preamble to the final participant contribution regulation, 29 CFR 2510.3–102, published at 61 FR 41220, 41226 (Aug. 7, 1996).

for a breach that also constitutes an operational plan qualification failure generally will constitute correction for purposes of the IRS's EPCRS program.

C. Notice and Request for Comments

Although the Department is not required to seek public comments on an enforcement policy, the Department solicits comments from the public on the revisions to the VFC Program discussed in this Notice, including whether there are different ways in which the new transactions included in the Program could be corrected in accordance with the goals of the Program.

At the same time, the Department has determined that the relief afforded by the revised VFC Program should be made available upon publication of the revised Program in the **Federal Register** in order to ensure that interested parties may avail themselves of the Program changes on the earliest possible date. EBSA does not believe that a delay in the implementation of the changes discussed herein would serve any useful purpose and is unnecessary, depriving potential applicants of the ability to take advantage of the clarified procedures and additional transactions included in the revised Program. As with the original VFC Program, implementation of the revised Program does not foreclose resolution of fiduciary breaches by other means, including entering into settlement agreements with the Department. The Department expects that the availability of the revised Program will encourage fiduciaries, which otherwise might not do so, to correct violations and reimburse plan losses. Alternatively, VFC Program applicants may pursue relief under the original VFC Program until such time as final changes are adopted by the Department.

D. Impact of Program Amendments

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, an assessment of the potential costs and benefits under section 6(a)(3) of that order is not required. In order to better inform the public, however, the Department has included below a brief analysis of the costs and benefits attributable to the updated and revised Program.

The Department continues to believe that the benefits of the VFC Program substantially outweigh its costs, because participation is voluntary, the administrative cost of correcting a potential fiduciary breach through voluntary participation in the VFC Program is lower than the administrative cost of a correction in connection with a civil action and civil penalties, and the value and security of the assets of the plans participating in the VFC Program are preserved or increased. The VFC Program imposes no costs unless Plan Officials choose to avail themselves of the opportunity to correct a potential fiduciary breach under the terms of the VFC Program. Costs to Plan Officials in applying under the VFC Program include the expenses related to making a correction in accordance with Program conditions, and completing the application to be submitted to the Department. Benefits for Plan Officials include the reduction of risk and savings of penalties that would otherwise be payable on the amount of assets recovered following a civil action, in addition to the savings of resources that might have been devoted to such a civil action.

An additional benefit of the VFC Program accrues to participants and beneficiaries through the correction of violations and restoration of losses or profits that arise from the reversal of impermissible transactions, resulting in greater security of plan assets and future benefits.

The Department expects that the revised VFC Program will be easier and more useful for potential applicants. The greater efficiency and accessibility that will result from the availability of a model application form, the reduced documentation requirements, simplification of the correction amount calculation, including the introduction of the Online Calculator and the factors provided under IRS Revenue Procedure 95–17, addition of new transaction categories, and other clarifying modifications are expected to make the Program easier to use, to lessen the cost of participation in many instances, and to increase efficiency for both applicants and reviewers.

The VFC Program has been very successful to date in encouraging and facilitating the correction of violations. The Department anticipates that the revised VFC Program will encourage Plan Officials, who otherwise might not do so, to correct violations and reimburse plan losses.

The Department is unable to predict with certainty either the reduction in application costs that will arise from simplification of application and procedural requirements, or the potential increase in participation that will be associated with these revisions. However, based on the Department's experience to date, and comments from employee benefit plan practitioners, the availability of the model application form, streamlining of documentation requirements, and simplification of the correction amount calculation would make the Program substantially easier to use. The voluntary model form should offer an easily accessible outline for applicants to use in ensuring that their applications are complete, which will reduce or eliminate common application errors that result in processing delays and potential rejections.

The reduction in the extent of documentation required for corrections involving delinquent contributions, in particular, should decrease the cost of participation for many Plan Officials because the vast majority of applications based on the delinquent remittance of participant funds have entailed breaches that involve amounts below $50,000, or amounts greater than $50,000 that were repaid within 180 days. The delinquent remittance of participant contributions is also the most common type of violation corrected to date under the VFC Program. Where it applies, this reduction is substantial in that it permits the submission of summary information rather than the detailed accounting records previously required.

Similarly, the modification of the method of calculating Lost Earnings or Restoration of Profits will simplify the correction in two significant ways. First, the revision in most cases eliminates the need for multiple calculations and a comparison of the two hypothetical amounts representing losses based on

actual rates and losses based on Code section 6621 rates. Second, the calculation of correction amounts will be facilitated considerably by the availability of the Online Calculator and the factors provided under IRS Revenue Procedure 95–17. As explained in detail above, the Online Calculator and IRS factors will be simpler, easier to use, and lessen the opportunity for errors. As noted, the Online Calculator and IRS factors will also facilitate calculations in connection with differences in Code section 6621 rates over time applicable to Lost Earnings, interest on Lost Earnings and interest for the Restoration of Profits. Further, the Online Calculator and IRS factors will facilitate these calculations for transactions causing large losses or resulting in large restorations where the Code section 6621(c)(1) large corporate underpayment rate must be used.

Again, the Department anticipates that this simplification will have a sizeable aggregate effect. This is because the Online Calculator is expected to be particularly useful in the correction of violations involving the delinquent remittance of participant contributions. Not only is this the most common type of violation corrected to date, it is also a violation likely to involve multiple Loss Dates, further complicating the computation of correction amounts. The revised Program does retain flexibility for applicants by permitting manual calculations using the IRS factors.

The Department previously estimated the average administrative cost of participation at about $3,000, consisting of about 39 hours of purchased professional services and Plan Official time for the correction and application. The actual cost is expected to be highly variable. However, if the model form, streamlined documentation, and simplification of correction amount calculation together served to reduce the average application time by eight to ten hours, spread over purchased professional services and Plan Officials, the average cost per applicant would be reduced to between $2,500 and $2,300. For the 700 plans estimated to participate in the VFC Program annually, this would amount to an aggregate savings of about $400,000 to $500,000 per year. This cost contrasts with fiscal year 2004 corrections in 474 cases restoring over $260 million.

The Department is unable to estimate the increase in participation in the Program that may result from these revisions, largely because participation has continued to increase substantially. Participation roughly doubled between fiscal years 2003 and 2004. Many factors may contribute to this steady increase, such that it is not possible to observe a relationship between the administrative cost of participation in the Program and the decision to participate. Although the degree to which perceived complexities in the Program have discouraged participation is unknown, information provided by practitioners suggests that these changes will encourage greater participation.

The inclusion in the Program of new covered transactions, involving certain loans to participants, the delinquent remittance of participant loan repayments, and the purchases and sales, of illiquid assets as determined under the VFC Program, along with the proposed prohibited transaction class exemption also published today that relates to the purchase and sale of illiquid assets, is also expected to make the relief available under the Program accessible to more Plan Officials and further increase participation. This assumption is based on both feedback from potential applicants, and on the experience of the Department in administering the Program. The Department has not ascertained a basis for estimating the volume of increased participation that might result from these new covered transactions and related prohibited transaction class exemption.

The Department actively monitors the use of the Program, and will continue at this time to project annual Program utilization by about 700 plans until the rate of participation has become more consistent.

Beyond these administrative impacts, the Department has also considered the potential economic impacts of eliminating the requirement for the comparison of two hypothetical correction amounts for the calculation of correction amounts. Plan Officials were previously required to restore the higher of earnings as though the principal had been invested appropriately under ERISA, and earnings as though the principal had accrued interest at the rates specified in Code section 6621. The Department acknowledges that the correction amount under the revised Program may in some instances be lower than the higher of the former two hypothetical amounts.

In eliminating dual calculation methods and offering the Online Calculator and IRS factors, the Department has attempted to strike a reasonable balance between the advantages of simplicity, which may include lower administrative costs and a greater likelihood of a timely correction, and the potentially greater precision of applying multiple rates of return based on the investment alternatives involved. The Department welcomes comments on the possible economic consequences of the revised provisions relating to the correction amount.

Paperwork Reduction Act

The Information Collection Request (ICR) included in the 2002 Program and PTE 2002–51 is currently approved by the Office of Management and Budget under control number 1210–0118. This approval is scheduled to expire on December 31, 2006. The amendments to the original VFC Program described earlier in this preamble may be expected to modify burden to some degree. However, with the exception of the change in the documentation requirements for the delinquent remittance of participant funds, these amendments do not in the Department's view constitute a substantive or material modification of the existing ICR. Accordingly, the Department has not addressed changes other than those made to Section 7.A.1.c. in a submission for the approval of a revision to the ICR in connection with these amendments, or with the proposed amendments to PTE 2002–51, published separately in this issue of the **Federal Register.**

As noted, to facilitate applicants' use of the Program, the Department has developed an optional model application form (Appendix E). Potential applicants and practitioners have strongly encouraged EBSA to develop such a form to assist applicants to readily identify the Program requirements, and to verify that they have provided all of the information and supplementary documentation necessary for a valid application. Use of the form may help applicants avoid common errors that frequently result in processing delays or rejections.

Although the model form may reduce burden, it follows the requirements set forth in the Program, and would not collect information not already required to be provided by an applicant under the existing Program. As such, the model application form will provide ready access to Program requirements previously set out in the text of the Program, and increase certainty about compliance with the application requirements, without altering the existing ICR.

Completion and submission of the checklist (Appendix B) was required in the original program, and is revised in only its more user-friendly format. Elements of the checklist now appear on a separate Appendix. It should be noted that the required checklist appears twice within the Appendices to the Program.

While it is required to be submitted only once, it is included as the separate Appendix B for applicants who do not choose to use the model application in Appendix E, and as the final item in the model application for ease of use for those who do choose to use the model application.

The Department has also modified the VFC Program's application requirements by clarifying certain terms and representations to be made in the application, by describing the process by which the Department when necessary may request additional documentation, and eliminating previously required information related to the plan's fidelity bond. These modifications are also made with intention of making the Program easier and more efficient to use, but do not substantively or materially alter the existing ICR.

In the Department's view, the amendments to Section 7.A.1.c. do constitute a substantive and material change to the existing ICR because they will substantially reduce burden. The revision of the currently approved ICR pertains to documentation requirements for Delinquent Participant Contributions and Delinquent Participant Loan Repayments to Pension Plans. Revised provision 7.A.1.c. eliminates under specific circumstances the requirement for the applicant to provide accounting and payroll records to document the date and amount of each contribution at issue. The Plan Official is relieved from providing the more detailed documentation if restored participant contributions and/or repayments (exclusive of Lost Earnings) total $50,000 or less, or exceed $50,000 and were remitted to the plan within 180 days from the date such amounts were received by the employer or otherwise payable to the participant in cash. This program change is intended to reduce the burden of participation in the Program.

This revision is expected to impact the burden of the currently approved information collection because the vast majority of violations corrected under the Program involve delinquent participant contributions that totaled $50,000 or less, or were remitted within 180 days. Thus a burden reduction is expected for more than 90% of applicants.

The information collection burden of the VFC Program and related PTE 2002–51 is estimated as follows. The estimates include updated assumptions for compensation rates and mailing costs, and an increase in the number of respondents over the number currently in OMB inventory. For each of 700 plans, 8 hours of time of Plan Officials at $68 per hour, and 5 hours of service provider time at $83 per hour will be required to meet information collection requirements. These components account for 5,600 burden hours and $290,500 in burden cost. Total burden cost includes $2 in mailing costs, for a total of $291,900.

Assuming as many as one-half of applicants also make use of the class exemption when using the Program and that all work is performed by service providers, an additional cost burden of $29,000 arises from developing required notices to interested persons at $83 per hour, and mailing at first class rates for 10% of those notices and the notices to the Department, assuming an average of 136 participants per plan. It is assumed that the remaining notices are delivered electronically. Total cost burden for the information collection provisions of the exemption is $30,900. The total cost of the information collection provisions of the VFC Program and exemption before this revision is $322,800.

The revision in Section 7.A.1.c is estimated to reduce the hours and costs required to comply with the Program's information collection request by about one-half. The burden associated with the exemption is unchanged.

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the revision of the currently approved information collection request (ICR) included in this Amended and Restated Voluntary Fiduciary Correction Program. A copy of the ICR may be obtained by contacting the PRA addressee shown below.

The Department has submitted a copy of the revised ICR to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through June 6, 2005, OMB requests that comments be received within 30 days of publication of the Notice of Adoption of Amended and Restated Voluntary Fiduciary Correction Program.

PRA Addressee: Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

Type of Review: Revision of currently approved collection of information.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 700.

Frequency of Response: On occasion.

Responses: 5,810.

Estimated Total Burden Hours: 1,200 for existing ICR; 3,500 for revised ICR.

Total Annual Cost (Operating and Maintenance): $66,000 for existing ICR; $177,600 for revised ICR.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Regulatory Flexibility Act

This document describes an enforcement policy of the Department, and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply and the Department is not required to either certify that the rule will not have a significant economic impact on a substantial number of small entities, or conduct a regulatory flexibility analysis. However, EBSA considered the potential costs and benefits of this action for small plans and the Plan Officials in developing the revised Program, and believes that its greater simplicity and accessibility will make the Program more useful to small employers who wish to avail themselves of the relief offered.

Congressional Review Act

The VFC Program is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review. The Program is not a "major rule" as that term is defined in 5 U.S.C 804 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this regulatory action does not include any Federal mandate that may result in annual expenditures by State, local, or tribal governments, or the private sector, of $100 million or more.

E. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This Program would not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated that are not pertinent here, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this Program do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

Authority: Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb 3, 2003). ERISA Sec. 502(a)(2) and (a)(5) also issued under 29 U.S.C. 1132(a)(2) and (a)(5), ERISA Sec. 506(b) also issued under 29 U.S.C. 1136(b).

Voluntary Fiduciary Correction Program

Section 1. Purpose and Overview of the VFC Program

The purpose of the Voluntary Fiduciary Correction Program (VFC Program or Program) is to protect the financial security of workers by encouraging identification and correction of transactions that violate Part 4 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Part 4 of Title I of ERISA sets out the responsibilities of employee benefit plan fiduciaries. Section 409 of ERISA provides that a fiduciary who breaches any of these responsibilities shall be personally liable to make good to the plan any losses to the plan resulting from each breach and to restore to the plan any profits the fiduciary made through the use of the plan's assets. Section 405 of ERISA provides that a fiduciary may be liable, under certain circumstances, for a co-fiduciary's breach of his or her fiduciary responsibilities. In addition, under certain circumstances, there may be liability for knowing participation in a fiduciary breach. In order to assist all affected persons in understanding the requirements of ERISA and meeting their legal responsibilities, the Employee Benefits Security Administration (EBSA) is providing guidance on what constitutes adequate

correction under Title I of ERISA for the breaches described in this Program.

Section 2. Effect of the VFC Program

(a) *In general.* EBSA generally will issue to the applicant a no action letter [11] with respect to a breach identified in the application if the eligibility requirements of Section 4 are satisfied and a Plan Official corrects a breach, as defined in Section 3, in accordance with the requirements of Sections 5, 6 and 7. Pursuant to the no action letter it issues, EBSA will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no action letter, or assess a civil penalty under section 502(l) of ERISA on the correction amount paid to the plan or its participants.

(b) *Verification.* EBSA reserves the right to conduct an investigation at any time to determine (1) the truthfulness and completeness of the factual statements set forth in the application and (2) that the corrective action was, in fact, taken.

(c) *Limits on the effect of the VFC Program.* (1) *In general.* Any no action letter issued under the VFC Program is limited to the breach and applicants identified therein. Moreover, the method of calculating the correction amount described in this Program is only intended to correct the specific breach described in the application. Methods of calculating losses other than, or in addition to, those set forth in the Program may be more appropriate, depending on the facts and circumstances, if the transaction violates provisions of ERISA other than those that can be corrected under the Program. If a transaction gave rise to violations not specifically described in the Program, the relief afforded by the Program would not extend to such additional violations.

(2) *No implied approval of other matters.* A no action letter does not imply Departmental approval of matters not included therein, including steps that the fiduciaries take to prevent recurrence of the breach described in the application and to ensure the plan's future compliance with Title I of ERISA.

(3) *Material misrepresentation.* Any no action letter issued under the VFC Program is conditioned on the truthfulness, completeness and accuracy of the statements made in the application and of any subsequent oral and written statements or submissions. Any material misrepresentations or omissions will void the no action letter, retroactive to the date that the letter was issued by EBSA, with respect to the transaction that was materially misrepresented.

(4) *Applicant fails to satisfy terms of the VFC Program.* If an application fails to satisfy the terms of the VFC Program, as determined by EBSA, EBSA reserves the right to investigate and take any other action with respect to the transaction and/or plan that is the subject of the application, including refusing to issue a no action letter.

(5) *Criminal investigations not precluded.* Participation in the VFC Program will not preclude:

(i) EBSA or any other governmental agency from conducting a criminal investigation of the transaction identified in the application;

(ii) EBSA's assistance to such other agency; or

(iii) EBSA making the appropriate referrals of criminal violations as required by section 506(b) of ERISA.[12]

(6) *Other actions not precluded.* Compliance with the terms of the VFC Program will not preclude EBSA from taking any of the following actions:

(i) Seeking removal from positions of responsibility with respect to a plan or other non-monetary injunctive relief against any person responsible for the transaction at issue;

(ii) Referring information regarding the transaction to the Internal Revenue Service (IRS) as required by section 3003(c) of ERISA;[13] or

(iii) Imposing civil penalties under section 502(c)(2) of ERISA based on the failure or refusal to file a timely, complete and accurate annual report Form 5500. Applicants should be aware that amended annual report filings may be required if possible breaches of ERISA have been identified, or if action is taken to correct possible breaches in accordance with the VFC Program.

(7) *Not binding on others.* The issuance of a no action letter does not affect the ability of any other government agency, or any other person, to enforce any rights or carry out any authority they may have, with respect to matters described in the no action letter.

(8) *Example.* A plan fiduciary causes the plan to purchase real estate from the plan sponsor under circumstances to which no prohibited transaction exemption applies. In connection with this transaction, the purchase causes the plan assets to be no longer diversified, in violation of ERISA section 404(a)(1)(C). If the application reflects full compliance with the requirements of the Program, the Department's no action letter would apply to the violation of ERISA section 406(a)(1)(A), but would not apply to the violation of section 404(a)(1)(C).

(d) *Correction.* The correction criteria listed in the VFC Program represent EBSA enforcement policy with respect to applications under the Program and are provided for informational purposes to the public, but are not intended to confer enforceable rights on any person who purports to correct a violation. Applicants are advised that the term "correction" as used in the VFC Program is not necessarily the same as "correction" pursuant to section 4975 of the Internal Revenue Code (Code).[14] Correction may not be achieved under the Program by engaging in a prohibited transaction that is not subject to a prohibited transaction administrative exemption.

(e) *EBSA's authority to investigate.* EBSA reserves the right to conduct an investigation and take any other enforcement action relating to the transaction identified in a VFC Program application in certain circumstances, such as prejudice to the Department that may be caused by the expiration of the statute of limitations period, material misrepresentations, or significant harm to the plan or its participants that is not cured by the correction provided under the VFC Program. EBSA may also conduct a civil investigation and take any other enforcement action relating to matters not covered by the VFC Program application or relating to other plans sponsored by the same plan sponsor, while a VFC Program application involving the plan or the plan sponsor is pending.

[11] *See* Appendix A.

[12] Section 506(b) provides that the Secretary of Labor shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of Title I of ERISA and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of Title 18 of the United States Code.

[13] Section 3003(c) provides that, whenever the Secretary of Labor obtains information indicating that a party in interest or disqualified person is violating section 406 of ERISA, she shall transmit such information to the Secretary of the Treasury.

[14] *See* section 4975(f)(5) of the Code; section 141.4975–13 of the temporary Treasury Regulations and section 53.4941(e)–1(c) of the Treasury Regulations. The IRS has indicated that the federal tax treatment of a breach and correction under the VFC Program (including the federal income and employment tax consequences to participants, beneficiaries, and plan sponsors) are determined under the Code and that, based on its review of the Program, except in those instances where the fiduciary breach or its correction involve a tax abuse, a correction under the VFC Program for a breach that constitutes a prohibited transaction under section 4975 of the Code generally will constitute correction for purposes of section 4975 and a correction under the VFC Program for a breach that also constitutes an operational plan qualification failure generally will constitute correction for purposes of the IRS's Employee Plans Compliance Resolution Program (EPCRS).

(f) *Confidentiality.* EBSA will maintain the confidentiality of any documents submitted under the VFC Program, to the extent permitted by law. However, as noted in (c)(5) and (6) of this section, EBSA has an obligation to make referrals to the IRS and to refer to other agencies evidence of criminality and other information for law enforcement purposes.

Section 3. Definitions

(a) The terms used in this document have the same meaning as provided in section 3 of ERISA, 29 U.S.C. section 1002, unless separately defined herein.

(b) The following definitions apply for purposes of the VFC Program:

(1) *Breach.* The term "Breach" means any transaction that is or may be a breach of the fiduciary responsibilities contained in Part 4 of Title I of ERISA.

(2) *Plan Official.* The term "Plan Official" means a plan fiduciary, plan sponsor, party in interest with respect to a plan, or other person who is in a position to correct a Breach.

(3) *Under Investigation.* For purposes of section 4(a), a plan or an applicant shall be considered to be "Under Investigation" if EBSA or any other Federal agency is conducting an investigation or examination of the plan, the applicant, or the plan sponsor in connection with an act or transaction involving the plan, or if a written or oral notice of an intent to conduct such an investigation or examination has been received by the plan, a Plan Official, or other plan representative. For purposes of section 4(a), a plan shall not be considered to be "Under Investigation" merely because EBSA staff has contacted the plan, the applicant, or the plan sponsor in connection with a participant complaint, unless the participant complaint concerns the transaction described in the application. A plan also is not considered to be "Under Investigation" if the accountant of the plan is undergoing a work paper review by EBSA's Office of the Chief Accountant under the authority of ERISA section 504(a).

Example 1. On March 1 the plan sponsor of a profit sharing plan received written notification from an agent of the IRS that the plan has been scheduled for examination. As of March 1, the plan is ineligible for participation in the VFC Program because the plan sponsor has received a notice from the IRS concerning the IRS's intent to examine the plan.

Example 2. Assume the same facts as in Example 1, except that the plan sponsor received written notification from a Federal agency of an investigation of the company regarding an alleged workplace safety violation. The plan's eligibility to participate in the VFC Program would not be affected because the investigation does not involve the plan or an act or transaction involving the plan.

Section 4. VFC Program Eligibility

Eligibility for the VFC Program is conditioned on the following:

(a) Neither the plan nor the applicant is Under Investigation.

(b) The application contains no evidence of potential criminal violations as determined by EBSA.

Section 5. General Rules for Acceptable Corrections

(a) *Fair Market Value Determinations.* Many corrections require that the current or fair market value of an asset be determined as of a particular date, usually either the date the plan originally acquired the asset or the date of the correction, or both. In order to be acceptable as part of a VFC Program correction, the valuation must meet the following conditions:

(1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price).

(2) If there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.

(3) An appraiser is "qualified" if he or she has met the education, experience, and licensing requirements that are generally recognized for appraisal of the type of asset being appraised.

(4) An appraiser is "independent" if he or she is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following:

(i) The prior owner of the asset, if the asset was purchased by the plan;

(ii) The purchaser of the asset, if the asset was, or is now being, sold by the plan;

(iii) Any other owner of the asset, if the plan is not the sole owner;

(iv) A fiduciary of the plan;

(v) A party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or

(vi) The VFC Program applicant.

(b) *Correction Amount.* (1) *In general.* For purposes of the VFC Program, the correction amount is the amount that must be paid to the plan as a result of the Breach in order to make the plan whole. In most instances, the correction amount will be a combination of the Principal Amount involved in the transaction (*see* subparagraph (2)), the Lost Earnings amount, which is earnings that would have been earned on the Principal Amount for the period of the transaction (*see* subparagraph (5)), and any interest on Lost Earnings. However, in circumstances when the Restoration of Profits amount (*see* subparagraph (6)) exceeds the Lost Earnings amount and any interest on Lost Earnings, the correction amount will be a combination of the Principal Amount and the Restoration of Profits amount.

(2) *Principal Amount.* "Principal Amount" is the amount that would have been available to the plan for investment or distribution on the date of the Breach, had the Breach not occurred. The Principal Amount, when applicable, must be determined for each transaction by reference to Section 7 of the VFC Program. Generally, the Principal Amount is the base amount on which Lost Earnings and, if applicable, Restoration of Profits is calculated. The Principal Amount shall also include, where appropriate, any transaction costs associated with entering into the transaction that constitutes the Breach.

(3) *Loss Date.* "Loss Date" is the date that the plan lost the use of the Principal Amount.

(4) *Recovery Date.* "Recovery Date" is the date that the Principal Amount is restored to the plan.

(5) *Lost Earnings.* (A) *General.* "Lost Earnings" is intended to approximate the amount that would have been earned by the plan on the Principal Amount, but for the Breach. For purposes of this Program, Lost Earnings shall be calculated in accordance with this paragraph.

(B) *Initial Calculation.* Lost earnings shall be calculated by: (i) Determining the applicable corporate underpayment rate(s) established under section 6621(a)(2) of the Code [15] for each quarter (or portion thereof) for the period beginning with the Loss Date and ending with the Recovery Date; (ii) determining, by reference to IRS Revenue Procedure 95–17,[16] the applicable factor(s) for such quarterly underpayment rate(s) for each quarter

[15] These underpayment rates are displayed on EBSA's Web site and will be updated when necessary.

[16] Rev. Proc. 95–17, 1995–1 C.B. 556 (Feb. 8, 1995). These factors, which are displayed on EBSA's Web site in a tabular format, incorporate daily compounding of an interest rate over a set period of time.

(or portion thereof) of the period beginning with the Loss Date and ending with the Recovery Date; and (iii) multiplying the Principal Amount by the first applicable factor to determine the amount of earnings for the first quarter (or portion thereof). If the Loss Date and Recovery Date are within the same quarter, the initial calculation is complete. If the Recovery Date is not in the same quarter as the Loss Date, the applicable factor for each subsequent quarter (or portion thereof) must be applied to the sum of the Principal Amount and all earnings as of the end of the immediately preceding quarter (or portion thereof), until Lost Earnings have been calculated for the entire period, ending with the Recovery Date.

(C) *Payment of Lost Earnings after Recovery Date.* If Lost Earnings are not paid to the plan on the Recovery Date along with the Principal Amount, payment of Lost Earnings shall include interest on the amount of Lost Earnings determined in accordance with subparagraph (5)(B), above. Such interest shall be calculated in the same manner as Lost Earnings described in subparagraph (5)(B) above, for the period beginning on the Recovery Date and ending on the date the Lost Earnings are paid to the plan.

(D) *Special Rule for Transactions Causing Large Losses.* If the amount of Lost Earnings (determined in accordance with subparagraph (5)(B)) and any interest added to such Lost Earnings (determined in accordance with subparagraph (5)(C)) above, exceed $100,000, the amount of Lost Earnings and interest, if any, to be paid to the plan shall be determined in accordance with subparagraphs (5)(B) and (C), above, substituting the applicable underpayment rates under section 6621(c)(1) of the Code [17] in lieu of the rates under section 6621(a)(2).

(E) *Method of Calculation.* For purposes of calculating Lost Earnings and interest, if any, a Plan Official may either (i) use the Online Calculator described in Section 5(b)(7), below, or (ii) perform a manual calculation in accordance with subparagraphs (B) through (D) of this paragraph (5). A Plan Official using the Online Calculator or performing a manual calculation shall include as part of the VFC Program application sufficient information to verify the correctness of the amounts to be paid to the plan.

(6) *Restoration of Profits.* (A) *General.* If the Principal Amount was used for a specific purpose such that a profit on the use of the Principal Amount is determinable, the Plan Official must calculate the Restoration of Profits amount and compare it to the Lost Earnings amount to determine the correction amount (*see* paragraph (b)(1)). "Restoration of Profits" is a combination of two amounts: (i) The amount of profit made on the use of the Principal Amount by the fiduciary or party in interest who engaged in the Breach, or by a person who knowingly participated in the Breach, and (ii) if the profit is returned to the plan on a date later than the date on which the profit was realized (*i.e.*, received or determined), the amount of interest earned on such profit from the date the profit was realized to the date on which the profit is paid to the plan. The amount of such interest shall be determined in accordance with subparagraph (B), below.

If the Restoration of Profits amount exceeds Lost Earnings and interest, if any, the Restoration of Profits amount must be paid to the plan instead of Lost Earnings.

(B) *Calculation of Interest.* Interest shall be calculated by: (i) Determining the applicable corporate underpayment rate(s) established under section 6621(a)(2) of the Code for each quarter (or portion thereof) for the period beginning with the date the profit was realized (*i.e.* received or determined) and ending with the date on which the profit is paid to the plan; (ii) determining, by reference to IRS Revenue Procedure 95–17, the applicable factor(s) for such quarterly underpayment rate(s) for each quarter (or portion thereof) of the period beginning with the date the profit was realized and ending with the date on which the profit is paid to the plan; and (iii) multiplying the first applicable factor by the profit on the Principal Amount, referred to in paragraph (A)(i), above, to determine the amount of interest for the first quarter (or portion thereof). If the date the profit was realized and the date the profit is paid to the plan are within the same quarter, the initial calculation is complete. If the date the profit was realized is not in the same quarter as the date the profit was paid to the plan, the applicable factor for each subsequent quarter (or portion thereof) must be applied to the sum of the profit on the Principal Amount, referred to in paragraph (A)(i), above, and all interest as of the end of the immediately preceding quarter (or portion thereof), until interest has been calculated for the entire period, ending with the date the profit is paid to the plan.

(C) *Special Rule for Transactions Resulting in Large Restorations.* If the amount of Restoration of Profits (determined in accordance with subparagraph (6)(A)) above exceeds $100,000, the amount of any interest on the Restoration of Profits to be paid to the plan shall be determined in accordance with subparagraph (6)(B), above, substituting the applicable underpayment rates under section 6621(c)(1) of the Code in lieu of the rates under section 6621(a)(2).

(D) *Method of Calculation.* For purposes of calculating the interest amount for Restoration of Profits, pursuant to subparagraphs (6)(B) and (C) above, a Plan Official may either (i) use the Online Calculator described in Section 5(b)(7), below, or (ii) perform a manual calculation in accordance with subparagraphs (B) and (C) of this paragraph (6). A Plan Official using the Online Calculator or performing a manual calculation shall include as part of the VFC Program application sufficient information to verify the correctness of the amounts to be paid to the plan.

(7) *Online Calculator.* "Online Calculator" is an Internet based compliance assistance tool provided on EBSA's Web site that permits applicants to calculate the amount of Lost Earnings, any interest on Lost Earnings, and the interest amount for Restoration of Profits, if applicable, for certain transactions. The Online Calculator will be updated as necessary.

(A) *Lost Earnings and Interest.* To calculate Lost Earnings, applicants must input the (1) Principal Amount, (2) Loss Date, and (3) Recovery Date, and if the final payment will occur after the Recovery Date, (4) the date of such final payment. The Online Calculator selects the applicable factors under Revenue Procedure 95–17 after referencing the underpayment rates over the relevant time period. The Online Calculator then automatically applies the factors to provide applicants with the amount of Lost Earnings and interest, if any, that must be paid to the plan.

(B) *Interest Amount for Restoration of Profits.* To calculate the interest amount on the profit, applicants must input (1) the amount of profit, (2) the date the amount of profit was realized (*i.e.* received or determined), and (3) the date of payment of the Restoration of Profits amount. The Online Calculator selects the applicable factors under Revenue Procedure 95–17 after referencing the underpayment rates over the relevant time period. The Online Calculator then automatically applies the factors to provide applicants with

[17] These underpayment rates are displayed on EBSA's Web site and will be updated when necessary.

the interest amount on the profit that must be paid to the plan.

(8) The principles of this paragraph (b) are illustrated by example in Appendix D.

(c) *Costs of Correction.* (1) The fiduciary, plan sponsor or other Plan Official, shall pay the costs of correction, which may not be paid from plan assets.

(2) The costs of correction include, where appropriate, such expenses as closing costs, prepayment penalties, or sale or purchase costs associated with correcting the transaction.

(3) The principle of paragraph (c)(1) is illustrated in the following example and in (d) below:

Example: The plan fiduciaries did not obtain a required independent appraisal in connection with a transaction described in Section 7. In connection with correcting the transaction, the plan fiduciaries now propose to have the appraisal performed as of the date of purchase. The plan document permits the plan to pay reasonable and necessary expenses; the fiduciaries have objectively determined that the cost of the proposed appraisal is reasonable and is not more expensive than the cost of an appraisal contemporaneous with the purchase. The plan may therefore pay for this appraisal. However, the plan may not pay any costs associated with recalculating participant account balances to take into account the new valuation. There would be no need for these additional calculations or any increased appraisal cost if the plan's assets had been valued properly at the time of the purchase. Therefore, the cost of recalculating the plan participants' account balances is not a reasonable plan expense, but is part of the costs of correction.

(d) *Distributions.* Plans will have to make supplemental distributions to former employees, beneficiaries receiving benefits, or alternate payees, if the original distributions were too low because of the Breach. In these situations, the Plan Official or plan administrator must determine who received distributions from the plan during the time period affected by the Breach, recalculate the account balances, and determine the amount of the underpayment to each affected individual. The applicant must demonstrate proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant. For individuals whose location is unknown, applicants must demonstrate that they have segregated adequate funds to pay the missing individuals and that the applicant has commenced the process of locating the missing individuals using either the IRS and Social Security Administration locator services, or other comparable means. The costs of such efforts are part of the costs of correction.

(e) *De Minimus Exception.* Where correction under the Program requires distributions in amounts less than $20 to former employees, their beneficiaries and alternate payees, who neither have account balances with, nor have a right to future benefits from the plan, and the applicant demonstrates in its submission that the cost of making the distribution to each such individual exceeds the amount of the payment to which such individual is entitled in connection with the correction of the transaction that is the subject of the application, the applicant need not make distributions to such individuals who would receive less than $20 each as part of the correction. However, the applicant must pay to the plan as a whole the total of such de minimus amounts not distributed to such individuals.

Example. Employer X sponsors Plan Y. Employer X submits an application under the VFC Program to correct a failure to timely forward participant contributions to Plan Y. Employer X had paid the delinquent contributions six months late, but had not paid lost earnings on the delinquency. The correction under the VFC Program, therefore, required only payment of Lost Earnings for the six-month delinquency. During the six-month period 25 employees separated from service and rolled over their plan accounts to individual retirement accounts. The amount of lost earnings due to 20 of those former employees is less than $20, and Employer X demonstrates that the cost of making the distribution to those former employees is $27 per individual. Employer X need not make distributions to those 20 former employees. However, the total amount of distributions that would have been due to those former employees must be paid to Plan Y. The payment to Plan Y may be used for any purpose that payments or credits to Plan Y that are not allocated directly to participant accounts are used. Employer X must make distributions to the five former employees who are entitled to receive distributions of more than $20.

Section 6. Application Procedures

(a) *In general.* Each application must adhere to the requirements set forth below. Failure to do so may render the application invalid.

(b) *Preparer.* The application must be prepared by a Plan Official or his or her authorized representative (*e.g.*, attorney, accountant, or other service provider). If a representative of the Plan Official is submitting the application, the application must include a statement signed by the Plan Official that the representative is authorized to represent the Plan Official. Any fees paid to such representative for services relating to the preparation and submission of the application may not be paid from plan assets.

(c) *Contact person.* Each application must include the name, address and telephone number of a contact person. The contact person must be familiar with the contents of the application, and have authority to respond to inquiries from EBSA.

(d) *Detailed narrative.* The applicant must provide to EBSA a detailed narrative describing the Breach and the corrective action. The narrative must include:

(i) a list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers);

(ii) the employer identification number (EIN), plan number, and address of the plan sponsor and administrator;

(iii) the date the plan's most recent Form 5500 was filed;

(iv) an explanation of the Breach, including the date it occurred;

(v) an explanation of how the Breach was corrected, by whom and when;

(vi) specific calculations demonstrating how Principal Amount and Lost Earnings or, if applicable, Restoration of Profits were computed and an explanation of why payment of Lost Earnings or Restoration of Profits was chosen to correct the Breach.

(e) *Supporting documentation.* The applicant must also include:

(i) copies of the relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract); [18]

(ii) documentation that supports the narrative description of the transaction and its correction;

(iii) documentation establishing the Lost Earnings amount;

(iv) documentation establishing the amount of Restoration of Profits, if applicable;

(v) all documents described in Section 7 with respect to the transaction involved; and

(vi) proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.

(f) *Examples of supporting documentation.* (i) Examples of documentation supporting the description of the transaction and correction are leases, appraisals, notes and loan documents, service provider contracts, invoices, settlement documents, deeds, perfected security interests, and amended annual reports.

[18] Applicants must supply complete copies of the plan documents and other pertinent documents if requested by EBSA during its review of the application.

(ii) Examples of acceptable proof of payment include copies of canceled checks, executed wire transfers, a signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution), and bank statements for the plan's account.

(g) *Penalty of Perjury Statement.* Each application must include the following statement: "Under penalties of perjury I certify that I am not Under Investigation (as defined in Section 3(b)(3)) and that I have reviewed this application, including all supporting documentation, and to the best of my knowledge and belief the contents are true, correct, and complete." The statement must be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and the authorized representative of the applicant, if any. In addition, each Plan Official applying under the VFC Program must sign and date the Penalty of Perjury statement. The statement must accompany the application and any subsequent additions to the application. Use of the Penalty of Perjury Statement included with the Model Application Form in Appendix E will satisfy the requirements of this Section 6(g).

(h) *Checklist.* The checklist in Appendix B must be completed, signed, and submitted with the application. Use of the checklist included with the Model Application Form in Appendix E also will satisfy the requirements of this Section 6(h).

(i) *Where to apply.* The application shall be mailed to the appropriate regional EBSA office listed in Appendix C.

(j) *Submission of Additional Documentation.* If EBSA determines that required information is missing from the application or that additional documentation is needed to complete EBSA's review, EBSA will request such documentation in writing from the applicant or authorized representative. If EBSA does not receive the requested documentation within a time period specified in writing by the EBSA reviewer, EBSA may suspend its review of the application and consider appropriate action. EBSA will notify the applicant or authorized representative in writing regarding such suspension.

(k) *Record keeping.* The applicant must maintain copies of the application and any subsequent correspondence with EBSA for the period required by section 107 of ERISA.

Section 7. Description of Eligible Transactions and Corrections Under the VFC Program

EBSA has identified certain Breaches and methods of correction that are suitable for the VFC Program. Any Plan Official may correct a Breach listed in this Section in accordance with Section 5 and the applicable correction method. The correction methods set forth are strictly construed and are the only acceptable correction methods under the VFC Program for the transactions described in this Section. EBSA will not accept applications concerning correction of breaches not described in this Section.

A. Delinquent Remittance of Participant Funds

1. Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans

(a) *Description of Transaction.* An employer receives directly from participants, or withholds from employees' paychecks, certain amounts for either contribution to a pension plan or for repayment of participants' plan loans. Instead of forwarding participant contributions for investment in accordance with the provisions of the plan and by reference to the principles of the Department's regulation at 29 CFR 2510.3–102, the employer retains such contributions for a longer period of time. Similarly, in the case of participant loan repayments, instead of applying such repayments to outstanding loan balances within a reasonable period of time determined by reference to the guiding principles of 29 CFR 2510.3–102 and in accordance with the provisions of the plan, the employer retains such repayments for a longer period of time.

(b) *Correction of Transaction.* (1) *Unpaid Contributions or Participant Loan Repayments.* Pay to the plan the Principal Amount plus the greater of (i) Lost Earnings on the Principal Amount or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in Section 5(b). The Loss Date for such contributions is the date on which each contribution reasonably could have been segregated from the employer's general assets. In no event shall the Loss Date for such contributions be later than the applicable maximum time period described in 29 CFR 2510.3–102. The Loss Date for such repayments is the date on which each repayment reasonably could have been segregated from the employer's general assets consistent with the guiding principles of 29 CFR 2510.3–102.[19] Any penalties, late fees or other charges shall be paid by the employer and not from participant loan repayments.

(2) *Late Contributions or Participant Loan Repayments.* If participant contributions or loan repayments were remitted to the plan outside of the time periods described above, the only correction required is to pay to the plan the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b). Any penalties, late fees or other charges shall be paid by the employer and not from participant loan repayments.

(3) For this transaction, the Principal Amount is the amount of delinquent participant contributions or loan repayments retained by the employer.

(4) *Example.* The principles of this paragraph (b) are illustrated by example in Appendix D.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A statement from a Plan Official identifying the earliest date on which the participant contributions and/or repayments reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion;

(2) If restored participant contributions and/or repayments (exclusive of Lost Earnings) (A) total $50,000 or less; or (B) exceed $50,000 and were remitted to the plan within 180 calendar days from the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(i) A narrative describing the applicant's contribution and/or repayment remittance practices before and after the period of unpaid or late contributions and/or repayments; and

(ii) Summary documents demonstrating the amount of unpaid or late contributions and/or repayments; and

(3) If restored participant contributions and/or repayments (exclusive of Lost Earnings) exceed $50,000 and were remitted more than

[19] Although the maximum time periods described in 29 CFR 2510.3–102 are not directly applicable to participant loan repayments, retaining repayments beyond such periods raises a question as to whether the employer forwarded repayments to the plan as soon as they could reasonably be segregated from the employer's general assets. *See* Advisory Opinion 2002–02A (May 17, 2002).

180 calendar days after the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(i) A narrative describing the applicant's contribution and/or repayment remittance practices before and after the period of unpaid or late contributions and/or repayments;

(ii) For participant contributions and/or repayments received from participants, a copy of the accounting records which identify the date and amount of each contribution received; and

(iii) For participant contributions and/or repayments withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding.

2. Delinquent Participant Contributions to Insured Welfare Plans

(a) *Description of Transaction.* Benefits are provided exclusively through insurance contracts issued by an insurance company or similar organization qualified to do business in any state or through a health maintenance organization (HMO) defined in section 1310(c) of the Public Health Service Act, 42 U.S.C. 300e–9(c). An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to an insurance provider for the purpose of providing group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan (including the provisions of any insurance contract) or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(b) *Correction of Transaction.* (1) Pay to the insurance provider or HMO the Principal Amount, as well as any penalties, late fees or other charges necessary to prevent a lapse in coverage due to such failure. Any penalties, late fees or other such charges shall be paid by the employer and not from participant contributions.

(2) For this transaction, the Principal Amount is the amount of delinquent participant contributions retained by the employer.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion;

(4) Copies of the insurance contract or contracts for the group health or other welfare benefits for the plan;

(5) A statement from a Plan Official attesting that there are no instances in which claims have been denied under the plan for nonpayment, nor has there been any lapse in coverage; and

(6) A statement from a Plan Official attesting that any penalties, late fees or other such charges have been paid by the employer and not from participant contributions.

3. Delinquent Participant Contributions to Welfare Plan Trusts

(a) *Description of Transaction.* An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to a trust maintained to provide, through insurance or otherwise, group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(b) *Correction of Transaction.* (1) *Unpaid Contributions.* Pay to the trust (1) the Principal Amount, and, where applicable, any penalties, late fees or other charges necessary to prevent a lapse in coverage due to the failure to make timely payments, and (2) the greater of (i) Lost Earnings on the Principal Amount or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b). The Loss Date for such contributions is the date on which each contribution would become plan assets under 29 CFR 2510.3–102. Any penalties, late fees or other charges shall be paid by the employer and not from participant contributions.

(2) *Late Contributions.* If participant contributions were remitted to the trust outside of the time period required by the regulation, the only correction required is to pay to the trust the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b). Any penalties, late fees or other such charges shall be paid by the employer and not from participant contributions.

(3) For this transaction, the Principal Amount is the amount of delinquent participant contributions retained by the employer.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion; and

(4) A statement from a Plan Official attesting that there are no instances in which claims have been denied under the plan for nonpayment, nor has there been any lapse in coverage.

B. Loans

1. Loan at Fair Market Interest Rate to a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest at an interest rate no less than that for loans with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. An independent commercial lender must also confirm in writing that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.

(c) *Documentation.* In addition to the documentation required by Section 6,

submit a narrative describing the process used to determine the fair market interest rate at the time the loan was made, validated in writing by an independent commercial lender.

2. Loan at Below-Market Interest Rate to a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. (1) Pay to the plan the Principal Amount, plus the greater of (i) the Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b).

(2) For purposes of this transaction, each loan payment has a Principal Amount equal to the excess of the loan payment that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over the loan payment actually received under the loan terms during such period. Under the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

Example: The plan made to a party in interest a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The party in interest or Plan Official must repay the loan in full plus any applicable prepayment penalties. The party in interest or Plan Official also must pay the difference between what the plan would have received through the Recovery Date had the loan been made at 7% and what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A narrative describing the process used to determine the fair market interest rate at the time the loan was made;

(2) A copy of the independent commercial lender's fair market interest rate determination(s); and

(3) A copy of the independent fiduciary's dated, written approval of the fair market interest rate determination(s).

3. Loan at Below-Market Interest Rate to a Person Who Is Not a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a person who is not a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings through the Recovery Date, as described in Section 5(b).

(2) For purposes of this transaction, each loan payment has a Principal Amount equal to the excess of the loan payment that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over the loan payment actually received under the loan terms during such period. Under the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

(3) From the inception of the loan to the Recovery Date, the amount to be paid to the plan is the Lost Earnings on the series of Principal Amounts, calculated in accordance with Section 5(b).

(4) From the Recovery Date to the maturity date of the loan, the amount to be paid to the plan is the present value of the remaining Principal Amounts, as determined by an independent commercial lender. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(5) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan made a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The borrower or the Plan Official must pay the excess of what the plan would have received through the Recovery Date had the loan been made at 7% over what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as described in Section 5(b). The Plan Official must also pay on the Recovery Date the difference in the value of the remaining payments on the loan between the 7% and the 4% for the duration of the time the plan is owed repayments on the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A narrative describing the process used to determine the fair market interest rate at the time the loan was made; and

(2) A copy of the independent commercial lender's fair market interest rate determination(s).

4. Loan at Below-Market Interest Rate Solely Due to a Delay in Perfecting the Plan's Security Interest

(a) *Description of Transaction.* For purposes of the VFC Program, if a plan made a purportedly secured loan to a person who is not a party in interest with respect to the plan, but there was a delay in recording or otherwise perfecting the plan's interest in the loan collateral, the loan will be treated as an unsecured loan until the plan's security interest was perfected.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings as described in Section 5(b), through the date the loan became fully secured.

(2) For purposes of this transaction, each loan payment has a Principal Amount equal to the excess of the loan payment that would have been received if the loan had been made at the fair market interest rate for an unsecured loan (from the beginning of the loan until the Recovery Date) over the loan payment actually received under the loan terms during such period. Under the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

(3) In addition, if the delay in perfecting the loan's security caused a permanent change in the risk characteristics of the loan, the fair market interest rate for the remaining term of the loan must be determined by an independent commercial lender. In that case, the correction amount includes an additional payment to the plan. The amount to be paid to the plan is the present value of the remaining Principal Amounts from the date the loan is fully secured to the maturity date of the loan. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(4) The principles of this paragraph (b) are illustrated in the following examples:

Example 1: The plan made a mortgage loan, which was supposed to be secured by a Deed of Trust. The plan's Deed was not

recorded for six months, but, when it was recorded, the Deed was in first position. The interest rate on the loan was the fair market interest rate for a mortgage loan secured by a first-position Deed of Trust. The loan is treated as an unsecured, below-market loan for the six months prior to the recording of the Deed of Trust.

Example 2: Assume the same facts as in Example 1, except that, as a result of the delay in recording the Deed, the plan ended up in second position behind another lender. The risk to the plan is higher and the interest rate on the note is no longer commensurate with that risk. The loan is treated as a below-market loan (based on the lack of security) for the six months prior to the recording of the Deed of Trust and as a below-market loan (based on secondary status security) from the time the Deed is recorded until the end of the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A narrative describing the process used to determine the fair market interest rate for the period that the loan was unsecured and, if applicable, for the remaining term of the loan; and

(2) A copy of the independent commercial lender's fair market interest rate determination(s).

C. Participant Loans

1. Loan Amount in Excess of Plan Limitations

(a) *Description of Transaction.* A plan extended a loan to a plan participant who is a party in interest with respect to the plan based solely on his or her status as an employee of any employer whose employees are covered by the plan, as defined in section 3(14)(H) of ERISA. The amount of the loan exceeded the amount permitted under applicable plan provisions incorporating the requirements of section 72(p) of the Code. The loan was a prohibited transaction that failed to qualify for ERISA's statutory exemption for plan loan programs because the loan amount exceeded the amount permitted under applicable plan provisions.

(b) *Correction of Transaction.* (1) The participant must pay the Principal Amount to the plan. Plan Officials must reform the outstanding loan amount that was not in excess of the applicable plan loan limit at origination (the date of Breach) into an ongoing plan loan. In reformulating the loan, Plan Officials must make the necessary adjustments to the monthly repayment amount so that the remaining outstanding principal balance is amortized over the remaining duration of the original loan and also enforce all other terms of the original loan agreement. The Principal Amount is the loan amount in excess of the applicable plan loan limit on the Loss Date. The Loss Date is the date of loan origination.

(2) The principles of this paragraph (b) are illustrated in the following example:

Example. On January 1, 2004, Participant A receives a $15,000 loan pursuant to the loan provisions of Plan X, which incorporate the requirements of section 72(p) of the Code. Participant A is an employee of Company Y, the plan sponsor. Participant A is not a party in interest with respect to Plan X for any reason other than his employment with Company Y. The terms of the loan include a five-year repayment in equal monthly installments of principal and interest at a then current market interest rate of 4.625%. Amortized monthly payments for Participant A are determined to be $280. However, in accordance with Plan X limitations on the amount of participant loans and Participant A's account balance as of January 1, 2004, Participant A should not have received a loan in excess of $10,000. The loan otherwise complies with Plan X's loan provisions.

In late 2004, a Plan Official discovers that the amount of Participant A's loan exceeded applicable plan limitations. On January 1, 2005, the Recovery Date, Participant A's outstanding loan balance is $12,270. Participant A repays $5,000 to Plan X, the amount by which his loan exceeded applicable plan limitations on January 1, 2004. Plan Officials reform Participant A's loan on January 1, 2005 based on the outstanding principal balance of $7,270, to be paid back in equal monthly installments of principal and interest at the original loan rate of 4.625%. Appropriate adjustments are made to the monthly repayment amount, which will be $166 over the 4-year period remaining on the loan's original 5-year term. The reformed loan otherwise will comply with the terms of the original loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For each plan loan originated in violation of applicable plan limits, the date, amount, duration, interest rate and repayment schedule applicable to each plan loan and the amount of each participant's nonforfeitable accrued benefit on such date;

(2) Date and amount of excess loan repaid by each participant prior to reformulation;

(3) Date, amount and repayment schedule of each reformulated plan loan being maintained as an ongoing plan loan;

(4) Date and amount of payments made by the participant with respect to the original plan loan;

(5) A copy of the plan's loan provisions; and

(6) An explanation of any administrative practices or procedures with respect to plan loans and any changes to such practices or procedures designed to prevent this type of Breach from recurring.

2. Loan Duration in Excess of Plan Limitations

(a) *Description of Transaction.* A plan extended a loan to a plan participant who is a party in interest with respect to the plan based solely on his or her status as an employee of any employer whose employees are covered by the plan, as defined in section 3(14)(H) of ERISA. The duration of the loan exceeded the maximum repayment term permitted under applicable plan provisions incorporating the requirements of section 72(p) of the Code. The loan was a prohibited transaction that failed to qualify for ERISA's statutory exemption for plan loan programs because the duration of the loan exceeded the maximum repayment term permitted under applicable plan provisions.

(b) *Correction of Transaction.* (1) Plan Officials must reform the duration of the loan term so that repayment of the outstanding loan will be completed by the date that complies with the maximum repayment term permitted under applicable plan provisions. The duration of the reformulated loan must be no longer than the maximum permissible term under applicable plan provisions, measured from the date of loan origination to the date of correction. In reformulating the loan, Plan Officials must make the necessary adjustments to the monthly repayment amount so that the remaining outstanding principal balance is amortized over such duration and also enforce all other terms of the original loan agreement. If the period of time elapsed between the date of loan origination and the date Plan Officials discover the error equals or exceeds the maximum permissible term permitted under applicable plan provisions, then this correction is unavailable.

(2) The principles of this paragraph (b) are illustrated in the following example:

Example. On January 1, 2004, Participant A receives a general purpose $10,000 loan pursuant to the loan provisions of Plan X, which incorporate the requirements of section 72(p) of the Code. Participant A is an employee of Company Y, the plan sponsor. Participant A is not a party in interest with respect to Plan X for any reason other than his employment with Company Y. The terms of the loan include a ten-year repayment in equal monthly installments of principal and interest at a then current market interest rate of 4.75%. Amortized monthly payments for Participant A are determined to be $105. However, in accordance with Plan X limitations on the repayment term for general purpose participant loans, Participant A should not have received a loan with a duration longer than five years. The loan

otherwise complies with Plan X's loan provisions.

In late 2004, a Plan Official discovers that the duration of Participant A's loan exceeded applicable plan limitations. Plan Officials reform Participant A's loan on January 1, 2005, the date of correction, based on the outstanding principal balance of $9,200, to be paid back in equal monthly installments of principal and interest at the original loan rate of 4.75%. Appropriate adjustments are made to the monthly repayment amount, which will be $211 over the remaining four-year repayment term that begins on the date of correction. The reformed loan otherwise will comply with the terms of the original loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For each plan loan originated with a duration exceeding applicable plan limits, the date, amount, duration, interest rate, and repayment schedule applicable to each plan loan;

(2) Date, amount, duration, interest rate, and repayment schedule of each reformulated plan loan being maintained as an ongoing plan loan from the date of correction;

(3) Date and amount of payments made by the participant with respect to the original plan loan;

(4) A copy of the plan's loan provisions; and

(5) An explanation of any administrative practices or procedures with respect to plan loans and any changes to such practices or procedures designed to prevent this type of Breach from recurring.

D. Purchases, Sales and Exchanges

1. Purchase of an Asset (Including Real Property) by a Plan From a Party in Interest

(a) *Description of Transaction.* A plan purchased an asset with cash from a party in interest with respect to the plan, and under the circumstances, no prohibited transaction exemption applies.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the asset back to the party in interest who originally sold the asset to the plan or to a person who is not a party in interest. Whether the asset is sold to a person who is not a party in interest with respect to the plan or is sold back to the original seller, the plan must receive the higher of (i) the fair market value (FMV) of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) For this transaction, the Principal Amount is the plan's original purchase price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan purchased from the plan sponsor a parcel of real property. The plan does not lease the property to any person. Instead, the plan uses the property as an office. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property at the time of purchase. The appraiser values the property at $100,000, although the plan paid the plan sponsor $120,000 for the property. As of the Recovery Date, the property is valued at $110,000. To correct the transaction, the plan sponsor repurchases the property for $120,000 with no reduction for the costs of sale and reimburses the plan for the initial costs of sale. The plan sponsor also must pay the plan the greater of the plan's Lost Earnings or the sponsor's profits on this amount. This example assumes that the plan sponsor did not make a profit on the $120,000 proceeds from the original sale of the property to the plan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the seller;

(2) A narrative describing the relationship between the original seller of the asset and the plan; and

(3) The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan, both at the time of the original purchase and at the recovery date.

2. Sale of an Asset (Including Real Property) by a Plan to a Party in Interest

(a) *Description of Transaction.* A plan sold an asset for cash to a party in interest with respect to the plan, in a transaction that is not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* (1) The plan must receive the Principal Amount plus the greater of (i) Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b). As an alternative to repayment of the Principal Amount, if it is determined that the plan will realize a greater benefit by repurchasing the asset, the plan may repurchase the asset from the party in interest [20] at the lower of the price for which it sold the property or the FMV of the property as of the Recovery Date plus restoration to the plan of the party in interest's net profits from owning the property, to the extent they exceed the plan's investment return from the proceeds of the sale. The determination as to which correction alternative the plan chooses must be made by an independent fiduciary.

(2) For this transaction, the Principal Amount is the amount by which the FMV of the asset (at the time of the original sale) exceeds the sale price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold a parcel of unimproved real property to the plan sponsor. The sponsor did not make any profit on the use of the property. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property as of the date of sale. The appraiser valued the property at $130,000, although the plan sold the property to the plan sponsor for $120,000. However, the plan fiduciaries have reason to believe that the property will substantially increase IN VALUE in the near future based on the anticipated building of a shopping mall adjacent to the property in question and, as of the Recovery Date, the appraiser values the property at $140,000. An independent fiduciary determines that the property is a prudent investment for the plan, and will not result in any liquidity or diversification problems. The plan corrects by repurchasing the property at the original sale price, with the party in interest assuming the costs of the reversal of the sale transaction.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's sale of the asset, including the date of the sale, the sales price, and the identity of the original purchaser;

(2) A narrative describing the relationship of the purchaser to the asset and the relationship of the purchaser to the plan;

(3) The qualified, independent appraiser's report addressing the FMV of the property at the time of the sale from the plan and as of the Recovery Date; and

(4) The independent fiduciary's report that the property is a prudent investment for the plan.

3. Sale and Leaseback of Real Property to Employer

(a) *Description of Transaction.* The plan sponsor sold a parcel of real property to the plan, which then was leased back to the sponsor, in a transaction that is not otherwise exempt.

[20] The repurchase of the same property from the party in interest to whom the asset was sold is a reversal of the original prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an exemption.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the parcel of real property back to the plan sponsor or to a person who is not a party in interest with respect to the plan.[21] The plan must receive the higher of (i) FMV of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) For purposes of this transaction, the Principal Amount is the plan's original purchase price.

(3) If the plan has not been receiving rent at FMV, as determined by a qualified, independent appraisal, the sale price of the real property should not be based on the historic below-market rent that was paid to the plan.

(4) In addition to the correction amount in subparagraph (1), if the plan was not receiving rent at FMV, as determined by a qualified, independent appraiser, the Principal Amount also includes the difference between the rent actually paid and the rent that should have been paid at FMV. The plan sponsor must pay to the plan this additional Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the plan sponsor's use of the Principal Amount, as described in Section 5(b).

(5) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan purchased at FMV from the plan sponsor an office building that served as the sponsor's primary business site. Simultaneously, the plan sponsor leased the building from the plan at below the market rental rate. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property and rent. To correct the transaction, the plan sponsor purchases the property from the plan at the higher of the appraised value at the time of the resale or the original sales price and also pays the Lost Earnings. Because the rent paid to the plan was below the market rate, the sponsor must also make up the difference between the rent paid under the terms of the lease and the amount that should have been paid, plus Lost Earnings on this amount, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the original seller;

(2) Documentation of the plan's sale of the asset, including the date of sale, the sales price, and the identity of the purchaser;

(3) A narrative describing the relationship of the original seller to the plan and the relationship of the purchaser to the plan;

(4) A copy of the lease;

(5) Documentation of the date and amount of each lease payment received by the plan; and

(6) The qualified, independent appraiser's report addressing both the FMV of the property at the time of the original sale and at the Recovery Date, and the FMV of the lease payments.

4. Purchase of an Asset (Including Real Property) by a Plan From a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Other Than Fair Market Value

(a) *Description of Transaction.* A plan acquired an asset from a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan paid more than it should have for the asset.

(b) *Correction of Transaction.* The Principal Amount is the difference between the actual purchase price and the asset's FMV at the time of purchase. The plan must receive the Principal Amount plus the Lost Earnings, as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan bought unimproved land without obtaining a qualified, independent appraisal. Upon discovering that the purchase price was $10,000 more than the appraised FMV, the Plan Official pays the plan the Principal Amount of $10,000, plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original purchase of the asset, including the date of the purchase, the purchase price, and the identity of the seller;

(2) A narrative describing the relationship of the seller to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's purchase.

5. Sale of an Asset (Including Real Property) by a Plan to a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Less Than Fair Market Value

(a) *Description of Transaction.* A plan sold an asset to a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan received less than it should have from the sale.

(b) *Correction of Transaction.* The Principal Amount is the amount by which the FMV of the asset as of the Recovery Date exceeds the price at which the plan sold the property. The plan must receive the Principal Amount plus Lost Earnings as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold unimproved land without taking steps to ensure that the plan received FMV. Upon discovering that the sale price was $10,000 less than the FMV, the Plan Official pays the plan the Principal Amount of $10,000 plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original sale of the asset, including the date of the sale, the sale price, and the identity of the buyer;

(2) A narrative describing the relationship of the buyer to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's sale.

6. Holding of an Illiquid Asset Previously Purchased by a Plan

(a) *Description of Transaction.* A plan is holding an asset previously purchased from (i) a party in interest with respect to the plan at no greater than fair market value at that time in an acquisition to which no prohibited transaction exemption applied, (ii) a person who was not a party in interest with respect to the plan in an acquisition in which a plan fiduciary failed to appropriately discharge his or her fiduciary duties, or (iii) a person who was not a party in interest with respect to the plan in an acquisition in which a plan fiduciary appropriately discharged his or her fiduciary duties. Currently, a plan fiduciary determines that such asset is an illiquid asset because: (1) the asset failed to appreciate, failed to provide a reasonable rate of return, or caused a loss to the plan; (2) the sale of the asset

[21] If the plan purchased the property from the plan sponsor, the sale of the same property back to the plan sponsor is a reversal of the prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an individual prohibited transaction exemption, as long as the plan did not make improvements while it owned the property.

is in the best interest of the plan; and (3) following reasonable efforts to sell the asset to a person who is not a party in interest with respect to the plan, the asset cannot immediately be sold for its original purchase price, or its current FMV, if greater. Examples of assets that may meet this definition include, but are not limited to, restricted and thinly traded stock, limited partnership interests, real estate and collectibles.

(b) *Correction of Transaction.* (1) The transaction may be corrected by the sale of the asset to a party in interest, provided the plan receives the higher of (i) the fair market value (FMV) of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus Lost Earnings as described in Section 5(b). The Plan Official may cause the plan to sell the asset to a party in interest. This correction provides relief for both the original purchase of the asset, if required, and the sale of the illiquid asset by the plan to a party in interest, provided the Plan Official also satisfies the applicable conditions of the VFC Program class exemption.

(2) For this transaction, the Principal Amount is the plan's original purchase price.

(3) The principles of this paragraph (b) are illustrated in the following examples:

Example 1. A plan purchases undeveloped real property from a party in interest with respect to the plan for $60,000 in June 1999. In April 2004, Plan Officials determine that the property is an illiquid asset. A qualified independent, appraiser appraises the property at a current FMV of $20,000. The plan sponsor pays the plan the Principal Amount of $60,000 plus Lost Earnings as described in Section 5(b), and Plan Officials transfer the property from the plan to the plan sponsor. The Plan Officials also comply with the applicable terms of the related exemption.

Example 2. A plan purchases a limited partnership interest for $60,000 in June 1999 from an unrelated party after plan fiduciaries properly fulfill their fiduciary duties with respect to the purchase. In April 2004, Plan Officials determine that the interest is an illiquid asset because the interest has failed to generate a reasonable rate of return. A qualified, independent appraiser appraises the interest at a current FMV of $80,000. The plan sponsor pays the plan the FMV of $80,000 without a reduction for the costs of the sale, which is greater than the Principal Amount plus Lost Earnings, and Plan Officials transfer the interest from the plan to the plan sponsor. The Plan Officials also comply with the applicable terms of the related exemption.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original purchase of the asset, including the date of the purchase, the plan's purchase price, the identity of the original seller, and a description of the relationship, if any, between the original seller and the plan;

(2) The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan at the recovery date;

(3) A narrative describing the plan's efforts to sell the asset to persons who are not parties in interest with respect to the plan and any documentation of such efforts to sell the asset;

(4) A statement from a Plan Official attesting that: (i) The asset failed to appreciate, failed to provide a reasonable rate of return, or caused a loss to the plan; (ii) the sale of the asset is in the best interest of the plan; (iii) the asset is an illiquid asset; and (iv) the plan made reasonable efforts to sell the asset to persons who are not parties in interest with respect to the plan without success; and

(5) In the case of an illiquid asset that is a parcel of real estate, a statement from a Plan Official attesting that no party in interest owns real estate that is contiguous to the plan's parcel of real estate on the Recovery Date.

E. Benefits

1. Payment of Benefits Without Properly Valuing Plan Assets on Which Payment Is Based

(a) *Description of Transaction.* A defined contribution pension plan pays benefits based on the value of the plan's assets. If one or more of the plan's assets are not valued at current value, the benefit payments are not correct. If the plan's assets are overvalued, the current benefit payments will be too high. If the plan's assets are undervalued, the current benefit payments will be too low.

(b) *Correction of Transaction.* (1) Establish the correct value of the improperly valued asset for each plan year, starting with the first plan year in which the asset was improperly valued. Restore to the plan for distribution to the affected plan participants, or restore directly to the plan participants, the amount by which all affected participants were underpaid distributions to which they were entitled under the terms of the plan, plus Lost Earnings as described in Section 5(b) on the underpaid distributions. File amended Annual Report Forms 5500, as detailed below.

(2) To correct the valuation defect, a Plan Official must determine the FMV of the improperly valued asset per Section 5(a) for each year in which the asset was valued improperly.

(3) Once the FMV has been determined, the participant account balances for each year must be adjusted accordingly.

(4) The Annual Report Forms 5500 must be amended and refiled for (i) the last three plan years or (ii) all plan years in which the value of the asset was reported improperly, whichever is less.

(5) The Plan Official or plan administrator must determine who received distributions from the plan during the time the asset was valued improperly. For distributions that were too low, the amount of the underpayment is treated as a Principal Amount for each individual who received a distribution. The Principal Amount and Lost Earnings must be paid to the affected individuals. For distributions that were too high, the total of the overpayments constitutes the Principal Amount for the plan. The Principal Amount plus the Lost Earnings, as described in Section 5(b), must be restored to the plan or to any participants who received distributions that were too low.

(6) The principles of this paragraph (b) are illustrated in the following examples:

Example 1. On December 31, 1995, a profit sharing plan purchased a 20-acre parcel of real property for $500,000, which represented a portion of the plan's assets. The plan has carried the property on its books at cost, rather than at FMV. One participant left the company on January 1, 1997, and received a distribution, which included her portion of the value of the property. The separated participant's account balance represented 2% of the plan's assets. As part of correction for the VFC Program, a qualified, independent appraiser has determined the FMV of the property for 1996, 1997, and 1998. The FMV as of December 31, 1996, was $400,000. Therefore, this participant was overpaid by $2,000 (($500,000–$400,000) multiplied by 2%). The Plan Officials corrected the transaction by paying to the plan the $2,000 Principal Amount plus Lost Earnings as described in Section 5(b).

The plan administrator also filed an amended Form 5500 for plan years 1996 and 1997, to reflect the proper values. The plan administrator will include the correct asset valuation in the 1998 Form 5500 when that form is filed.

Example 2. Assume the same facts as in Example 1, except that the property had appreciated in value to $600,000 as of December 31, 1996. The separated participant would have been underpaid by $2,000. The correction consists of locating the participant and distributing to her the $2,000 Principal Amount plus Lost Earnings as described in Section 5(b), as well as filing the amended Forms 5500.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A copy of the qualified, independent appraiser's report for each plan year in which the asset was revalued;

(2) A written statement confirming the date that amended Annual Report Forms 5500 with correct valuation data were filed;

(3) If losses are restored to the plan, proof of payment to the plan and copies of the adjusted participant account balances; and

(4) If supplemental distributions are made, proof of payment to the individuals entitled to receive the supplemental distributions.

F. Plan Expenses

1. Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan

(a) *Description of Transaction.* A plan paid excessive compensation, including commissions or fees, to a service provider (such as an attorney, accountant, actuary, financial advisor, or insurance agent); a plan paid two or more persons to provide the same services to the plan; or a plan paid a service provider for services that were not necessary for the operation of the plan.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the use of the Principal Amount, as described in Section 5(b).

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan to the service provider during the six years prior to the discontinuation of the payment of the excessive, duplicative, or unnecessary compensation and (b) the reasonable market value of the non-duplicative services.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. Excessive compensation. A plan hired an investment advisor who advised the plan's trustees about how to invest the plan's entire portfolio. In accordance with the plan document, the trustees instructed the advisor to limit the plan's investments to equities and bonds. In exchange for his services, the plan paid the investment advisor 3% of the value of the portfolio's assets. If the trustees had inquired they would have learned that comparable investment advisors charged 1% of the value of the assets for the type of portfolio that the plan maintained. To correct the transaction, the plan must be paid the Principal Amount of 2% of the value of the plan's assets, plus Lost Earnings, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A written estimate of the reasonable market value of the services;

(2) The estimator's qualifications; and

(3) The cost of the services at issue during the period that such services were provided to the plan.

2. Payment of Dual Compensation to a Plan Fiduciary

(a) *Description of Transaction.* A plan pays a fiduciary for services rendered to the plan when the fiduciary already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in the plan. The plan's payments to the plan fiduciary are not mere reimbursements of expenses properly and actually incurred by the fiduciary.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the fiduciary's use of the Principal Amount for the same period.

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan during the six years prior to the discontinuation of the payments to the fiduciary and (b) the amount that represents reimbursements of expenses properly and actually incurred by the fiduciary.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. A union sponsored a health plan funded through contributions by employers. The union president receives $50,000 per year from the union in compensation for his services as union president. He is appointed as a trustee of the health plan while retaining his position as union president. In exchange for acting as plan trustee, the union president is paid a salary of $200 per week by the plan while still receiving the $50,000 salary from the union. Since $50,000 is full-time pay, the plan's weekly salary payments are improper. To correct the transaction, the plan must be paid the Principal Amount, which is the $200 weekly salary amount for each week that the salary was paid, plus the higher of Lost Earnings or Restoration of Profits, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Copies of the plan's accounting records which show the date and amount of compensation paid by the plan to the identified fiduciary; and

(2) If any of the amounts paid by the plan to the fiduciary represent reimbursements of expenses properly and actually incurred by the fiduciary, include copies of the plan records that indicate the date, amount, and character of these payments.

Signed at Washington, DC, this 30th day of March, 2005.

Ann L. Combs,

Assistant Secretary for Employee Benefits Security Administration, U.S. Department of Labor.

Appendix A – Sample VFC Program No Action Letter

Applicant (Plan Official)
Address

Dear Applicant (Plan Official):

Re: VFC Program Application No. xx–xxxxxx

The Department of Labor, Employee Benefits Security Administration (EBSA), has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). EBSA has established a Voluntary Fiduciary Correction Program to encourage the correction of breaches of fiduciary responsibility and the restoration of losses to the plan participants and beneficiaries.

In accordance with the requirements of the VFC Program, you have identified the following transactions as breaches, or potential breaches, of Part 4 of Title I of ERISA, and you have submitted documentation to EBSA that demonstrates that you have taken the corrective action indicated.

[Briefly recap the violation and correction. *Example:* Failure to deposit participant contributions to the XYZ Corp. 401(k) plan within the time frames required by ERISA, from _____(date) to _____(date). All participant contributions were deposited by _____(date) and lost earnings on the delinquent contributions were deposited and allocated to participants' plan accounts on _____(date).]

Because you have taken the above-described corrective action that is consistent with the requirements of the VFC Program, EBSA will take no civil enforcement action against you with respect to this breach. Specifically, EBSA will not recommend that the Solicitor of Labor initiate legal action against you, and EBSA will not impose the penalty in section 502(l) of ERISA on the amount you have repaid to the plan.

EBSA's decision to take no further action is conditioned on the completeness and accuracy of the representations made in your application. You should note that this decision will not preclude EBSA from conducting an investigation of any potential violations of criminal law in connection with the transaction identified in the application or investigating the transaction identified in the application with a view toward seeking appropriate relief from any other person.

[If the transaction is a prohibited transaction for which no exemptive relief is available, add the following language: Please also be advised that pursuant to section 3003(c) of ERISA, 29 U.S.C. section 1203(c), the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.]

In addition, you are cautioned that EBSA's decision to take no further action is binding on EBSA only. Any other governmental agency, and participants and beneficiaries, remain free to take whatever action they deem necessary.

If you have any questions about this letter, you may contact the Regional VFC Program Coordinator at *applicable address and telephone number*.

Appendix B – VFC Program Checklist (Required)

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate "Yes", "No" or "N/A" next to each item. A "No" answer or the failure to include a completed checklist will delay review of the application until all required items are received.

_____ 1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?
_____ 2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?
_____ 3. Have you provided the EIN, Plan Number, and address of the plan sponsor and plan administrator?
_____ 4. Have you provided the date that the most recent Form 5500 was filed by the plan?
_____ 5. Have you enclosed a signed and dated certification under penalty of perjury for the plan fiduciary with knowledge of the transactions and for each applicant and the applicant's representative, if any?
_____ 6. Have you enclosed relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?
_____ 7. Where applicable, have you enclosed a copy of an appraiser's report?
_____ 8. Have you enclosed supporting documentation, including:
_____ a. A detailed narrative of the Breach, including the date it occurred;
_____ b. Documentation that supports the narrative description of the transaction;
_____ c. An explanation of how the Breach was corrected, by whom and when, with supporting documentation;
_____ d. A list of all persons materially involved in the Breach and its correction (e.g., fiduciaries, service providers, borrowers, lenders);
_____ e. Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed, and
_____ f. Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits?
_____ g. If application concerns delinquent employee contributions or loan repayments, a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer's general assets and supporting documentation on which the Plan Official relied?
_____ 9. If you are an eligible applicant and wish to avail yourself of excise tax relief under the VFC Program Class Exemption, have you made proper arrangements to provide within 60 calendar days after submission of this application a copy of the Exemption notice to all interested persons and to the EBSA regional office to which the application is filed?
_____ 10. In calculating Lost Earnings, have you elected to use:
_____ a. The Online Calculator; or
_____ b. A manual calculation performed in accordance with Section 5(b)?
_____ 11. Where applicable, have you enclosed a description demonstrating proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant, and for participants who need to be located, have you demonstrated how adequate funds have been segregated to pay missing participants and commenced the process of locating the missing participants using either the IRS and SSA locator services, or other comparable means?
_____ 12. Has the plan implemented measures to ensure that the transactions specified in the application do not recur? (Do not include this with the application except for transactions under Section 7(c)(1) and (2)).

Signature of Applicant and Date Signed:

_____

Name of Applicant: _____

Title/Relationship to the Plan: _____

Name of Plan, EIN and Plan Number:

_____

Paperwork Reduction Act Notice

The information identified on this form is required for a valid application for the Voluntary Fiduciary Correction Program of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). You must complete this form and submit it as part of the application in order to receive the relief offered under the Program with respect to a breach of fiduciary responsibility under Part 4 of Title I of ERISA. EBSA will use this information to determine that you have satisfied the requirements of the Program. EBSA estimates that completing and submitting this form will require an average of 2 to 4 minutes. This collection of information is currently approved under **OMB Control Number 1210-0118**. You are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

Appendix C – EBSA Regional Offices

Submit your VFC Program application to the appropriate EBSA regional office:

Atlanta Regional Office, 61 Forsyth Street, SW, Suite 7B54, Atlanta, GA 30303, telephone (404) 562-2156, fax (404) 562-2168; jurisdiction: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.
Boston Regional Office, J.F.K. Building, Room 575, Boston, MA 02203, telephone: (617) 565-9600, fax: (617) 565-9666; jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, central and western New York, Rhode Island, Vermont.
Chicago Regional Office, 200 West Adams Street, Suite 1600, Chicago, IL 60606, telephone (312) 353-0900, fax (312) 353-1023; jurisdiction: northern Illinois, northern Indiana, Wisconsin.
Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011-2664, telephone (859) 578-4680, fax (859) 578-4688; jurisdiction: southern Indiana, Kentucky, Michigan, Ohio.
Dallas Regional Office, 525 Griffin Street, Rm. 900, Dallas, TX 75202-5025, telephone (214) 767-6831, fax (214) 767-1055; jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Kansas City Regional Office, 1100 Main Street, Suite 1200, Kansas City, MO 64105, telephone (816) 426-5131, fax (816) 426-5511; jurisdiction: Colorado, southern Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.
Los Angeles Regional Office, 1055 E. Colorado Boulevard, Suite 200, Pasadena, CA 91106-2341, telephone (626) 229-1000, fax (626) 229-1097; jurisdiction: 10 southern counties of California, Arizona, Hawaii, American Samoa, Guam, Wake Island.
New York Regional Office, 33 Whitehall Street, Suite 1200, New York, NY 10004, telephone (212) 607-8600, fax (212) 607-8681; jurisdiction: southeastern New York, northern New Jersey.
Philadelphia Regional Office, The Curtis Center, 170 S. Independence Mall West, Suite 870 West, Philadelphia, PA 19106-3317, telephone (215) 861-5300, fax (215) 861-5347; jurisdiction: Delaware, Maryland, southern New Jersey, Pennsylvania, Virginia, Washington, D.C., West Virginia.
San Francisco Regional Office, 71 Stevenson St., Suite 915, San Francisco, CA 94105, telephone (415) 975-4600, fax (415) 975-4589; jurisdiction: Alaska, 48 northern counties of California, Idaho, Nevada, Oregon, Utah, Washington.

Please verify current telephone numbers and addresses on EBSA's website, www.dol.gov/ebsa/.

Appendix D –Lost Earnings Example (Manual Calculation)

Delinquent Participant Contributions

Company A's pay periods end every other Friday. Each pay period, participant contributions total $10,000, which reasonably can be segregated from Company A's general assets by ten business days following the end of each pay period. Company A should have remitted participant contributions for the pay period ending March 2, 2001 to the plan by March 16, 2001, the Loss Date, but actually remitted them on April 13, 2001, the Recovery Date. In early 2004, a Plan Official discovers that participant contributions for this pay period were not remitted on a timely basis. To comply with the Program, the Plan Official determined that she would repay all Lost Earnings on January 30, 2004.

Based on the above facts:

- **Principal Amount** is $10,000
- **Loss Date** is March 16, 2001
- **Recovery Date** is April 13, 2001
- **Number of Days Late** is 28 (Recovery Date less Loss Date)

The basic formula for computing earnings using the applicable factors under IRS Revenue Procedure 95-17 is: Dollar Amount * IRS factor

Step 1. The Plan Official must calculate Lost Earnings, based on the Principal Amount, that should have been paid on the Recovery Date.

The first period of time is from March 16, 2001 to March 31, 2001 (15 days). The Code underpayment rate is 9%. Using Revenue Procedure 95-17, the factor for 15 days at 9% is 0.003705021 from table 23.

$$\$10,000 * 0.003705021 = \$37.05$$

The plan is due $10,037.05 as of March 31, 2001. The second period of time is April 1, 2001 through April 13, 2001 (13 days). The Code underpayment rate is 8%. Using Revenue Procedure 95-17, the factor for 13 days at 8% is 0.002853065 from table 21.

$$\$10,037.05 * 0.002853065 = \$28.64$$

Therefore, Lost Earnings of $65.69 ($37.05 plus $28.64) must be paid to the plan.

Step 2. If Lost Earnings are paid to the plan after the Recovery Date, the Plan Official must calculate the amount of interest on the Lost Earnings (determined in Step 1) that must also be paid to the plan. This calculation is shown by the following chart: (The "Interest" column is the previous time period's "Amnt. Due" multiplied by the Factor. "Amnt. Due" is the previous "Amnt. Due" plus "Interest". The calculation in the first row is based on the $65.69 Lost Earnings.)

1st Day	To	Days	Underpmnt. Rate	Rev. Proc. Table	Factor	Interest	Amnt. Due
4/14/01	6/30/01	78	8%	21	.017240956	1.132558	66.82256
7/1/01	9/30/01	92	7%	19	.017798686	1.189354	68.01191
10/1/01	12/31/01	92	7%	19	.017798686	1.210523	69.22243
1/1/02	3/31/02	90	6%	17	.014903267	1.031640	70.25408
4/1/02	6/30/02	91	6%	17	.015070101	1.058736	71.31281
7/1/02	9/30/02	92	6%	17	.015236961	1.086591	72.39940
10/1/02	12/31/02	92	6%	17	.015236961	1.103147	73.50255
1/1/03	3/31/02	90	5%	15	.012404225	0.911742	74.41429
4/1/03	6/30/03	91	5%	15	.012542910	0.933372	75.34766
7/1/03	9/30/03	92	5%	15	.012681615	0.955530	76.30319
10/1/03	12/31/03	92	4%	13	.010132630	0.773152	77.07634
1/1/04	1/30/04	30	4%	61	.003283890	0.253110	*77.32945*
				Total	Interest:	11.64	

Note that the last factor comes from the Revenue Procedure 95-17 tables for leap years.

The plan is also owed $11.64. This is the amount of interest on $65.69 (Lost Earnings on the Principal Amount) accrued between April 13, 2001, the Recovery Date, when the Principal Amount $10,000 was paid to the plan, and January 30, 2004, the date chosen to repay Lost Earnings.

Therefore, the Plan Official must pay **$77.33** to the plan on January 30, 2004, as Lost Earnings ($65.69) plus interest on Lost Earnings ($11.64) for the pay period ending March 2, 2001, in addition to the Principal Amount ($10,000) that was paid on April 13, 2001. This total corresponds with the final Total Due in the above chart (emphasized).

Appendix E – Model Application Form (Optional)

Voluntary Fiduciary Correction Program Application Form

This application form provides a recommended format for your VFC Program application. For full application procedures, consult www.dol.gov/ebsa/.

Applicant Name(s) and Address(es)

List separately:

_____

_____

_____

List Transaction(s) Corrected

Check which transaction(s) listed in the VFC Program you have corrected:

___ Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans
___ Delinquent Participant Contributions to Insured Welfare Plans
___ Delinquent Participant Contributions to Welfare Plan Trusts
___ Loan at Fair Market Interest Rate to a Party in Interest
___ Loan at Below-Market Interest Rate to a Party in Interest
___ Loan at Below-Market Interest Rate to a Non-Party in Interest
___ Loan at Below-Market Interest Rate Due to Delay in Perfecting Plan's Security Interest
___ Participant Loan Amount in Excess of Plan Limitations
___ Participant Loan Duration in Excess of Plan Limitations
___ Purchase of an Asset by a Plan from a Party in Interest
___ Sale of an Asset by a Plan to a Party in Interest
___ Sale and Leaseback of Real Property to Employer
___ Purchase of Asset by a Plan from a Non-Party in Interest at Other Than Fair Market Value
___ Sale of an Asset by a Plan to a Non-Party in Interest at Other Than Fair Market Value
___ Holding of an Illiquid Asset Previously Purchased by a Plan
___ Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based
___ Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan
___ Payment of Dual Compensation to a Plan Fiduciary

Correction Amount

Principal Amount $ _____ *Date Paid* ___ / ___ / ___

Lost Earnings/Restoration of Profit $ _____ *Date Paid* ___ / ___ /

Narrative and Calculations

List (1) all persons materially involved in the Breach and its correction (e.g., fiduciaries, service providers):

(2) An explanation of the Breach, including the date(s) it occurred (attach separate sheets if necessary):

(3) An explanation of how the Breach was corrected, by whom, and when (attach separate sheets if necessary):

(4) For correction of Delinquent Remittance of Participant Funds, provide a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer's general assets (attach supporting documentation on which Plan Official relied):

(5) Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits was calculated (attach separate sheets if necessary):

Supplemental Information

(1) Plan Sponsor Name:

EIN:

Address:

(2) Plan Name:

Plan Number: _____

(3) Plan Administrator Name:

_____

EIN: _____

Address:

_____

_____

_____

_____

(4) Name of Authorized Representative:

_____

Address:

_____

_____

_____**Telephone:**

_____

(5) Name of Contact Person:

_____

Address:

_____

_____

_____

Telephone: _____

(6) Date of Most Recent Annual Report Form 5500 Filing: ___/___/____ for Plan Year Ending: ___/___/___

(7) Is Applicant Seeking Relief Under the VFC Program Class Exemption?

___ Yes ___ No

Attach supporting documentation here.

Authorization of Preparer

I have authorized (insert name of authorized representative)

_____

_____ *to represent me concerning this VFC Program application.*

Name of Plan Official

_____

Signature of Plan Official

_____

Penalty of Perjury Statement

The following statement must be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and by the authorized representative, if any. Each Plan Official applying under the VFC Program must also sign and date the statement, which must accompany any subsequent additions to the application.

"Under penalties of perjury I certify that I am not Under Investigation (as defined in VFC Program Section 3(b)(3)) and that I have reviewed this application, including all supporting documentation, and to the best of my knowledge and belief the contents are true, correct, and complete."

_____

Name and Title

Signature _____

Date _____

_____

Name and Title

Signature _____

Date _____

Paperwork Reduction Act Notice

The information identified on this form is required for a valid application for the Voluntary Fiduciary Correction Program of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). You are not required to use this form; however, you must supply the information identified in order to receive the relief offered under the Program with respect to a breach of fiduciary responsibility under Part 4 of Title I of ERISA. EBSA will use this information to determine whether you have satisfied the requirements of the Program. EBSA estimates that assembling and submitting this information will require an average of 6 to 8 hours. This collection of information is currently approved under **OMB Control Number 1210-0118.** You are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

VFC Program Checklist

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate "Yes", "No" or "N/A" next to each item. A "No" answer or the failure to include a completed checklist will delay review of the application until all required items are received.

_____ 1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?
_____ 2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?
_____ 3. Have you provided the EIN, Plan Number, and address of the plan sponsor and plan administrator?
_____ 4. Have you provided the date that the most recent Form 5500 was filed by the plan?
_____ 5. Have you enclosed a signed and dated certification under penalty of perjury for the plan fiduciary with knowledge of the transactions and for each applicant and the applicant's representative, if any?
_____ 6. Have you enclosed relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?
_____ 7. Where applicable, have you enclosed a copy of an appraiser's report?
_____ 8. Have you enclosed supporting documentation, including:
_____ a. A detailed narrative of the Breach, including the date it occurred;
_____ b. Documentation that supports the narrative description of the transaction;
_____ c. An explanation of how the Breach was corrected, by whom and when, with supporting documentation;
_____ d. A list of all persons materially involved in the Breach and its correction (e.g., fiduciaries, service providers, borrowers, lenders);
_____ e. Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed, and
_____ f. Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits?
_____ g. If application concerns delinquent employee contributions or loan repayments, a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer's general assets and supporting documentation on which the Plan Official relied?
_____ 9. If you are an eligible applicant and wish to avail yourself of excise tax relief under the VFC Program Class Exemption, have you made proper arrangements to provide within 60 calendar days after submission of this application a copy of the Exemption notice to all interested persons and to the EBSA regional office to which the application is filed?
_____ 10. In calculating Lost Earnings, have you elected to use:
_____ a. The Online Calculator; or
_____ b. A manual calculation performed in accordance with Section 5(b)?
_____ 11. Where applicable, have you enclosed a description demonstrating proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant, and for participants who need to be located, have you demonstrated how adequate funds have been segregated to pay missing participants and commenced the process of locating the missing participants using either the IRS and SSA locator services, or other comparable means?
_____ 12. Has the plan implemented measures to ensure that the transactions specified in the application do not recur? (Do not include this with the application except for transactions under Section 7(c)(1) and (2)).

Signature of Applicant and Date Signed:

_____

Name of Applicant: _____

Title/Relationship to the Plan: _____

Name of Plan, EIN and Plan Number:

_____

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BILLING CODE 4150–29–P

Federal Register

Wednesday,
April 6, 2005

Part III

Federal Deposit Insurance Corporation

12 CFR Parts 303, 325, 327, and 347
International Banking; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 325, 327, and 347

RIN 3064–AC85

International Banking

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its international banking regulations in subpart J of part 303 and revising subparts A and B of part 347. The amendments reorganize, clarify, and revise subparts A and B of part 347, and address various issues raised as part of the FDIC's ongoing effort under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (12 U.S.C. 3311). Included in the revisions are amendments that address relocation of insured U.S. branches of foreign banks within and outside the state where such branches are presently located, adoption of a risk-based asset pledge requirement for insured U.S. branches of foreign banks, and information and examination requirements for foreign banks that own branches or depository institution subsidiaries seeking FDIC deposit insurance. The FDIC has also decided to maintain its existing position concerning the availability of FDIC deposit insurance for wholesale U.S. branches of foreign banks.

DATES: These revisions are effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT: John Di Clemente, Chief, International Section, Division of Supervision and Consumer Protection, (202) 898–3540 or *jdiclemente@fdic.gov* or Rodney D. Ray, Counsel, Legal Division, (202) 898–3556 or *rray@fdic.gov*, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On July 19, 2004, the FDIC issued a notice of proposed rulemaking ("NPR") in the **Federal Register**, with a 60 day comment period, regarding proposed amendments to its international banking regulations contained in subpart J of part 303, subpart B of part 325, subpart A of part 327, and subparts A and B of part 347 of title 12 of the Code of Federal Regulations. (69 FR 43060).

The proposed amendments were intended to accomplish various goals. These included implementation of the "plain language" requirement contained in section 722 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 4809); addressing certain regulatory burden issues raised in public comments as part of the FDIC's ongoing burden reduction effort under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)(12 U.S.C. 3311); maintaining parity with Regulation K, which was amended by the Board of Governors of the Federal Reserve System ("FRB") in October, 2001; and updating and enhancing the FDIC's supervisory processes by revising existing rules and proposing certain new rules. In addition, although no amendments were proposed regarding the topics, the FDIC requested comments on whether deposits in wholesale U.S. branches of foreign banks should be insured by the FDIC and whether the accounting regulations contained in subpart C of part 347 should be revised.

The comment period closed on September 17, 2004. Comments were received from the American Bankers Association ("ABA"), the Institute for International Bankers ("IIB"), and the Conference of State Bank Supervisors ("CSBS") regarding issues addressed in the NPR. In addition, at the IIB's request, FDIC staff met with representatives of the IIB and representatives of its constituent foreign banks regarding the IIB's EGRPRA suggestions and issues addressed in its comment letter.[1] No comments were received regarding subpart C of part 347 and, therefore, none of the rules in that subpart are being amended in the final rule.

A discussion of the comments and changes to the proposal that are being adopted in this final rule are presented below.

II. International Banking Procedural, Capital Maintenance, Assessment Rules

Subpart J of part 303 contains the FDIC application procedures that implement the international banking regulations in part 347, subparts A and B. Although the NPR contained several amendments to the subpart J regulations, most of them consisted of technical amendments because of the substantial restructuring being proposed for the regulations in part 347. There were no comments on those amendments and the FDIC is adopting them as proposed.

In addition to the technical amendments, the FDIC proposed to amend section 303.184, which addresses moving an insured branch of a foreign bank ("grandfathered branch"),[2] by specifying that expedited processing could be provided for applications involving intrastate relocations of eligible grandfathered branches. This amendment was added to address concerns expressed by the IIB that grandfathered branches would be precluded from moving or relocating from their existing locations if their proposed relocations were made subject to the "immediate neighborhood" geographic relocation requirement applied to proposed branch relocations of state nonmember banks in section 303.41(b). In their comments, the ABA and IIB expressed support for the proposed amendment but the IIB indicated that it assumed that the FDIC would subject a proposed interstate relocation to standard processing and requested that the FDIC clarify this point in the final rule. The FDIC has considered the IIB request and has added a new paragraph (e) to section 303.184 to address standard processing of applications to relocate a grandfathered state branch to another state. In doing so, the FDIC believes it is appropriate to address a state licensing issue raised by the IIB comment letter and to ensure that the rule will only be utilized for legitimate relocations of existing grandfathered state branches and not simply to recharacterize the establishment of a new foreign branch in another state as a "move" or "relocation" of a grandfathered state branch to avoid compliance with the subsidiary requirement contained in section 6(d) of the IBA. Therefore, under section 303.184, as revised by this final rule, in addition to satisfying the criteria contained in paragraph (d), a foreign bank proposing to relocate a grandfathered state branch to another state without affecting its grandfathered status will be required, under paragraph (e), to comply with any applicable state laws and regulations of the states affected by the proposed relocation. In addition, because the foreign bank will be relocating its whole grandfathered branch operation from one state to another (not creating an additional out-of-state branch of the grandfathered branch, which would not be allowed), the existing license of the branch in the state from which it is moving may need to be surrendered or cancelled and a

[1] A meeting summary and list of participants is available on the FDIC's Web page at *http://www.fdic.gov/regulations/laws/federal/04cMEETING.html*.

[2] A grandfathered branch of a foreign bank is a U.S. branch of a foreign bank that obtained FDIC deposit insurance prior to December 19, 1991 and is authorized to accept or maintain domestic retail deposit accounts pursuant to section 6(d)(2) of the International Banking Act ("IBA")(12 U.S.C. 3104(d)(2)).

new license obtained in the state to which the branch is relocating. To avoid a "break" in the existence of the grandfathered branch, which may create an issue regarding compliance with the subsidiary requirement contained in section 6(d) of the IBA, the rule also specifies that the foreign bank must obtain any required regulatory approvals from the appropriate state licensing authority of the state to which the insured branch proposes to relocate before relocating the existing branch operations and surrendering its existing license to the appropriate state licensing authority of the state from which the branch is relocating.

In addition to the amendments proposed in subpart J of part 303, the FDIC also proposed revisions to sections 325.103 and 327.4, regarding capital maintenance and the annual assessment rate, respectively, for insured U.S. branches of foreign banks. The amendments were proposed to conform those sections with proposed amendments to the FDIC's asset pledge and asset maintenance requirements contained in subpart B of part 347. Because the FDIC has decided to maintain the existing quarterly calculation methodology for asset maintenance in the final rule, for the reasons discussed subsequently in connection with section 347.210, the reference to the "insured branch's daily third-party liabilities" has been eliminated in the final rule.

III. Foreign Banking and Investment by Insured State Nonmember Banks

Subpart A of part 347 primarily addresses branching, investments, and permissible activities of state nonmember banks in foreign countries. The FDIC proposed various amendments in the NPR that reorganized the existing sections in the subpart and clarified their coverage. For example, the FDIC proposed to divide particularly complex sections, such as existing section 347.104 into sections 347.104 through 347.110, which are less complex sections but accomplish a similar result. The FDIC also proposed to move and consolidate existing sections based on the subject matter addressed to make the requirements easier to locate and understand. For example, existing sections 347.103, addressing foreign branch powers and FDIC consent requirements, and 347.108, addressing FDIC consent requirements for foreign investments, were made sections 347.115 (permissible activities for foreign branches), and 347.117 (general consent for foreign branches and investments), 347.118 (expedited processing for foreign branches and investments, and 347.119 (specific consent). The discussion that follows is provided to explain a few of the more significant amendments to the subpart.

The FDIC proposed to revise existing sections 347.103 and 347.104 in the NPR to better address the interplay between the FDIC's part 362 and part 347. This revision was accomplished in two ways. First we separated the substance of existing section 347.104(f), dealing with direct and indirect investments in foreign organizations, into section 347.104 in the proposed rule.[3] Second, we created "permissible activities" sections for state nonmember banks and their subsidiaries in section 347.105(b) out of existing section 347.104(a)–(b) and for foreign branches of state nonmember banks in section 347.115(a)–(g) out of existing section 347.103(a). In addition, the order and list of activities authorized for state nonmember banks and their subsidiaries and foreign branches of state nonmember banks were revised to more closely track the order of the activities listed as permissible for member banks and their subsidiaries or foreign branches of member banks under the corresponding provision in Regulation K. This revision will make the comparison easier between activities authorized under subpart A of part 347 and those authorized under Regulation K for branches of member banks or member banks and their subsidiaries. The FDIC also added paragraph (d) to proposed section 347.105 and paragraph (h) to proposed section 347.115, for clarification, to generally address when activities, other than those authorized by the respective sections, may be authorized by specific consent under part 347 or when authorization for the activities must be obtained under part 362 as well as subpart A of part 347.

The ABA commented on the proposed amendment to section 347.115, including another FDIC proposal adopting the same definition of "investment grade" that had been adopted by the FRB and the OCC. In its comment, the ABA noted that the adoption of the same approach to "investment grade" was a substantive improvement, which it supported. It also expressed support for the addition of section 347.115(h), discussed above.

The FDIC also proposed to amend its authorization for "general consent" in two ways. The first way was to allow insured state nonmember banks to branch into a foreign country under general consent in circumstances covered by proposed section 347.117(a)(1)(ii) or (iii). This change would allow an eligible state nonmember bank to establish additional branches in a country in which the bank's holding company operates a foreign bank subsidiary, or in which an affiliated bank or Edge or Agreement corporation operates one or more foreign branches or foreign bank subsidiaries and allow for an after-the-fact notification to the FDIC in those circumstances, rather than requiring prior approval under expedited processing, as is presently required under section 347.103(c)(1). The second way was to grant general consent to invest in a foreign organization, under proposed section 347.117(b)(2), when at least one insured state nonmember bank operates a foreign branch in the relevant foreign country where the organization will be located because of the FDIC's familiarity with the banking laws and practices of that country. The ABA commented on this amendment and expressed support for the proposed change in general consent for foreign branches.

[3] Like existing section 347.104(f), section 347.104 recognizes that the FDIC's treatment of direct and indirect investments by state nonmember banks in foreign organizations differs from the treatment such investments are provided in Regulation K for member banks. This is because of differences in the underlying statutory provisions governing member and state nonmember banks. Unlike member banks, whose investments are constrained by the language of section 25 of the Federal Reserve Act (12 U.S.C. 601), section 18(l) of the FDI Act permits state nonmember banks to invest in foreign "banks and other entities," to the extent authorized by state law. Thus, considering the legislative history of section 18(l), and the language of the statute, the FDIC has interpreted section 18(l) as not restricting the types of foreign organizations in which a state nonmember bank can invest.

The ability of insured state nonmember banks to invest in other types of foreign organizations, however, raises issues under section 24 of the FDI Act (12 U.S.C. 1831a) and part 362 because national banks are unable to invest directly in nonbank foreign organizations. Section 24 prohibits an insured state nonmember bank from acquiring an equity investment that a national bank is not permitted to acquire. Such an investment may be made under section 24, subject to FDIC approval, however, if the investment is made through a majority-owned subsidiary of the bank. It may also be made if a company becomes majority-owned by the bank as a result of the investment and the "as principal" activities of the company are ones in which a subsidiary of a national bank could engage. Ownership of more than 50 percent of the equity in a nonbank foreign organization makes that organization a majority-owned subsidiary and, thus, no section 24 analysis is required because such a subsidiary is authorized only to engage in the same activities that the FRB has authorized for subsidiaries of member banks (and thus national banks) under Regulation K. In addition, while it is unnecessary for insured state nonmember bank investments of 50 percent or less of the equity of a nonbank foreign organization to be held through an intermediate foreign bank subsidiary or Edge subsidiary as required under Regulation K, those investments are required to be held through some form of U.S. or foreign majority-owned subsidiary in order to comply with the requirements of section 24 and part 362.

Although the FDIC received no comments on the proposed revision for foreign investments, an additional clarification to proposed section 347.117(b)(2) is included in this final rule. As indicated in the discussion contained in the NPR, when the FDIC amended its foreign banking regulations in 1998, it declined to adopt a suggestion that the FDIC grant general consent to invest in a foreign organization when at least one insured state nonmember bank operates a foreign branch in the relevant foreign country. This was due to concerns that "nameplate" branches being operated in foreign countries might fall within the scope of the authorization. In the discussion of the proposed amendment in the NPR, the FDIC indicated that it believed most nameplate branches would be operated in jurisdictions where authority to invest in foreign organizations by general consent would be inapplicable under section 347.119(a). Although the FDIC believes the discussion in the NPR was correct, it is concerned that the standard may be somewhat imprecise. Therefore, the text contained in section 347.117(b)(2) has been revised in the final rule to clearly indicate that the existence of a "shell branch" (a term that the FDIC intends to be synonymous with the term "nameplate branch") in a foreign country will not provide a basis for investment by general consent under section 347.117(b).

Finally, the proposal contained a new section 347.122, which was intended to enhance the FDIC's existing supervisory authority. The section recognizes that the FDIC may, under section 18(d)(2) and 18(l) of the FDI Act, condition the authority granted under subpart A as it considers appropriate and provide for termination of activities or divestiture of investments permitted under the subpart, after giving the bank notice and a reasonable opportunity to be heard, if a bank is unable or fails to comply with the requirements of the subpart or any conditions imposed by the FDIC regarding transactions under the subpart. The only comment on the section was submitted by the ABA, which expressed no opposition to the new section.

After considering the proposed amendments contained in the NPR and the comments submitted thereon, except as otherwise stated above, the FDIC is adopting all of the amendments to subpart A of part 347 in this final rule as they were proposed.

IV. Foreign Banks

The existing rules in part 347, subpart B primarily implement provisions of the FDI Act and International Banking Act concerning insured and noninsured U.S. branches of foreign banks. The FDIC proposed reorganizing the subpart by grouping the existing sections that were applicable to insured State and Federal branches at the beginning of the subpart, followed by the sections applicable to only State branches. In addition to several minor revisions to the existing sections, the FDIC also proposed more substantive amendments. These included revising its existing rules to update its foreign examination and information rule and applying them to U.S. banking subsidiaries of foreign banks, addressing how a grandfathered branch could be transferred to a new foreign bank owner and retain the branch's grandfathered status, adopting a risk-based approach for its asset pledge rule, and revising its asset maintenance rule to compute asset maintenance requirements based on a daily calculation of the third-party assets and liabilities. Finally, the FDIC proposed a new rule to facilitate cross-border supervision of insured U.S. branches of foreign banks and insured U.S. bank subsidiaries by providing for the sharing of supervisory information between the FDIC and foreign bank regulatory or supervisory authorities and addressing the confidentiality of such information. These more substantive amendments are discussed in greater detail below.

Section 347.208 of the FDIC's existing rules addresses foreign bank agreements with the FDIC to be examined and provide information. The regulation implements section 10(b) of the FDI Act (12 U.S.C. 1820(b)) and was initially issued in 1979. Although the regulation addresses foreign banks applying for deposit insurance for U.S. branches, it does not address deposit insurance applications of U.S. depository institution subsidiaries of foreign banks.[4]

To update the rule and enhance the FDIC's supervisory authority, the FDIC proposed to redesignate the rule as section 347.204 and substantially amend it to make it more useful. As envisioned in the proposal, the amended rule would have addressed several issues. It would have made the rule applicable to U.S. depository institution subsidiaries, as well as U.S. branches, of a foreign bank seeking deposit insurance from the FDIC. It also would have required the foreign bank to provide the FDIC with a written commitment (including the foreign bank's consent to U.S. court jurisdiction and designation of agent for service of process, acceptable to the FDIC) to:

- Permit examination of the foreign bank and affiliates located outside the U.S.;
- Provide information regarding the foreign bank and affiliates located outside the U.S.; and
- Permit examination and provide information regarding the offices and affiliates of the foreign bank that are located in the U.S.

In addition, the proposal would have allowed the FDIC to waive the foreign examination provision if the FRB had determined that the foreign bank was subject to comprehensive consolidated supervision ("CCS"). It also would have allowed for the FDIC, in its discretion and subject to the requirements specified in the regulation, to waive some or all of the commitment requirements imposed by the section in lieu of requiring its own separate commitment from the foreign bank.

There were two comments on proposed section 347.204. The ABA expressed support for the proposed amendments to the section. The IIB expressed concerns, however, about what it viewed as exertion of "extraterritorial" examination authority over non-U.S. offices and affiliates of foreign banks. The IIB also asserted that the proposal would reverse the FDIC's longstanding position, dating back to 1979, when the original rule was adopted, when the FDIC recognized that despite its broad statutory authority to conduct such examinations, home country laws typically would prohibit the FDIC from doing so. Therefore, the IIB observed, the FDIC adopted a compromise under which it asserted examination authority only over U.S. branches and affiliates and required an agreement to provide information concerning operations of non-U.S. offices and affiliates. The IIB also felt that the proposed foreign examination provision was largely unnecessary because the proposed rule contained waiver authority for foreign banks that had been determined to be subject to CCS. It noted that section 3 of the Bank Holding Company Act (12 U.S.C. 1842) required a finding of comprehensive consolidated supervision by the FRB before a foreign bank could acquire or establish a U.S. commercial bank subsidiary and that the acquisition by a foreign bank of control of a savings

[4] The statute requires a foreign bank, in connection with obtaining deposit insurance for a branch or depository institution subsidiary, to submit a binding written commitment to the FDIC to permit any examination of the affairs of any affiliate of the branch or depository institution subsidiary to the extent necessary to determine: (1) the relationship between the depository institution and the affiliate and (2) the effect of such relationship on such depository institution.

association was subject to a CCS determination by the OTS.

The FDIC has reviewed and considered the comments on proposed section 347.204, as well as the information and an examination requirement contained in existing section 347.208, and has decided to make several revisions to section 347.204 in the final rule.

Although the IIB did not specifically reference the 1979 statement mentioned in its comment, the FDIC believes that the reference was to a comment contained in the preamble to the proposed rule for the FDIC's initial foreign banking regulations. In that notice, the FDIC observed:

> The FDIC is aware that most foreign banks would be prohibited, or at least restricted, by law or policy of the country of the bank's domicile from providing such a commitment. Were the FDIC to require a commitment allowing the FDIC to conduct a full examination of the bank, it is probable that no foreign bank could operate an insured branch. This result clearly is not intended. Thus, the FDIC proposes that a foreign bank agree to provide the FDIC with information regarding the affairs of the bank and its affiliates which are located outside the United States. As to activities within the United States, the bank shall agree to allow the FDIC to examine the affairs of the bank and its affiliates. 44 FR 23869, 23871 (April 23, 1979).

The FDIC believes that this conservative approach may have been prudent in the context of foreign banks seeking deposit insurance for U.S. branches in the late 1970s but that the approach has become somewhat outdated and the rule should be more reflective of the supervisory structure that is currently in existence. In this regard, it is noted that the underlying statutory provision in the FDI Act and the initial regulation preceded the failure of the Bank of Credit and Commerce International ("BCCI") in the early 1990s, which had an impact on certain insured depository institutions in the United States that had undisclosed relationships with BCCI. The underlying statutory provision and initial regulation also preceded the enactment of statutory amendments to the IBA, Bank Holding Company Act, and Home Owners Loan Act, as part of the Foreign Bank Supervision and Enforcement Act of 1991,[5] that require comprehensive consolidated supervision determinations in certain circumstances by the appropriate Federal banking agency under those statutes, including the initial acquisition of control or establishment of a U.S. bank, savings association, branch, agency, or representative office. Because the appropriate Federal banking agencies consider, as part of their CCS determination, whether the foreign bank's home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess its overall financial condition and compliance with laws and regulations, as specified in 12 CFR 211.24(c)(ii), the FDIC believes acceptable commitments and assurances of cooperation by the foreign bank, coupled with appropriate supervisory coordination and communication with the home country regulator may be sufficient to satisfy the examination commitment for a foreign bank and its affiliates outside the U.S. Thus, a CCS determination from the appropriate Federal banking agency should reduce the need for foreign examination commitments. Therefore, the section has been rewritten to eliminate the foreign examination commitment requirement as a prerequisite for obtaining consideration of a deposit insurance application if the foreign bank has been determined to be subject to CCS by the appropriate Federal banking agency.[6]

The FDIC has also revised the final rule to eliminate the waiver provisions contained in paragraph (b) of the proposal. The first waiver provision concerned the foreign examination commitment, which is no longer addressed in paragraph (a) of the final rule. In addition, the other waiver provision, regarding waivers for commitments provided to other Federal banking agencies, has been deleted. Although the latter provision was intended to avoid the appearance of duplication, the FDIC is concerned that such waivers may create the potential for uncertainty regarding the FDIC's authority under the commitments. Thus the FDIC believes the potential enforcement difficulties attendant to such waivers outweigh the potential benefits of such waiver authority.

The FDIC also has revised the consent to jurisdiction and designation of agent provisions in the final rule to clarify those provisions by eliminating the "court" and "process" references. The FDIC presently requires that foreign owners of insured depository institutions, including foreign banks, provide consents to personal jurisdiction that are acceptable to the FDIC; however, the consents are not limited merely to court proceedings.[7] Thus, the consent to jurisdiction and designation of agent provisions have been revised in the final rule to avoid giving the erroneous impression that consents to jurisdiction and designations of agents that are limited to consent to jurisdiction of the U.S. courts and service of process in court proceedings will be acceptable to the FDIC.

Section 347.204(b)(3) of the proposal has also been made paragraph (b) in the final rule and revised. Because the FDIC believes that an acceptable consent to U.S. jurisdiction and designation of agent for service are essential components needed to obtain binding commitments from the foreign bank, the final rule clarifies that the consent to jurisdiction and designation of agent for service (and any limitations on the FDIC's ability to utilize them) will be considered together with the commitments provided by the foreign bank. Additionally, as revised by the final rule, the section recognizes that the FDIC also has discretion to consider any additional commitments or assurances by the foreign bank, including that it will cooperate and assist the FDIC, including, without limitation, by seeking to obtain waivers and exemptions from applicable confidentiality or secrecy restrictions or requirements to enable the foreign bank or its affiliates to make such information available to the FDIC.

Therefore, the FDIC is adopting section 347.204, as revised in this final rule, for application to deposit insurance applications of U.S. branches and depository institution subsidiaries of foreign banks.

Another issue addressed in the proposal was an amendment contained in proposed section 347.206(d), concerning the transferability of grandfathered branches to new foreign banks. As indicated in the proposal, section 347.206 of the proposal is largely derived from existing section 347.204(a)–(c) and implements section 6(d) of the IBA (12 U.S.C. 3104(d)).[8]

As part of the EGRPRA process the IIB requested that the FDIC adopt an interpretation of section 6(d) that would

[5] Pub. L. 102–242, 105 Stat. 2236, 2286 (1991).

[6] In the event that the FDIC receives an application for deposit insurance for a U.S. banking subsidiary of a foreign bank that has not been determined to be subject to CCS by an appropriate Federal banking agency, the FDIC expects the foreign bank to provide the commitments required by section 347.204 and it may also require the foreign bank to provide the FDIC such additional commitments and assurances as the FDIC considers necessary under the circumstances.

[7] The consents to jurisdiction and designation of agent that the FDIC presently uses also include consent to agency jurisdiction and investigations for various supervisory and enforcement purposes.

[8] Section 6(d) of the IBA allows any insured branches that were accepting or maintaining domestic retail deposit accounts on December 19, 1991, to continue to operate as "grandfathered" insured branches conducting domestic retail deposit activities.

allow the grandfathered branch status of an insured U.S. branch of a foreign bank to survive the sale or transfer of the branch from one foreign bank to another foreign bank. As indicated in the proposal, the IIB's view was that because the availability of the grandfather exception appears to be conditioned upon a single exception (that the branch was insured as of December 19, 1991), it was inconsistent with the plain meaning of the statute to include an additional condition (that is, the branch was not transferred after December 19, 1991). The IIB also observed that other grandfather provisions enacted by Congress in the same statute expressly state that those grandfather rights terminate upon a change in control. Therefore, the absence of such a provision in the grandfathered branch exception, it was argued, indicates that Congress did not intend that an insured branch would lose its grandfathered status upon its sale or transfer. Additionally, the IIB observed that permitting transfers of grandfathered branches would provide an option for other foreign banks that would like to establish FDIC-insured branches but are constrained from doing so by the subsidiary requirement in section 6(d) of the IBA. Finally, it was observed that depositors would not lose the protections of deposit insurance solely as a result of the sale or transfer of an insured branch.

Having considered these points in the proposal, the FDIC observed that it had narrowly construed the exception in the past and that a broad reading of the grandfather exception requested would be at odds with the distinct preference Congress stated in section 6(d) of the IBA of making foreign banks desiring to engage in *new* domestic retail deposit activities requiring deposit insurance after December 19, 1991 do so through insured banking subsidiaries. The FDIC also noted that it was a well recognized rule of statutory construction that in ascertaining the plain meaning of a statute it is appropriate to look to the particular statutory language at issue, as well as the language and design of the statute as a whole. By reading the statute as a whole, rather than merely focusing on the precise language of the grandfathered branch exception, the proposed broad reading of the exception was contrary to the direction Congress provided in section 6(a) of the IBA, regarding implementation of the section, because purchasers of grandfathered branches could avoid forming and capitalizing banking subsidiaries to engage in domestic retail deposit activity in the U.S., rather than following the same process required for domestic banks of establishing and capitalizing a distinct corporate entity and applying for deposit insurance.

The FDIC recognized, however, that its existing regulations did not address this issue and that there may be other situations, such as certain merger and acquisition transactions, that are not designed or motivated by the desire to obtain access to the domestic retail deposit market and avoid compliance with the subsidiary requirement in section 6(d) of the IBA, where the grandfathered status of an insured branch should remain intact. Therefore, the FDIC proposed to address the issue by providing in section 347.206(d) of the proposal that in certain circumstances, such as certain merger and acquisition transactions, which are not designed or motivated by the desire to obtain access to the domestic retail deposit market and avoid compliance with the subsidiary requirement in section 6(d) of the IBA, the grandfathered status of an insured branch should remain intact following the transaction.

The FDIC received comments from the ABA and IIB on the proposed amendment. The ABA indicated that it did not oppose the amendment, noting that it appeared to state explicitly what has been considered to be the law implicitly. The IIB, however, reiterated its previously expressed view that there was adequate legal authority for the FDIC to permit, rather than prohibit, the transferability of an insured branch to another foreign bank without the loss of its grandfathered status. It also suggested that permitting the grandfathered status of the remaining 12 FDIC-insured branches to survive a transfer of the branch would not be fundamentally inconsistent with the 1991 Congressional determination that foreign banks seeking to engage in *new* domestic retail activity do so through subsidiaries rather than branches.

As indicated earlier, the IIB's legal and policy arguments on the transferability issue were submitted prior to the issuance of the proposal and were considered and discussed in the proposal. Although the FDIC recognizes that it might be possible to make legal and policy arguments supporting the IIB's proposed broad reading of the grandfather exception, the FDIC continues to believe that the exception should be construed narrowly, since it is contrary to Congress' general direction that foreign banks only engage in retail deposit taking after December 19, 1991, through banking subsidiaries with deposit insurance and that the statute not be construed to provide foreign banks with a competitive advantage over domestic banks.

The IIB also noted that requiring a specific proper motivation in a merger and acquisition might even call into question the survival of grandfathered status following a change in control of the foreign parent bank. It suggested, regardless of the FDIC's treatment of the broader transferability issue, that the FDIC clarify that changes in control of the foreign parent bank will not terminate the grandfathered status of existing insured branches.

The FDIC believes that it may be problematic to make a general statement such as that requested by the IIB in the context of a rulemaking proceeding. The FDIC believes that a change in ownership of a foreign bank that owns an insured branch may affect the FDIC's interest in the insured institution and that the FDIC should have an opportunity to evaluate the transaction before it is finalized. Therefore, since the universe of grandfathered insured branches of foreign banks is very limited, the FDIC believes that it is more appropriate for a foreign bank considering this type of transaction to discuss its planned structure with FDIC staff to evaluate whether the grandfathered status of the branch will remain intact following the proposed change in control of the existing foreign bank owner.

Therefore, for the reasons previously stated, the FDIC is adopting section 347.206, as proposed, in the final rule.

The FDIC also proposed to add a new section 347.207 to the subpart to facilitate cross-border supervision of insured U.S. branches and banking subsidiaries of foreign banks by providing for the sharing of supervisory information between the FDIC and foreign bank regulatory or supervisory authorities. As indicated in the proposal, the section was patterned after section 15 of the IBA (12 U.S.C. 3109) and 12 CFR 211.27. It also addressed the confidentiality of such information, based upon the FDIC's interpretation of section 8(v) of the FDI Act (12 U.S.C. 1818(v)), by providing that the disclosure or transfer of such information to a foreign bank regulatory or supervisory authority will not waive any privilege applicable to such information. The ABA's comment indicated that it supported the addition of the provision and it is being adopted in the final rule without further amendment.

In amendments contained in section 347.209 of the proposal, the FDIC proposed to revise the 5 percent asset pledge requirement, contained in existing section 347.210, to make it

more risk-focused and take into consideration characteristics that may be unique to each insured branch. As discussed in the proposal, under the amended rule, the asset pledge requirement would be determined in a manner similar to the approach the FDIC has taken with its risk-based deposit insurance assessment system. In addition, any newly insured branch would be subject to at least a 5 percent asset pledge requirement throughout the first three years of its operations as an insured branch.[9] After the first three years of operations as an insured branch, the asset pledge amount would be adjusted by taking into consideration the percentage of assets maintained by the insured branch, pursuant to section 347.210, and the supervisory information relative to the branch at issue. It was also envisioned that the most recent ROCA rating [10] for the insured branch will be a focal point of such supervisory information but, as with the risk-based premium system, the FDIC could also consider other supervisory information that it considered appropriate to fully evaluate the potential risk posed by the insured branch in determining the supervisory subgroup assignment for the branch. The appropriate percentage of assets required to be pledged would then be determined based on the supervisory risk subgroup assigned and the asset maintenance level applicable to the branch. The amended section would generally permit the asset pledge to be lowered to not less than 2 percent of third-party liabilities for insured branches that were perceived to pose a lower potential risk and up to 8 percent of liabilities for insured branches that were perceived to pose a higher potential risk to the deposit insurance fund. In addition, the FDIC's ability to require a higher percentage of pledged assets in appropriate circumstances would remain unchanged.

The FDIC also proposed amendments to the "eligible collateral" portion of the rule to specify that "negotiable" certificates of deposit ("CDs") with waivers of offset from their issuers, but not non-negotiable CDs with waivers of offset from their issuers, and U.S. Treasury bills would be considered eligible collateral under the rule.

All of the commenters discussed the proposed amendments to this rule. The CSBS observed that the asset pledge and asset maintenance requirements were extremely important and valuable supervisory tools. It also observed that, while the role of the state asset pledge and asset maintenance requirements is paramount for the protection of creditors of uninsured branches, in the unique situation where retail deposits are insured by the FDIC, the major objective is the protection of depositors and that certain states had taken the initiative to avoid the imposition of double asset pledge requirements by exempting FDIC insured branches from state asset pledge requirements. Therefore, given the unique situation posed by insured branches of foreign banks and lack of effect on state prerogatives, the CSBS indicated that it did not object to the proposed amendments to the FDIC asset pledge and maintenance rules.

The ABA expressed general support for the amendments but suggested that additional financial instruments be added to the eligible collateral list in the rule. The ABA observed that the list of assets that foreign banks may pledge under the existing rule includes certain negotiable CDs and bankers acceptances issued by state and national banks, but does not include the same types of instruments issued by state and federal savings associations. The ABA also observed that eligible collateral, under the existing rule, includes notes issued by banks and bank holding companies but not savings associations and thrift holding companies. The ABA believed that there was no reason to distinguish between banks, savings associations, and their respective corporate parents in this manner, since financial instruments provided by these other issuers also would provide the same protection from the FDIC.

The IIB supported adoption of a risk-based asset pledge requirement but believed the proposed two percent minimum pledge amount should be eliminated in favor of either (i) a completely risk-based requirement or (ii) a smaller minimum. The IIB also disagreed with the FDIC's proposal to amend the eligible collateral requirement to require negotiable CDs with waivers of offset because of the practical burdens associated with requiring grandfathered branches to substitute negotiable CDs with waivers of offset for non-negotiable CDs with waivers of offset. It also observed that non-negotiable CDs with waivers of offset had been considered acceptable collateral for over 20 years.

The FDIC has considered the comments and is making certain amendments to section 347.209 in the final rule. The FDIC asset pledge requirement was established to provide the FDIC deposit insurance funds protection against losses on insured deposit claims by depositors of U.S. branches of foreign banks. While the FDIC is aware that the level of assets required to be pledged to the FDIC by a foreign bank may have an economic impact on the foreign bank, the FDIC's paramount interests are maintaining and protecting the resources of the deposit insurance funds that it administers and honoring its deposit insurance obligations to depositors of insured U.S. branches of foreign banks. Inherent in the asset pledge requirement, regardless of asset maintenance requirements imposed on U.S. branches, is the possibility that those U.S. branch assets may not be sufficient to pay the claims of domestic creditors, including the FDIC. Therefore, the FDIC believes that the proposed risk-based approach, including the two percent minimum requirement, represents the best compromise between the interest of the FDIC in assuring that the deposit insurance funds that it administers are protected and the financial interests of foreign banks in the pledged assets.

For similar reasons, although the FDIC may have allowed non-negotiable CDs to be treated as eligible collateral in the past, the FDIC is concerned that considering non-negotiable certificates of deposit as the equivalent of negotiable certificates of deposit, for asset pledge purposes, fails to take into consideration the potentially decreased value of non-negotiable certificates of deposit in the event of a forced sale, which is precisely the time the FDIC would be most concerned about their value, because of their non-negotiability. Therefore, except as provided in the final rule, the FDIC is adopting the proposal to allow only negotiable CDs with waivers of offset to be treated as eligible collateral for purposes of section 347.209. A limited exception is provided in the final rule, however, to treat non-negotiable CDs that insured branches have pledged on March 18, 2005 as eligible collateral until those certificates of deposit mature according to the original terms of their existing deposit agreements.[11] Finally,

[9] The asset pledge requirement of newly insured branches has been revised in the final rule to provide that the pledge will be based on the branch's projection of its liabilities at the end of each year during the first three years of its operations. This revision is intended to avoid requiring a newly insured branch to pledge assets based on its third year projected liabilities, which will likely reflect its largest liability balance, during its first and second years of operations, when its projected liabilities will presumably be lower.

[10] The ROCA system represents the rating of risk management, operational controls, compliance, and asset quality of a Foreign Banking Organization's U.S. operations.

[11] The FDIC recognizes that obtaining waivers of offset from issuers of negotiable certificates of deposit may make the pledge of certificates of

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the FDIC agrees with the ABA's recommendation concerning other types of eligible collateral and the final rule has been amended to include those additional types of financial instruments.

The FDIC also proposed various amendments relating to the asset maintenance calculation for insured branches, in section 347.210 of the proposal, including a revision that would have required insured branches to maintain eligible assets at a ratio of not less than 106 percent of the insured branch's daily third-party liabilities, rather than based upon the preceding quarter's average book value of the insured branch's liabilities. The amendment was proposed to avoid potential anomalies that could be caused by using liability information from the preceding quarter, such as instances where grandfathered branches that were winding down their operations needed to calculate their asset maintenance on a daily basis to maintain compliance with the rule.

Two of the commenters addressed this revision. The ABA expressed support for the amendment. The IIB, however, suggested that the mere change of the longstanding quarterly calculation method would impose systems and other burdens on insured branches that it felt could be avoided by the FDIC continuing to resolve such situations on a case-by-case basis. The IIB also suggested that the FDIC might consider a specific modification to the existing asset maintenance requirement for branches that are winding down their operations.

The FDIC has considered the comments, as well as the IIB's representations to FDIC staff that it is less difficult to calculate asset maintenance, based on fixed liability numbers, than based on the daily assets and liabilities of a branch, which can fluctuate, and has decided to retain the substance of the asset maintenance requirements specified in existing section 347.211(a). In doing so, the FDIC notes that the daily calculation method specified in the existing rule may be used to address situations where the quarterly calculation method is considered inappropriate from a supervisory perspective. This authority may be utilized, in the FDIC's discretion, in instances where the current third-party liabilities of a branch decline or increase substantially in relation to the average book value of the branch's third-party liabilities for the preceding quarter. In addition, appropriate conforming changes are also being made in the final rule to section 347.210(d), based on revisions being made to paragraph (a).

There were no public comments on the proposed amendments to subpart B, other than those discussed above, and they are being adopted in the final rule, with the revisions previously discussed.

V. Deposit Insurance for Wholesale U.S. Branches of Foreign Banks

The FDIC included a request for comments in the NPR concerning whether the FDIC should revise its existing views regarding the availability of FDIC insurance for wholesale U.S. branches of foreign banks.

As explained in the NPR, the IIB expressed the view that some foreign banks with U.S. wholesale branches (*i.e.*, branches that are not engaged in domestic retail deposit activities that require FDIC insurance) may be interested in obtaining deposit insurance but that certain statements the FDIC made in the context of a 1998 final rule may have had the effect of discouraging international banks from applying for "optional" deposit insurance and that the FDIC should not continue to discourage this effort.

In that 1998 final rule (63 FR 17056), which accompanied the issuance of the FDIC's existing foreign banking rules in 1998, the FDIC observed that because section 5(b) of the FDI Act (12 U.S.C. 1815(b)), addressing deposit insurance applications for U.S. branches of foreign banks, had not been repealed, it arguably may be possible for a U.S. branch of a foreign bank that does not engage in domestic retail deposit activity to seek deposit insurance from the FDIC. The FDIC also observed, however, that as a practical matter, it did not foresee many circumstances in which it could be appropriate for the FDIC's Board of Directors to approve such an application, but that the elimination of the optional insurance rule would not affect a foreign bank's ability to argue that it may make such an application under section 5(b) of the FDI Act. Finally, the FDIC noted that the FDIC Board of Directors would have to determine whether to actually accept and approve such an application, based on its review of the facts and circumstances involved, in addition to the pertinent legal and policy considerations.

Among the arguments the IIB advanced to support an expanded view of the availability of deposit insurance for wholesale branches were:

- A "plain meaning" construction of section 5(b) permits "any branch"—including a wholesale branch—to become insured;
- Congress expressly prohibited foreign banks from obtaining FDIC insurance for branches "engaged in domestic retail deposit activities" but did not remove the statutory provisions authorizing foreign banks to apply for deposit insurance for wholesale branches;
- The FDIC's approach ignores significant changes in regulatory practices and structures that have occurred since 1991 with regard to foreign banks; broader acceptance of the principle of "investor choice;" and rejection of a broader policy to force foreign banks to operate in the U.S. only through subsidiaries;
- Wholesale depositors often seek the benefits of FDIC insurance—even though the full amount of their deposits may not be insured. The ability to offer these benefits through a U.S. branch would provide a benefit to customers and increase a foreign bank's funding options;
- Optional FDIC insurance is likely to be attractive primarily to foreign banks already operating FDIC-insured branches and subsidiaries in the U.S. and to a relatively small number of other foreign banks, especially those seeking to serve particular ethnic markets. As a result, a more liberal policy likely would have a minimal effect on the deposit insurance fund; and
- Permitting wholesale branches to obtain deposit insurance is consistent with the business model that has been followed by some major U.S. banks that have retained insurance while focusing on wholesale markets.

Some of the arguments and observations countering the IIB's arguments were:

- Difficulty in reconciling the idea that Congress imposed the subsidiary requirement with regard to domestic retail deposit activity requiring deposit insurance for the protection of the FDIC with the implicit assumption that Congress did not believe such protection of the FDIC was needed with regard to wholesale branches of foreign banks because the first $100,000 of customer deposits in a wholesale branch would be insured to the same extent as deposits maintained in any other FDIC insured depository institution;
- Unlike bank subsidiaries, branches function as an integral part of the foreign bank itself and do not have their own independent board of directors. Thus, the directors of a foreign bank are not usually subject to the U.S.

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deposit less attractive to foreign banks but there are several other types of financial instruments specified in the rule, besides certificates of deposit, that can be pledged by foreign banks to meet the collateral requirements.

jurisdiction, and domestic branch personnel essential to explaining certain transactions could be transferred beyond the reach of U.S. authorities;

- Essential records could also be difficult to reach if they are kept at the head office or at branches in other countries;
- A U.S. branch could be subjected to requirements under foreign laws or to political or economic decisions of a foreign government which conflict with domestic bank regulatory policies;
- Operating through a branch, as opposed to subsidiary structure, allows foreign banks the ability to engage in transactions with the home office without significant operational restrictions that might otherwise be applied to transactions with affiliates of insured U.S. banks; and
- Due to the operating relationship of a branch to its home office and dependence on the home office for financial support, the insolvency of a foreign bank with a multinational branch structure will result in the insolvency of the branches and this may pose complicated and time-consuming issues regarding the resolution of the branch that could more likely be avoided in situations involving banking subsidiaries.

The FDIC received two comments concerning this section. The CSBS expressed support for the view that "optional insurance" is not specifically authorized by statute. The IIB indicated that it continued to believe that the FDIC's concerns, such as those regarding the potential impact on the FDIC insurance fund, were misplaced or could be adequately addressed by other means. The IIB also requested that no action be taken on its request to allow it to continue to explore ways to address the FDIC's concerns.

As the FDIC has indicated above, there are arguments that can be made for providing deposit insurance coverage to wholesale U.S. branches of foreign banks, as well as compelling arguments that can be made against providing such coverage. Therefore, the FDIC has decided to maintain its previously stated position that, as a practical matter, it does not foresee many circumstances in which it could be appropriate for the FDIC's Board of Directors to approve such an application and that the FDIC Board of Directors would have to determine whether to actually accept and approve such an application, based on its review of the facts and circumstances involved, in addition to the pertinent legal and policy considerations.

VI. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has two OMB-approved information collections (3064–0125, Foreign Branching and Investment by Insured State Nonmember Banks, and 3064–0114, Foreign Banks) that cover the paperwork burden associated with subparts A and B of part 347. The information collections in 3064–0125 consist of applications related to establishing and closing a foreign branch; applications related to acquiring stock of a foreign organization; and records and reports which a nonmember bank must maintain once it has established a foreign branch or foreign organization. The information collections in 3064–0114 consist of applications to operate as a noninsured state-licensed branch of a foreign bank; applications from an insured state-licensed branch of a foreign bank to conduct activities which are not permissible for a federally-licensed branch; internal recordkeeping by insured branches of foreign banks; and reporting requirements related to an insured branch's pledge of assets to the FDIC. This proposal to amend part 347, subparts A and B will not result in any change in the current estimated paperwork burden associated with the regulation, therefore no submission has been made to OMB under the Paperwork Reduction Act.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 604, 605(b). For purposes of the analysis or certification, financial institutions with assets of $150 million or less are considered "small entities." The FDIC has reviewed the impact of this final rule on small banks and, for the reasons provided below, certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule makes primarily technical revisions to update, reorganize, and clarify the existing rules in subpart A of part 347 and subpart J of part 303. Subpart J of part 303 contains the procedural rules that implement part 347. The rules in subpart A of part 347 address issues related to the international activities and investments of insured state nonmember banks. In general, they implement the FDIC's statutory authority under section 18(d)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1828(*d*)(2)), regarding branches of insured state nonmember banks in foreign countries, and section 18(*l*) of the FDI Act, regarding insured state nonmember bank investments in foreign entities. As of September 30, 2004, there were approximately 4,800 state nonmember commercial banks, but fewer than 40 of those institutions report having foreign offices. Available information indicates that state nonmember banks with foreign investments or foreign branches are not small entities.

The final rule also makes revisions to update, reorganize, and clarify the existing rules in subpart B of part 347, as well as additional revisions and amendments that address supervisory issues. The rules in subpart B of part 347 principally address issues related to insured and noninsured U.S. branches of foreign banks under section 6 of the International Banking Act (IBA) (12 U.S.C. 3104). As of December 31, 2004, there were approximately 199 U.S. branches of foreign banks, including 12 insured branches. Of this number, there were approximately 90 U.S. branches of foreign banks that appear to qualify as small entities, including 6 insured branches. The 12 insured branches are presently subject to the FDIC's asset pledge requirement, which is revised in section 347.209 of the final rule. Although the revision of the asset pledge requirement to implement a risk-based approach may result in an increase in the amount of assets pledged for insured branches with low supervisory ratings, the FDIC does not believe this will affect the insured branches that qualify as small entities. Other revisions to the rules affecting noninsured branches are not substantive and, thus, should have no significant economic impact on noninsured branches that qualify as small entities.

VIII. Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

IX. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act (GLBA) (12 U.S.C. 4809), requires banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLBA. No GLBA comments were received.

X. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 325

Banks, banking, Reporting and recordkeeping requirements.

12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, United States investments abroad.

■ For the reasons set forth above and under the authority of 12 U.S.C. 1819(a) (Tenth), the FDIC Board of Directors hereby amends 12 CFR chapter III as follows:

PART 303—FILING PROCEDURES

Subpart J—International Banking

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

■ 2. Revise § 303.182 to read as follows:

§ 303.182 Establishing, moving or closing a foreign branch of an insured state nonmember bank.

(a) Notice procedures for general consent. Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.117(a) of this chapter must be provided to the appropriate FDIC office no later than 30 days after taking such action. The notice must include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a–2). The FDIC will provide written acknowledgment of receipt of the notice.

(b) Filing procedures for other branch establishments—(1) Where to file. An applicant seeking to establish a foreign branch other than under § 347.117(a) of this chapter shall submit an application to the appropriate FDIC office.

(2) Content of filing. A complete letter application must include the following information:

(i) The exact location of the proposed foreign branch, including the street address, and a statement whether the foreign branch will be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register, in accordance with section 402 of the NHPA Amendments Act;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u) of this part, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the applicant's business plan with respect to the foreign branch; and

(iv) A brief description of the proposed activities of the branch and, to the extent any of the proposed activities are not authorized by § 347.115 of this chapter, the applicant's reasons why they should be approved.

(3) Additional information. The FDIC may request additional information to complete processing.

(c) Processing—(1) Expedited processing for eligible depository institutions. An application filed under § 347.118(a) of this chapter by an eligible depository institution as defined in § 303.2(r) of this part seeking to establish a foreign branch by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a substantially complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) Standard processing. For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) Closing. Notices of branch closing under § 347.121 of this chapter, in the form of a letter including the name, location, and date of closing of the closed branch, shall be filed with the appropriate FDIC office no later than 30 days after the branch is closed.

■ 3. Amend § 303.183 by revising the section heading and paragraphs (a), (b)(1), and (c)(1) to read as follows:

§ 303.183 Investment by insured state nonmember banks in foreign organization.

(a) Notice procedures for general consent. Notice in the form of a letter from an eligible depository institution making direct or indirect investments in a foreign organization pursuant to § 347.117(b) of this chapter shall be provided to the appropriate FDIC office no later than 30 days after taking such action. The FDIC will provide written acknowledgment of receipt of the notice.

(b) Filing procedures for other investments—(1) Where to file. An applicant seeking to make a foreign investment other than under § 347.117(b) of this chapter shall submit an application to the appropriate FDIC office.

* * * * *

(c) Processing—(1) Expedited processing for eligible depository institutions. An application filed under § 347.118(b) of this chapter by an eligible depository institution as defined in § 303.2(r) of this part seeking to make direct or indirect investments in a foreign organization will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this

part. Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a substantially complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

* * * * *

■ 4. Amend § 303.184 to revise paragraph (b)(1) and add paragraph (e) to read as follows:

§ 303.184 Moving an insured branch of a foreign bank.

* * * * *

(b) Processing—(1) Expedited processing for eligible insured branches. An application filed by an eligible insured branch as defined in § 303.181(c) of this part will be acknowledged in writing by the FDIC and will receive expedited processing if the applicant is proposing to move within the same state, unless the applicant is notified to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(i) The 21st day after the FDIC's receipt of a substantially complete application; or

(ii) The 5th day after expiration of the comment period described in paragraph (c) of this section.

* * * * *

(e) Relocation of insured branch from one state to another. If the foreign bank proposes to relocate an insured state branch to a state that is outside the state where the branch is presently located, in addition to meeting the approval criteria contained in paragraph (d) of this section, the foreign bank must:

(i) Comply with any applicable state laws or regulations of the states affected by the proposed relocation; and

(ii) Obtain any required regulatory approvals from the appropriate state licensing authority of the state to which the insured branch proposes to relocate before relocating the existing branch operations and surrendering its existing license to the appropriate state licensing authority of the state from which the branch is relocating.

* * * * *

■ 5. Amend § 303.186 to revise the section heading and paragraph (a)(1) to read as follows:

§ 303.186 Exemptions from insurance requirements for a state branch of a foreign bank.

(a) Filing procedures— (1) Where to file. An application by a foreign bank for consent to operate as a noninsured state branch, as permitted by § 347.215(b) of this chapter, shall be submitted in writing to the appropriate FDIC office.

* * * * *

■ 6. Amend § 303.187 to revise the section heading and paragraphs (a)(1), (a)(2)(iv) and (b)(1) to read as follows:

§ 303.187 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches.

(a) Filing procedures—(1) Where to file. An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by § 347.212(a) of this chapter, shall be submitted in writing to the appropriate FDIC office.

(2) * * *

(iv) A statement by the applicant of whether it is in compliance with sections 347.209 and 347.210 of this chapter;

* * * * *

(b) Divestiture or cessation—(1) Where To file. Divestiture plans necessitated by a change in law or other authority, as required by § 347.212(e) of this chapter, shall be submitted in writing to the appropriate FDIC office.

* * * * *

PART 325—CAPITAL MAINTENANCE

■ 7. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 8. Amend § 325.103 to revise paragraph (c) to read as follows:

§ 325.103 Capital measures and capital category definitions.

* * * * *

(c) Capital categories for insured branches of foreign banks. For purposes of the provisions of section 38 and this subpart, an insured branch of a foreign bank shall be deemed to be:

(1) Well capitalized if the insured branch:

(i) Maintains the pledge of assets required under § 347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.15(b), or to comply with asset maintenance requirements pursuant to 12 CFR 28.20; or

(B) The FDIC to pledge additional assets pursuant to § 347.209 of this chapter or to maintain a higher ratio of eligible assets pursuant to § 347.210 of this chapter.

(2) Adequately capitalized if the insured branch:

(i) Maintains the pledge of assets required under § 347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a well capitalized insured branch.

(3) Undercapitalized if the insured branch:

(i) Fails to maintain the pledge of assets required under § 347.209 of this chapter; or

(ii) Fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) Significantly undercapitalized if it fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(5) Critically undercapitalized if it fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

* * * * *

PART 327—ASSESSMENTS

■ 9. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

■ 10. In § 327.4, revise paragraphs (a)(1)(i)(B)(*1*), (a)(1)(i)(B)(*2*), (a)(1)(ii)(B)(*1*), and (a)(1)(ii)(B)(*2*) to read as follows:

§ 327.4 Annual assessment rate.

(a) * * *

(1) * * *

(i) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.209 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section.

(ii) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.209 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section; and

* * * * *

■ 11. Revise part 347 to read as follows:

PART 347—INTERNATIONAL BANKING

Subpart A—Foreign Banking and Investment by Insured State Nonmember Banks

Sec.

Subpart B—Foreign Banks

Subpart C—International Lending

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Title IX, Pub. L. 98—181, 97 Stat. 1153.

§ 347.101 Authority, purpose, and scope.

(a) This subpart is issued pursuant to section 18(d) and (*l*) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d), 1828(*l*)).

(b) The rules in subpart A address the FDIC's requirements for insured state nonmember bank investments in foreign organizations, permissible foreign financial activities, loans or extensions of credit to or for the account of foreign organizations, and the FDIC's recordkeeping, supervision, and approval requirements. The rules also address the permissible activities for foreign branches of insured state nonmember banks, as well as the FDIC's requirements for establishing, operating, relocating and closing of branches in foreign countries.

§ 347.102 Definitions.

For the purposes of this subpart:

(a) An affiliate of an insured state nonmember bank means:

(1) Any entity of which the insured state nonmember bank is a direct or indirect subsidiary or which otherwise controls the insured state nonmember bank;

(2) Any organization which is a direct or indirect subsidiary of such entity or which is otherwise controlled by such entity; or

(3) Any other organization that is a direct or indirect subsidiary of the insured state nonmember bank or is otherwise controlled by the insured state nonmember bank.

(b) Control means the ability to control in any manner the election of a majority of an organization's directors or trustees; or the ability to exercise a controlling influence over the management and policies of an organization. An insured state nonmember bank is deemed to control an organization of which it is a general partner or its affiliate is a general partner.

(c) Domestic means United States.

(d) Eligible insured state nonmember bank means an eligible depository institution as defined in § 303.2(r) of this chapter.

(e) Equity interest means any ownership interest or rights in an organization, whether through an equity security, contribution to capital, general or limited partnership interest, debt or warrants convertible into ownership interests or rights, loans providing profit participation, binding commitments to acquire any such items, or some other form of business transaction.

(f) Equity security means voting or nonvoting shares, stock, investment contracts, or other interests representing ownership or participation in a company or similar enterprise, as well as any instrument convertible to any such interest at the option of the holder without payment of substantial additional consideration.

(g) FRB means the Board of Governors of the Federal Reserve System.

(h) Foreign bank means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands that:

(1) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the

country in which its principal banking operations are located;

(2) Receives deposits to a substantial extent in the regular course of its business; and

(3) Has the power to accept demand deposits.

(i) Foreign banking organization means a foreign organization that is formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the insured state nonmember bank.

(j) Foreign branch means an office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted, but does not include a representative office.

(k) Foreign country means any country other than the United States and includes any territory, dependency, or possession of any such country or of the United States.

(l) Foreign organization means an organization that is organized under the laws of a foreign country.

(m) Insured state nonmember bank or bank means a state bank, as defined by § 3(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(2)), whose deposits are insured by the FDIC and that is not a member of the Federal Reserve System.

(n) Indirectly means investments held or activities conducted by a subsidiary of an organization.

(o) Investment grade means a security that is rated in one of the four highest categories by:

(1) Two or more NRSROs; or

(2) One NRSRO if the security is rated by only one NRSRO.

(p) Loan or extension of credit means all direct and indirect advances of funds to a person, government, or entity made on the basis of any obligation of that person, government, or entity to repay funds.

(q) Organization or entity means a corporation, partnership, association, bank, or other similar entity.

(r) NRSRO means a nationally recognized statistical rating organization as designated by the Securities and Exchange Commission.

(s) Representative office means an office that engages solely in representative functions such as soliciting new business for its home office or acting as liaison between the home office and local customers, but which has no authority to make business or contracting decisions other than those relating to the personnel and premises of the representative office.

(t) Subsidiary means any organization more than 50 percent of the voting equity interests of which are directly or indirectly held by another organization.

(u) Tier 1 capital means Tier 1 capital as defined in § 325.2 of this chapter.

(v) Well capitalized means well capitalized as defined in § 325.103 of this chapter.

§ 347.103 Effect of state law on actions taken under this subpart.

A bank may acquire and retain equity interests in a foreign organization or establish a foreign branch, subject to the requirements of this subpart, if it is authorized to do so by the law of the state in which the bank is chartered.

§ 347.104 Insured state nonmember bank investments in foreign organizations.

(a) Investment in foreign banks or foreign banking organizations. A bank may directly or indirectly acquire and retain equity interests in a foreign bank or foreign banking organization.

(b) Investment in other foreign organizations. A bank may only: (1) acquire and retain equity interests in foreign organizations, other than foreign banks or foreign banking organizations in amounts of 50 percent or less of the foreign organization's voting equity interests, if the equity interest is held through a domestic or foreign subsidiary; and

(2) The bank meets its minimum capital requirements.

§ 347.105 Permissible financial activities outside the United States.

(a) Limitation on authorized activities. A bank may not directly or indirectly acquire or hold equity interests in a foreign organization that will result in the bank and its affiliates:

(1) Holding more than 50 percent, in the aggregate, of the voting equity interest in such foreign organization; or

(2) Controlling such foreign organization, unless the activities of a foreign organization are limited to those authorized under paragraph (b) of this section.

(b) Authorized activities. The following financial activities are authorized outside the United States:

(1) Commercial and other banking activities.

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring, subject to compliance with any attendant restrictions contained in 12 CFR 225.28(b).

(3) Leasing real or personal property, acting as agent, broker or advisor in leasing real or personal property, subject to compliance with any attendant restrictions in 12 CFR 225.28(b).

(4) Acting as a fiduciary, subject to compliance with any attendant restrictions in 12 CFR 225.28(b).

(5) Underwriting credit life, credit accident and credit health insurance.

(6) Performing services for other direct or indirect operations of a domestic banking organization, including representative functions, sale of long-term debt, name saving, liquidating assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the Bank Holding Company Act.

(7) Holding the premises of a branch of an Edge corporation or insured state nonmember bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or a subsidiary.

(8) Providing investment, financial, or economic services, subject to compliance with any attendant restrictions in 12 CFR 225.28(b).

(9) General insurance agency and brokerage.

(10) Data processing.

(11) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise management control over the firms in which it invests.

(12) Performing management consulting services, provided that such services when rendered with respect to the domestic market must be restricted to the initial entry.

(13) Underwriting, distributing, and dealing in debt securities outside the United States.

(14) With the prior approval of the FDIC under section 347.119(d), underwriting, distributing, and dealing in equity securities outside the United States.

(15) Operating a travel agency in connection with financial services offered outside the United States by the bank or others.

(16) Providing futures commission merchant services, subject to compliance with any attendant restrictions in 12 CFR 225.28(b).

(17) Engaging in activities that the FRB has determined in Regulation Y (12 CFR 225.28(b)) are closely related to banking under section 4(c)(8) of the Bank Holding Company Act.

(18) Engaging in other activities, with the prior approval of the FDIC.

(c) Limitation on activities authorized under Regulation Y. If a bank relies solely on the cross-reference to

Regulation Y contained in paragraph (b)(17) of this section as authority to engage in an activity, compliance with any attendant restrictions on the activity that are contained in 12 CFR 225.28(b) is required.

(d) Approval of other activities. Activities that are not specifically authorized by this section, but that are authorized by 12 CFR 211.10 or FRB interpretations of activities authorized by that section, may be authorized by specific consent of the FDIC on an individual basis and upon such terms and conditions as the FDIC may consider appropriate. Activities that will be engaged in as principal (defined by reference to section 362.1(b) of this chapter), and that are not authorized by 12 CFR 211.10 or FRB interpretations of activities authorized under that section, must satisfy the requirements of part 362 of this chapter and be approved by the FDIC under this part as well as part 362 of this chapter.

§ 347.106 Going concerns.

Going concerns. If a bank acquires an equity interest in a foreign organization that is a going concern, no more than 5 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under § 347.105(b).

§ 347.107 Joint ventures.

(a) joint ventures. If a bank, directly or indirectly, acquires or holds an equity interest in a foreign organization that is a joint venture, and the bank or its affiliates do not control the foreign organization, no more than 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under § 347.105(b).

(b) Joint venture defined. For purposes of this section, the term "joint venture" means any organization in which 20 percent or more but not in excess of 50 percent of the voting equity interests, in the aggregate, are directly or indirectly held by a bank or its affiliates.

§ 347.108 Portfolio investments.

(a) Portfolio investments. If a bank, directly or indirectly, acquires or holds an equity interest in a foreign organization as a portfolio investment and the foreign organization is not controlled, directly or indirectly, by the bank or its affiliates:

(1) No more than 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under § 347.105(b); and

(2) Any loans or extensions of credit made by the bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the bank or its affiliates and nonaffiliated organizations.

(b) Portfolio investment defined. For purposes of this section, the term "portfolio investment" means an investment in an organization in which less than 20 percent of the voting equity interests, in the aggregate, are directly or indirectly held by a bank or its affiliates.

§ 347.109 Limitations on indirect investments in nonfinancial foreign organizations.

(a) A bank may, through a subsidiary authorized by §§ 347.105 or 347.106, or an Edge corporation if also authorized by the FRB, acquire and hold equity interests in foreign organizations that are not foreign banks or foreign banking organizations and that engage generally in activities beyond those listed in § 347.105(b), subject to the following:

(1) The amount of the investment does not exceed 15 percent of the bank's Tier 1 capital;

(2) The aggregate holding of voting equity interests of one foreign organization by the bank and its affiliates must be less than:

(i) 20 percent of the foreign organization's voting equity interests; and

(ii) 40 percent of the foreign organization's voting and nonvoting equity interests;

(b) The bank or its affiliates must not otherwise control the foreign organization; and

(c) Loans or extensions of credit made by the bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the bank or its affiliates and nonaffiliated organizations.

§ 347.110 Affiliate holdings.

References in §§ 347.107, 347.108, and 347.109 to equity interests of foreign organizations held by an affiliate of a bank include equity interests held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by §§ 362.8 or 362.18 of this chapter or section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)).

§ 347.111 Underwriting and dealing limits applicable to foreign organizations held by insured state nonmember banks.

A bank that holds an equity interest in one or more foreign organizations which underwrite, deal, or distribute equity securities outside the United States as authorized by § 347.105(b)(14) is subject to the following limitations:

(a) Underwriting commitment limits. (1) The aggregate underwriting commitments by the foreign organizations for the equity securities of a single entity, taken together with underwriting commitments by any affiliate of the bank under the authority of 12 CFR 211.10(b), may not exceed the lesser of $60 million or 25 percent of the bank's Tier 1 capital, except as otherwise provided in this paragraph.

(2) Underwriting commitments in excess of this limit must be either:

(i) Covered by binding commitments from subunderwriters or purchasers; or

(ii) Deducted from the capital of the bank, with at least 50 percent of the deduction being taken from Tier 1 capital, with the bank remaining well capitalized after this deduction.

(b) Distribution and dealing limits. The equity securities of any single entity held for distribution or dealing by the foreign organizations, taken together with equity securities held for distribution or dealing by any affiliate of the bank under the authority of 12 CFR 211.10:

(1) May not exceed the lesser of $30 million or 5 percent of the bank's Tier 1 capital, subject to the following:

(i) Any equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting may be excluded from this limit;

(ii) Any equity securities of the entity held under the authority of §§ 347.105 through 347.109 or 12 CFR 211.10 for purposes other than distribution or dealing must be included in this limit; and

(iii) Up to 75 percent of the position in an equity security may be reduced by netting long and short positions in the same security, or offsetting cash positions against derivative instruments referenced to the same security so long as the derivatives are part of a prudent hedging strategy; and

(2) Must be included in calculating the general consent limits under § 347.117(b)(3) if the bank relies on the general consent provisions as authority to acquire equity interests of the same foreign entity for investment or trading.

(c) Additional distribution and dealing limits. With the exception of equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting, equity securities of a single entity held for distribution or dealing by all

affiliates of the bank (this includes shares held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by §§ 362.8 or 362.18 of this chapter or section 4(c)(8) of the Bank Holding Company Act), combined with any equity interests held for investment or trading purposes by all affiliates of the bank, must conform to the limits of §§ 347.105 through 347.109.

(d) Combined limits. The aggregate of the following may not exceed 25 percent of the bank's Tier 1 capital:

(1) All equity interests of foreign organizations held for investment or trading under § 347.109 or by an affiliate of the bank under the corresponding paragraph of 12 CFR 211.10.

(2) All underwriting commitments under paragraph (a) of this section, taken together with all underwriting commitments by any affiliate of the bank under the authority of 12 CFR 211.10, after excluding the amount of any underwriting commitment:

(i) Covered by binding commitments from subunderwriters or purchasers under paragraph (a)(1) of this section or the comparable provision of 12 CFR 211.10; or

(ii) Already deducted from the bank's capital under paragraph (a)(2) of this section, or the appropriate affiliate's capital under the comparable provisions of 12 CFR 211.10; and

(3) All equity securities held for distribution or dealing under paragraph (b) of this section, taken together with all equity securities held for distribution or dealing by any affiliate of the bank under the authority of 12 CFR 211.10, after reducing by up to 75 percent the position in any equity security by netting and offset, as permitted by paragraph (b)(1)(iii) of this section or the comparable provision of 12 CFR 211.10.

§ 347.112 Restrictions applicable to foreign organizations that act as futures commission merchants.

(a) If a bank acquires or retains an equity interest in a foreign organization that acts as a futures commission merchant pursuant to § 347.105(b)(16), the foreign organization may not be a member of an exchange or clearing association that requires members to guarantee or otherwise contract to cover losses suffered by other members unless the:

(1) Foreign organization's liability does not exceed two percent of the bank's Tier 1 capital, or

(2) Bank has obtained the prior approval of the FDIC under § 347.120(d).

(b) [Reserved]

§ 347.113 Restrictions applicable to activities by a foreign organization in the United States.

(a) A bank, acting under the authority provided in this subpart, may not directly or indirectly hold:

(1) Equity interests of any foreign organization that engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States; or

(2) More than 5 percent of the equity interests of any foreign organization that engages in activities in the United States unless any activities in which the foreign organization engages in the United States are incidental to its international or foreign business.

(b) For purposes of this section:

(1) A foreign organization is not engaged in any business or activities in the United States unless it maintains an office in the United States other than a representative office.

(2) The following activities are incidental to international or foreign business:

(i) Activities that are permissible for an Edge corporation in the United States under 12 CFR 211.6; or

(ii) Other activities approved by the FDIC.

§ 347.114 Extensions of credit to foreign organizations held by insured state nonmember banks; shares of foreign organizations held in connection with debts previously contracted.

(a) Loans or extensions of credit. A bank that directly or indirectly holds equity interests in a foreign organization pursuant to the authority of this subpart may make loans or extensions of credit to or for the accounts of the organization without regard to the provisions of section 18(j) of the FDI Act (12 U.S.C. 1828(j)).

(b) Debts previously contracted. Equity interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this subpart; however, they must be disposed of promptly but in no event later than two years after their acquisition, unless the FDIC authorizes retention for a longer period.

§ 347.115 Permissible activities for a foreign branch of an insured state nonmember bank.

In addition to its general banking powers and if permitted by the law of the state in which the bank is chartered, a foreign branch of a bank may conduct the following activities to the extent that they are consistent with banking practices in a foreign country where the bank maintains a branch:

(a) Guarantees. Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events including, without limitation, nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents, if:

(1) The guarantee or agreement specifies a maximum monetary liability; and

(2) To the extent the guarantee or agreement is not subject to a separate amount limit under state or federal law, the amount of the guarantee or agreement is combined with loans and other obligations for purposes of applying any legal lending limits.

(b) Government obligations. Engage in the following types of transactions with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed ten percent of the bank's Tier 1 capital:

(1) Underwrite, distribute and deal, invest in, or trade obligations of:

(i) The national government of the country in which the branch is located or its political subdivisions; and

(ii) An agency or instrumentality of such national government if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(2) Underwrite, distribute and deal, invest in or trade obligations [1] rated as investment grade of:

(i) The national government of any foreign country or its political subdivisions, to the extent permissible under the law of the issuing foreign country; and

(ii) An agency or instrumentality of the national government of any foreign country to the extent permissible under the law of the issuing foreign country, if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(c) Local investments. (1) Acquire and hold local investments in:

(i) Equity securities of the central bank, clearinghouses, governmental entities, and government sponsored development banks of the country in which the branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payment networks, professional

[1] If the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state nonmember bank must meet its minimum capital requirements.

societies, schools, and similar entities necessary to the business of the branch.

(2) Aggregate local investments (other than those required by the law of the foreign country or permissible under section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) by all the bank's branches in a single foreign country must not exceed 1 percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end Report of Income and Condition (Call Report): [2]

(d) Insurance. Act as an insurance agent or broker.

(e) Employee benefits program. Pay to an employee of a branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch.

(f) Repurchase agreements. Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit.

(g) Other activities. Engage in other activities, with the prior approval of the FDIC.

(h) Approval of other activities. Activities that are not specifically authorized by this section, but that are authorized by 12 CFR 211.4 or FRB interpretations of activities authorized by that section, may be authorized by specific consent of the FDIC on an individual basis and upon such terms and conditions as the FDIC may consider appropriate. Activities that will be engaged in as principal (defined by reference to section 362.1(b) of this chapter), and that are not authorized by 12 CFR 211.4 or FRB interpretations of activities authorized under that section, must satisfy the requirements of part 362 of this chapter and be approved by the FDIC under this part as well as part 362 of this chapter.

§ 347.116 Recordkeeping and supervision of foreign activities of insured state nonmember banks.

(a) Records, controls and reports. A bank with any foreign branch, any investment in a foreign organization of 20 percent or more of the organization's voting equity interests, or control of a foreign organization must maintain a system of records, controls and reports that, at minimum, provide for the following:

(1) Risk assets. To permit assessment of exposure to loss, information furnished or available to the main office should be sufficient to permit periodic and systematic appraisals of the quality of risk assets, including loans and other extensions of credit. Coverage should extend to a substantial proportion of the risk assets in the branch or foreign organization, and include the status of all large credit lines and of credits to customers also borrowing from other offices or affiliates of the bank. Appropriate information on risk assets may include:

(i) A recent financial statement of the borrower or obligee and current information on the borrower's or obligee's financial condition;

(ii) Terms, conditions, and collateral;

(iii) Data on any guarantors;

(iv) Payment history; and

(v) Status of corrective measures employed.

(2) Liquidity. To enable assessment of local management's ability to meet its obligations from available resources, reports should identify the general sources and character of the deposits, borrowing, and other funding sources employed in the branch or foreign organization with special reference to their terms and volatility. Information should be available on sources of liquidity—cash, balances with banks, marketable securities, and repayment flows—such as will reveal their accessibility in time and any risk elements involved.

(3) Contingencies. Data on the volume and nature of contingent items such as loan commitments and guarantees or their equivalents that permit analysis of potential risk exposure and liquidity requirements.

(4) Controls. Reports on the internal and external audits of the branch or foreign organization in sufficient detail to permit determination of conformance to auditing guidelines. Appropriate audit reports may include coverage of:

(i) Verification and identification of entries on financial statements;

(ii) Income and expense accounts, including descriptions of significant chargeoffs and recoveries;

(iii) Operations and dual-control procedures and other internal controls;

(iv) Conformance to head office guidelines on loans, deposits, foreign exchange activities, accounting procedures in compliance with applicable accounting standards, and discretionary authority of local management;

(v) Compliance with local laws and regulations; and

(vi) Compliance with applicable U.S. laws and regulations.

(b) Availability of information to examiners; reports. (1) Information about foreign branches or foreign organizations must be made available to the FDIC by the bank for examination and other supervisory purposes.

(2) The FDIC may from time to time require a bank to make and submit such reports and information as may be necessary to implement and enforce the provisions of this subpart, and the bank shall submit an annual report of condition for each foreign branch pursuant to instructions provided by the FDIC.

§ 347.117 General consent.

(a) General consent to establish or relocate a foreign branch. General consent of the FDIC is granted, subject to the written notification requirement contained in section 303.182(a) and consistent with the requirements of this subpart, for an:

(1) Eligible bank to establish a foreign branch conducting activities authorized by section 347.115 of this section in any foreign country in which:

(i) The bank already operates one or more foreign branches or foreign bank subsidiaries;

(ii) The bank's holding company operates a foreign bank subsidiary; or

(iii) An affiliated bank or Edge or Agreement corporation operates one or more foreign branches or foreign bank subsidiaries.

(2) Insured state nonmember bank to relocate an existing foreign branch within a foreign country.

(b) General consent to invest in a foreign organization. General consent of the FDIC is granted, subject to the written notification requirement contained in section 303.183(a) (unless no notification is required because the investment is acquired for trading purposes) and consistent with the requirements of this subpart, for an eligible bank to make investments in foreign organizations, directly or indirectly, if:

(1) The bank operates at least one foreign bank subsidiary or foreign branch, an affiliated bank or Edge or Agreement corporation operates at least one foreign bank subsidiary or foreign branch, or the bank's holding company operates at least one foreign bank subsidiary in the country where the foreign organization will be located;

(2) In any instance where the bank and its affiliates will hold 20 percent or more of the foreign organization's voting equity interests or control the foreign organization, at least one state nonmember bank has a foreign bank subsidiary or foreign branch (other than a shell branch) in the country where the foreign organization will be located; [3] and

[2] If a branch has recently been acquired by the bank and the branch was not previously required to file a Call Report, branch deposits as of the acquisition date must be used.

[3] A list of these countries can be obtained from the FDIC's Internet Web Site at *http://www.fdic.gov.*

(3) The investment is within one of the following limits:

(i) The investment is acquired at net asset value from an affiliate;

(ii) The investment is a reinvestment of cash dividends received from the same foreign organization during the preceding 12 months; or

(iii) The total investment, directly or indirectly, in a single foreign organization in any transaction or series of transactions during a twelve-month period does not exceed 2 percent of the bank's Tier 1 capital, and such investments in all foreign organizations in the aggregate do not exceed:

(A) 5 percent of the bank's Tier 1 capital during a 12-month period; and

(B) Up to an additional 5 percent of the bank's Tier 1 capital if the investments are acquired for trading purposes.

§ 347.118 Expedited processing.

(a) Expedited processing of branch applications. An eligible bank may establish a foreign branch conducting activities authorized by § 347.115 in an additional foreign country, after complying with the expedited processing requirements contained in § 303.182(b) and (c)(1), if any of the following are located in two or more foreign countries:

(1) Foreign branches or foreign bank subsidiaries of the eligible bank;

(2) Foreign branches or foreign bank subsidiaries of banks and Edge or Agreement corporations affiliated with the eligible bank; and

(3) Foreign bank subsidiaries of the eligible bank's holding company.

(b) Expedited processing of applications for investment in foreign organizations. An investment that does not qualify for general consent but is otherwise in conformity with the limits and requirements of this subpart may be made 45 days after an eligible bank files a substantially complete application with the FDIC in compliance with the expedited processing requirements contained in § 303.183(b) and (c)(1), or within such earlier time as authorized by the FDIC.

§ 347.119 Specific consent.

General consent and expedited processing under this subpart do not apply in the following circumstances:

(a) Limitation on access to supervisory information in foreign country.

(1) Applicable law or practice in the foreign country where the foreign organization or foreign branch would be located would limit the FDIC's access to information for supervisory purposes; and

(i) A bank would hold 20 percent or more of the voting equity interests of a foreign organization or control such organization as a result of a foreign investment; or

(ii) A bank would be establishing a foreign branch.

(b) World Heritage site. A foreign branch of a bank would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 403 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–2).

(c) Modification or suspension of general consent or expedited processing. The FDIC at any time notifies the bank that the FDIC is modifying or suspending its general consent or expedited processing procedure.

(d) Specific consent. Direct or indirect investments in or activities of foreign organizations by banks, the establishment of foreign branches or issues regarding the types or amounts of activity that can be engaged in by foreign branches, which are not authorized under §§ 347.117 or 347.118 require prior review and specific consent of the FDIC.

§ 347.120 Computation of investment amounts.

In computing the amount that may be invested in any foreign organization under §§ 347.117 through 347.119, any investments held by an affiliate of a bank must be included.

§ 347.121 Requirements for insured state nonmember bank to close a foreign branch.

A bank must comply with the written notification requirement contained in § 303.182(d) when it closes a foreign branch.

§ 347.122 Limitations applicable to the authority provided in this subpart.

The FDIC may impose such conditions on authority granted in this subpart as it considers appropriate. If a bank is unable or fails to comply with the requirements of this subpart or any conditions imposed by the FDIC regarding transactions under this subpart, the FDIC may require termination of any activities or divestiture of investments permitted under this subpart after giving the bank notice and a reasonable opportunity to be heard on the matter.

Subpart B—Foreign Banks

§ 347.201 Authority, purpose, and scope.

(a) This subpart is issued pursuant to sections 5(c) and 10(b)(4) of the Federal Deposit Insurance Act (FDI Act)(12 U.S.C. 1815(c) and 1820(b)(4)) and sections 6, 7, and 15 of the International Banking Act of 1978 (IBA)(12 U.S.C. 3104, 3105, and 3109).

(b) This subpart implements the insured branch asset pledge and examination commitment requirement for foreign banks in the FDI Act. It also implements the deposit insurance, permissible activity, and cross-border cooperation provisions of the IBA regarding the FDIC. Sections 347.203–347.211 apply to state and federal branches whose deposits are insured. Sections 347.204 and 347.207 are applicable to depository institution subsidiaries of a foreign bank. Section 347.212 applies to insured state branches and §§ 347.213–347.216 apply to state branches whose deposits are not insured by the FDIC.

§ 347.202 Definitions.

For the purposes of this subpart:

(a) Affiliate means any entity that controls, is controlled by, or is under common control with another entity. An entity shall be deemed to "control" another entity if the entity directly or indirectly owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(b) Branch means any office or place of business of a foreign bank located in any state of the United States at which deposits are received. The term does not include any office or place of business deemed by the state licensing authority or the Comptroller of the Currency to be an agency.

(c) Deposit has the same meaning as that term in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(d) Depository means any insured state bank, national bank, or insured branch.

(e) Domestic retail deposit activity means the acceptance by a federal or state branch of any initial deposit of less than $100,000.

(f) Federal branch means a branch of a foreign bank established and operating under the provisions of section 4 of the International Banking Act of 1978 (12 U.S.C. 3102).

(g) Foreign bank means any company organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, which engages in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking

activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating. Except as otherwise specifically provided by the Federal Deposit Insurance Corporation, banks organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands which are insured banks other than by reason of having an insured branch are not considered to be foreign banks for purposes of §§ 347.204, 347.205, 347.209, and 347.210.

(h) Foreign business means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust, which is organized under the laws of a foreign country or any United States entity which is owned or controlled by an entity which is organized under the laws of a foreign country or a foreign national.

(i) Foreign country means any country other than the United States and includes any colony, dependency or possession of any such country.

(j) FRB means the Board of Governors of the Federal Reserve System.

(k) Home state of a foreign bank means the state so determined by the election of the foreign bank, or in default of such election, by the Board of Governors of the Federal Reserve System.

(l) Immediate family member of a natural person means the spouse, father, mother, brother, sister, son or daughter of that natural person.

(m) Initial deposit means the first deposit transaction between a depositor and the branch where there is no existing deposit relationship. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings or time. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purposes of determining the dollar amount of the initial deposit.

(n) Insured bank means any bank, including a foreign bank with an insured branch, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(o) Insured branch means a branch of a foreign bank any deposits of which branch are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(p) Large United States business means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust which is organized under the laws of the United States or any state thereof, and:

(1) Whose securities are registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) Has annual gross revenues in excess of $1,000,000 for the fiscal year immediately preceding the initial deposit.

(q) A majority owned subsidiary means a company the voting stock of which is more than 50 percent owned or controlled by another company.

(r) Noninsured branch means a branch of a foreign bank deposits of which branch are not insured in accordance with the provisions of the Federal Deposit Insurance Act.

(s) OCC means the Office of the Comptroller of the Currency.

(t) Person means an individual, bank, corporation, partnership, trust, association, foundation, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(u) Significant risk to the deposit insurance fund shall be understood to be present whenever there is a high probability that the Bank Insurance Fund administered by the FDIC may suffer a loss.

(v) State means any state of the United States or the District of Columbia.

(w) State branch means a branch of a foreign bank established and operating under the laws of any state.

(x) Wholly owned subsidiary means a company the voting stock of which is 100 percent owned or controlled by another company except for a nominal number of directors' shares.

§ 347.203 Deposit insurance required for all branches of foreign banks engaged in domestic retail deposit activity in the same State.

The FDIC will not insure deposits in any branch of a foreign bank unless the foreign bank agrees that every branch established or operated by the foreign bank in the same state that engages in domestic retail deposit activity will be an insured branch.

§ 347.204 Commitment to be examined and provide information.

(a) In connection with an application for deposit insurance for a U.S. branch or depository institution subsidiary of a foreign bank that has been determined to be subject to comprehensive consolidated supervision by the appropriate Federal banking agency, as defined in section 3(q) of the FDI Act (12 U.S.C. 1813(q)), the foreign bank shall provide binding written commitments (including a consent to U.S. jurisdiction and designation of agent for service, acceptable to the FDIC) to the following terms:

(1) The FDIC will be provided with any information about the foreign bank and its affiliates located outside of the United States that the FDIC requests to determine:

(i) The relationship between the U.S. branch or depository institution subsidiary and its affiliates; and

(ii) The effect of such relationship on such U.S. branch or depository institution subsidiary;

(2) The FDIC will be allowed to examine the affairs of any office, agency, branch or affiliate of the foreign bank located in the United States and will be provided any information requested to determine:

(i) The relationship between the U.S. branch or depository institution subsidiary and such offices, agencies, branches or affiliates; and

(ii) The effect of such relationship on such U.S. branch or depository institution subsidiary.

(3) The FDIC will not process a deposit insurance application for any U.S. branch or depository institution subsidiary of a foreign bank if the foreign bank fails to provide the written commitments, consent to U.S. jurisdiction, and designation of agent for service required by this section.

(b) The FDIC will consider the existence and extent of any prohibition or restrictions, if any, on its ability to utilize the commitments, consent to U.S. jurisdiction, and designation of agent for service required by this section, in determining whether to grant or deny a deposit insurance application for the U.S. branch or depository institution subsidiary of the foreign bank. In addition, the FDIC may consider any additional assurances or commitments provided by the foreign bank, including that it will cooperate and assist the FDIC, without limitation, by seeking to obtain waivers and exemptions from applicable confidentiality or secrecy restrictions or requirements to enable the foreign bank or its affiliates to make information about the foreign bank and its affiliates located outside of the United States available to the FDIC for review.

(c) The foreign bank's commitments, consent to U.S. jurisdiction, and designation of agent for service shall be signed by an officer of the foreign bank who has been so authorized by the foreign bank's board of directors and in all instances will be executed in a manner acceptable to the FDIC and shall be included with the branch or

depository institution application for insurance. Any documents that are not in English shall be accompanied by an English translation.

§ 347.205 Record maintenance.

The records of each insured branch shall be kept as though it were a separate entity, with its assets and liabilities separate from the other operations of the head office, other branches or agencies of the foreign bank and its subsidiaries or affiliates. Each insured branch must keep a set of accounts and records in the words and figures of the English language that accurately reflects the business transactions of the insured branch on a daily basis. A foreign bank that has more than one insured branch in a state may treat such insured branches as one entity for record-keeping purposes and may designate one branch to maintain records for all the branches in the state.

§ 347.206 Domestic retail deposit activity requiring deposit insurance by U.S. branch of a foreign bank.

(a) Domestic retail deposit activity. To initiate or conduct domestic retail deposit activity requiring deposit insurance protection in any state after December 19, 1991, a foreign bank must establish one or more insured U.S. bank subsidiaries for that purpose.

(b) Exception. Paragraph (a) of this section does not apply to any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the FDIC pursuant to the Federal Deposit Insurance Act.

(c) Grandfathered insured branches. Domestic retail deposit accounts with balances of less than $100,000 that require deposit insurance protection may be accepted or maintained in an insured branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

(d) Change in ownership of grandfathered insured branch. The grandfathered status of an insured branch may not be transferred, except in certain merger and acquisition transactions that the FDIC determines are not designed, or motivated by the desire, to avoid compliance with section 6(d)(1) of the International Banking Act (12 U.S.C. 3104(d)(1)).

§ 347.207 Disclosure of supervisory information to foreign supervisors.

(a) Disclosure by the FDIC. The FDIC may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority, if the FDIC determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) Confidentiality. Before making any disclosure of information pursuant to paragraph (a) of this section, the FDIC will obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law. The disclosure or transfer of information to a foreign bank regulatory or supervisory authority under this section will not waive any privilege applicable to the information that is disclosed or transferred.

§ 347.208 Assessment base deductions by insured branch.

Deposits in an insured branch to the credit of the foreign bank or any of its offices, branches, agencies, or wholly owned subsidiaries may be deducted from the assessment base of the insured branch.

§ 347.209 Pledge of assets.

(a) Purpose. A foreign bank that has an insured branch must pledge assets for the benefit of the FDIC or its designee(s). Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) to pay the insured deposits of an insured branch, the assets pledged under this section must become the property of the FDIC and be used to the extent necessary to protect the deposit insurance fund.

(b) Amount of assets to be pledged. (1) For a newly insured branch, a foreign bank must pledge assets equal to at least 5 percent of the liabilities of the branch, based on the branch's projection of its liabilities at the end of each of the first three years of operations. For all other insured branches, a foreign bank must pledge assets equal to the appropriate percentage applicable to the insured branch, as determined by reference to the risk-based assessment schedule contained in this paragraph, of the insured branch's average liabilities for the last 30 days of the most recent calendar quarter.[4]

(2) Risk-based assessment schedule. The risk-based asset pledge required by paragraph (b)(1) will be determined by utilizing the following risk-based assessment schedule:

Asset maintenance level	Supervisory risk subgroup		
	A (%)	B (%)	C (%)
Equal to or greater than 108%	2	3	4
Equal to or greater than 106%	4	5	6
Less than 106%	6	7	8

The appropriate asset pledge percentage will be determined based on the supervisory risk subgroup and asset maintenance level applicable to the insured branch.

(3) Supervisory risk factors. For purposes of this section, within each asset maintenance group, each institution will be assigned to one of three subgroups based on consideration by the FDIC of supervisory evaluations provided by the primary federal regulator for the insured branch. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information the primary federal regulator determines to be relevant. In addition, the FDIC will take into consideration such other information (such as state examination findings, if appropriate) as it determines to be relevant to the financial condition and the risk posed to the deposit insurance fund. The three supervisory subgroups are:

[4] This average must be computed by using the sum of the close of business figures for the 30 calendar days of the most recent calendar quarter, ending with and including the last day of the calendar quarter, divided by 30. For days on which the branch is closed, however, balances from the previous business day are to be used in determining its average liabilities. In determining its average liabilities, the insured branch may exclude liabilities to other offices, agencies, branches, and wholly owned subsidiaries of the foreign bank. The value of the pledged assets must be computed based on the lesser of the principal amount (par value) or market value of such assets at the time of the original pledge and thereafter as of the last day of the most recent calendar quarter.

(i) Subgroup "A". This subgroup consists of financially sound institutions with only a few minor weaknesses;

(ii) Subgroup "B". This subgroup consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the deposit insurance fund; and

(iii) Subgroup "C". This subgroup consists of institutions that pose a substantial probability of loss to the deposit insurance fund.

(4) The FDIC may require a foreign bank to pledge additional assets or to compute its pledge on a daily basis whenever the FDIC determines that the condition of the foreign bank or the insured branch is such that the assets pledged under this section will not adequately protect the deposit insurance fund. In requiring a foreign bank to pledge additional assets, the FDIC will consult with the primary regulator for the insured branch. Among the factors to be considered in imposing these requirements are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk related to any one country, including the country in which the foreign bank's head office is located or any other factor the FDIC determines is relevant.

(5) Each insured branch must separately comply with the requirements of this section. A foreign bank which has more than one insured branch in a state may, however, treat all of its insured branches in the same state as one entity and will designate one insured branch to be responsible for compliance with this section.

(c) Depository. A foreign bank must place pledged assets for safekeeping at any depository which is located in any state. However, a depository may not be an affiliate of the foreign bank whose insured branch is seeking to use the depository. A foreign bank must obtain the FDIC's prior written approval of the depository selected, and such approval may be revoked and dismissal of the depository required whenever the depository does not fulfill any one of its obligations under the pledge agreement. A foreign bank shall appoint and constitute the depository as its attorney in fact for the sole purpose of transferring title to pledged assets to the FDIC as may be required to effectuate the provisions of paragraph (a) of this section.

(d) Assets that may be pledged. Subject to the right of the FDIC to require substitution, a foreign bank may pledge any of the kinds of assets listed in this paragraph (d); such assets must be denominated in United States dollars. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designee at such time as any such asset is placed with the depository, as follows:

(1)(i) Negotiable certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States and that are issued by any agency of a foreign bank which has executed a valid waiver of offset agreement; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(ii) Non-negotiable certificates of deposit, subject to the terms specified in paragraph (d)(1)(i) of this section other than the requirement of negotiability, that were pledged as collateral to the FDIC on March 18, 2005, until maturity according to the original terms of the existing deposit agreement.

(2) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency or instrumentality thereof;

(3) Commercial paper that is rated P–1 or P–2, or their equivalent by a nationally recognized rating service; provided, that any conflict in a rating shall be resolved in favor of the lower rating;

(4) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(5) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; provided, that such obligations have a credit rating within the top two rating bands of a nationally recognized rating service (with any conflict in a rating resolved in favor of the lower rating);

(6) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(7) Notes issued by bank and thrift holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by United States branches or agencies of foreign banks, provided, that the notes have a credit rating within the top two rating bands of a nationally recognized rating service (with any conflict in a rating resolved in favor of the lower rating) and that they are payable in the United States, and provided further, that the issuer is not an affiliate of the foreign bank pledging the note; or

(8) Any other asset determined by the FDIC to be acceptable.

(e) Pledge agreement. A foreign bank shall not pledge any assets unless a pledge agreement in form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository. The agreement, in addition to other terms not inconsistent with this paragraph (e), shall give effect to the following terms:

(1) Original pledge. The foreign bank shall place with the depository assets of the kind described in paragraph (d) of this section, having an aggregate value in the amount as required pursuant to paragraph (b) of this section.

(2) Additional assets required to be pledged. Whenever the foreign bank is required to pledge additional assets for the benefit of the FDIC or its designees pursuant to paragraph (b)(4) of this section, it shall deliver (within two business days after the last day of the most recent calendar quarter, unless otherwise ordered) additional assets of the kind described in paragraph (d) of this section, having an aggregate value in the amount required by the FDIC.

(3) Substitution of assets. The foreign bank, at any time, may substitute any assets for pledged assets, and, upon such substitution, the depository shall promptly release any such assets to the foreign bank; provided, that:

(i) The foreign bank pledges assets of the kind described in paragraph (d) of this section having an aggregate value not less than the value of the pledged assets for which they are substituted and certified as such by the foreign bank; and

(ii) The FDIC has not by written notification to the foreign bank, a copy of which shall be provided to the depository, suspended or terminated the foreign bank's right of substitution.

(4) Delivery of other documents. Concurrently with the pledge of any assets, the foreign bank will deliver to the depository all documents and instruments necessary or advisable to effectuate the transfer of title to any such assets and thereafter, from time to time, at the request of the FDIC, deliver to the depository any such additional documents or instruments. The foreign bank shall provide copies of all such documents described in this paragraph (e)(4) to the appropriate regional director concurrently with their delivery to the depository.

(5) Acceptance and safekeeping responsibilities of the depository. (i) The depository will accept and hold any assets pledged by the foreign bank pursuant to the pledge agreement for safekeeping free and clear of any lien, charge, right of offset, credit, or preference in connection with any claim the depository may assert against the foreign bank and shall designate any such assets as a special pledge for the benefit of the FDIC or its designee. The depository shall not accept the pledge of any such assets unless, concurrently with such pledge, the foreign bank delivers to the depository the documents and instruments necessary for the transfer of title thereto as provided in this part.

(ii) The depository shall hold any such assets separate from all other assets of the foreign bank or the depository. Such assets may be held in book-entry form but must at all times be segregated on the records of the depository and clearly identified as assets subject to the pledge agreement.

(6) Reporting requirements of the insured branch and the depository. (i) Initial reports. Upon the original pledge of assets as provided in paragraph (e)(1) of this section:

(A) The depository shall provide to the foreign bank and to the appropriate FDIC regional director a written report in the form of a receipt identifying each asset pledged and specifying in reasonable detail with respect to each such asset the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date and call date; and

(B) The foreign bank shall provide to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, and which states that the aggregate value of all such assets is at least equal to the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section.

(ii) Quarterly reports. Within ten calendar days after the end of the most recent calendar quarter:

(A) The depository shall provide to the appropriate regional director a written report specifying in reasonable detail with respect to each asset currently pledged (including any asset pledged to satisfy the requirements of paragraph (b)(4) of this section and identified as such), as of two business days after the end of the most recent calendar quarter, the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date, and call date, provided, that if no substitution of any asset has occurred during the reporting period, the reporting need only specify that no substitution of assets has occurred; and

(B) The foreign bank shall provide as of two business days after the end of the most recent calendar quarter to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, which states that the aggregate value of all such assets is at least equal to the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section, and which states the average of the liabilities of each insured branch of the foreign bank computed in the manner and for the period prescribed in paragraph (b) of this section.

(iii) Additional reports. The foreign bank shall, from time to time, as may be required, provide to the appropriate regional director a written report in the form specified containing the information requested with respect to any asset then currently pledged.

(7) Access to assets. With respect to any asset pledged pursuant to the pledge agreement, the depository will provide representatives of the FDIC or the foreign bank with access (during regular business hours of the depository and at the location where any such asset is held, without other limitation or qualification) to all original instruments, documents, books, and records evidencing or pertaining to any such asset.

(8) Release upon the order of the FDIC. The depository shall release to the foreign bank any pledged assets, as specified in a written notification of the appropriate regional director, upon the terms and conditions provided in such notification, including without limitation the waiver of any requirement that any assets be pledged by the foreign bank in substitution of any released assets.

(9) Release to the FDIC. Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act to pay insured deposits of an insured branch, the FDIC by written certification shall so inform the depository; and the depository, upon receipt of such certification, shall thereupon promptly release and transfer title to any pledged assets to the FDIC or release such assets to the foreign bank, as specified in the certification. Upon release and transfer of title to all pledged assets specified in the certification, the depository shall be discharged from any further obligation under the pledge agreement.

(10) Interest earned on assets. The foreign bank may retain any interest earned with respect to the assets currently pledged unless the FDIC by written notice prohibits retention of interest by the foreign bank, in which case the notice shall specify the disposition of any such interest.

(11) Expenses of agreement. The FDIC shall not be required to pay any fees, costs, or expenses for services provided by the depository to the foreign bank pursuant to, or in connection with, the pledge agreement.

(12) Substitution of depository. The depository may resign, or the foreign bank may discharge the depository, from its duties and obligations under the pledge agreement by giving at least 60 days' written notice thereof to the other party and to the appropriate regional director. The FDIC, upon 30 days' written notice to the foreign bank and the depository, may require the foreign bank to dismiss the depository if the FDIC in its discretion determines that the depository is in breach of the pledge agreement. The depository shall continue to function as such until the appointment of a successor depository becomes effective and the depository has released to the successor depository the pledged assets and documents and instruments to effectuate transfer of title in accordance with the written instructions of the foreign bank as approved by the FDIC. The appointment by the foreign bank of a successor depository shall not be effective until:

(i) The FDIC has approved in writing the successor depository; and

(ii) A pledge agreement in form and substance satisfactory to the FDIC has been executed.

(13) Waiver of terms. The FDIC may by written order waive compliance by the foreign bank or the depository with any term or condition of the pledge agreement.

§ 347.210 Asset maintenance.

(a) An insured branch of a foreign bank shall maintain on a daily basis

eligible assets in an amount not less than 106 percent of the preceding quarter's average book value of the insured branch's liabilities or, in the case of a newly-established insured branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries. The Director of the Division of Supervision and Consumer Protection or his designee may impose a computation of total liabilities on a daily basis in those instances where it is found necessary for supervisory purposes. The FDIC Board of Directors, after consulting with the insured branch's primary regulator, may require that a higher ratio of eligible assets be maintained if the financial condition of the insured branch warrants such action. Among the factors which will be considered in requiring a higher ratio of eligible assets are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located or any other factor the FDIC determines is relevant. Eligible assets shall be payable in United States dollars.

(b) In determining eligible assets for the purposes of compliance with paragraph (a) of this section, the insured branch shall exclude the following:

(1) Any asset due from the foreign bank's head office, or its other branches, agencies, offices or affiliates;

(2) Any asset classified "Value Impaired," to the extent of the required Allocated Transfer Risk Reserves or equivalent write down, or "Loss" in the most recent state or federal examination report;

(3) Any deposit of the insured branch in a bank unless the bank has executed a valid waiver of offset agreement;

(4) Any asset not supported by sufficient credit information to allow a review of the asset's credit quality, as determined at the most recent state or federal examination, as follows:

(i) Whether an asset has sufficient credit information will be a function of the size of the borrower and the location within the foreign bank of the responsibility for authorizing and monitoring extensions of credit to the borrower. For large, well known companies, when credit responsibility is located in an office of the foreign bank outside the insured branch, the insured branch must have adequate documentation to show that the asset is of good quality and is being supervised adequately by the foreign bank. In such cases, copies of periodic memoranda that include an analysis of the borrower's recent financial statements and a report on recent developments in the borrower's operations and borrowing relationships with the foreign bank generally would constitute sufficient information. For other borrowers, periodic memoranda must be supplemented by information such as copies of recent financial statements, recent correspondence concerning the borrower's financial condition and repayment history, credit terms and collateral, data on any guarantors, and where necessary, the status of any corrective measures being employed;

(ii) Subsequent to the determination that an asset lacks sufficient credit information, an insured branch may not include the amount of that asset among eligible assets until the FDIC determines that sufficient documentation exists. Such a determination may be made either at the next federal examination, or upon request of the insured branch, by the appropriate regional director;

(5) Any asset not in the insured branch's actual possession unless the insured branch holds title to such asset and the insured branch maintains records sufficient to enable independent verification of the insured branch's ownership of the asset, as determined at the most recent state or federal examination;

(6) Any intangible asset;

(7) Any other asset not considered bankable by the FDIC.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of this section and shall designate one insured branch to be responsible for maintaining the records of the insured branches' compliance with this section.

(d) The average book value of the insured branch's liabilities for a quarter shall be, at the insured branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the insured branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the insured branch's liabilities for a quarter shall be retained by the insured branch until the next federal examination.

§ 347.211 Examination of branches of foreign banks.

(a) Frequency of on-site examination. Each branch or agency of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by:

(1) The FRB;

(2) The FDIC, if an insured branch;

(3) The OCC, if the branch or agency of the foreign bank is licensed by the OCC; or

(4) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

(b) 18-month cycle for certain small institutions. (1) Mandatory standards. The FDIC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the insured branch:

(i) Has total assets of $250 million or less;

(ii) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;

(iii) Satisfies the requirement of either the following paragraph (b)(iii)(A) or (B):

(A) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or

(B) The insured branch has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the FRB, FDIC, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(2) Discretionary standards. In determining whether an insured branch that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the FDIC may consider additional factors, including whether:

(i) Any of the individual components of the ROCA supervisory rating of an insured branch is rated "3" or worse;

(ii) The results of any off-site monitoring indicate a deterioration in the condition of the insured branch;

(iii) The size, relative importance, and role of a particular insured branch when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(iv) The condition of the parent foreign bank gives rise to such a need.

(c) Authority to conduct more frequent examinations. Nothing in paragraphs (a) and (b) of this section limits the authority of the FDIC to examine any insured branch as frequently as it deems necessary.

§ 347.212 FDIC approval to conduct activities that are not permissible for federal branches.

(a) Scope. A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, must file a written application for permission to conduct such activity with the FDIC.

(b) Exceptions. If the FDIC has already determined, pursuant to part 362 of this chapter, "Activities and Investment of Insured State Banks," that an activity does not present a significant risk to the affected deposit insurance fund, no application is required under paragraph (a) of this section for a foreign bank operating an insured branch to engage or continue to engage in the same activity.

(c) Agency activities. A foreign bank operating an insured state branch is not required to submit an application pursuant to paragraph (a) of this section to engage in or continue engaging in an activity conducted as agent if the activity is:

(1) permissible agency activity for a state-chartered bank located in the state which the state-licensed insured branch of the foreign bank is located;

(2) permissible agency activity for a state-licensed branch of a foreign bank located in that state; and

(3) permissible pursuant to any other applicable federal law or regulation.

(d) Conditions of approval. (1) Approval of such an application required by paragraph (a) of this section may be conditioned on the agreement by the foreign bank and its insured state branch to conduct the activity subject to specific limitations, which may include pledging of assets in excess of the asset pledge and asset maintenance requirements contained in §§ 347.209 and 347.210.

(2) In the case of an application to initially engage in an activity, as opposed to an application to continue to conduct an activity, the insured state branch shall not commence the activity until it has been approved in writing by the FDIC pursuant to this part and the FRB, and any and all conditions imposed in such approvals have been satisfied.

(e) Divestiture or cessation. (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the FRB, the applicant shall submit a plan of divestiture or cessation of the activity to the appropriate regional director.

(2) A foreign bank operating an insured state branch which elects not to apply to the FDIC for permission to continue to conduct an activity which is rendered impermissible by any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction shall submit a plan of divestiture or cessation to the appropriate regional director.

(3) All plans of divestitures or cessation required by this paragraph must be completed within one year from the date of the disapproval, or within such shorter period as the FDIC may direct.

(f) Procedures. Procedures for applications under this section are set out in section 303.187.

§ 347.213 Establishment or operation of noninsured foreign branch.

(a) A foreign bank may establish or operate a state branch, as provided by state law, without federal deposit insurance whenever:

(1) The branch only accepts initial deposits in an amount of $100,000 or greater; or

(2) The branch meets the criteria set forth in §§ 347.214 or 347.215.

(b) [Reserved]

§ 347.214 Branch established under section 5 of the International Banking Act.

A foreign bank may operate any state branch as a noninsured branch whenever the foreign bank has entered into an agreement with the FRB to accept at that branch only those deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and implementing rules and regulations administered by the FRB (12 CFR 211).

§ 347.215 Exemptions from deposit insurance requirement.

(a) Deposit activities not requiring insurance. A state branch will not be considered to be engaged in domestic retail deposit activity that requires the foreign bank parent to establish an insured U.S. bank subsidiary if the state branch accepts initial deposits only in an amount of less than $100,000 that are derived solely from the following:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who:

(i) Are not citizens of the United States;

(ii) Are residents of the United States; and

(iii) Are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of natural persons) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other nondeposit banking services within the past twelve months or has entered into a written agreement to provide such services within the next twelve months;

(4) Foreign businesses, large United States businesses, and persons from whom an Edge or agreement corporation may accept deposits under 12 CFR 211.6(a)(1);

(5) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of any of the foregoing, and recognized international organizations;

(6) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds or the transmission of such funds by any electronic means; and

(7) Any other depositor, but only if:

(i) The branch's average deposits under this paragraph (a)(7) do not exceed one percent of the branch's average total deposits, as calculated under paragraph (a)(7)(ii) if this section (*de minimis* exception).

(ii) For purposes of calculating this exception:

(A) The branch's average deposits under this paragraph and the average total deposits must be computed by summing the close of business figures for each of the last 30 calendar days, ending with and including the last day of the calendar quarter, and dividing the resulting sum by 30;

(B) For days on which the branch is closed, balances from the last previous business day are to be used;

(C) The branch may exclude deposits in the branch of other offices, branches,

agencies or wholly owned subsidiaries of the bank to determine its average deposits;

(D) The branch must not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public; and

(E) A foreign bank that has more than one state branch in the same state may aggregate deposits in such branches (excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank) for the purpose of this paragraph (a)(7).

(b) Application for an exemption. (1) Whenever a foreign bank proposes to accept at a state branch initial deposits of less than $100,000 and such deposits are not otherwise exempted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

(2) Procedures for applications under this section are set out in § 303.186.

(c) Transition period. A noninsured state branch may maintain a retail deposit lawfully accepted prior to April 1, 1996 pursuant to regulations in effect prior to July 1, 1998:

(1) If the deposit qualifies pursuant to paragraph (a) or (b) of this section; or

(2) If the deposit does not qualify pursuant to paragraph (a) or (b) of this section, in the case of a time deposit, no later than the first maturity date of the time deposit after April 1, 1996.

§ 347.216 Depositor notification.

Any state branch that is exempt from the insurance requirement pursuant to § 347.215 shall:

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement "This deposit is not insured by the FDIC"; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch. This provision applies to any negotiable certificates of deposit made in a branch on or after July 6, 1989, as well as to any renewals of such deposits which become effective on or after July 6, 1989.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of March, 2005.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 2005–06 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2006 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Proposed 2005–06 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2006 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2005–06 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2005–06 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2006 spring/summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance, aid Federal, State, and tribal governments in the management of migratory game birds, and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2005–06 duck hunting seasons by May 1, 2005. Following later **Federal Register** Notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 30, 2005, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 30, 2005. Tribes must submit proposals and related comments by June 1, 2005. Proposals from the Co-management Council for the 2006 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2005.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 4107, Arlington Square Building, 4501 North Fairfax Drive, Arlington, Virginia. Proposals for the 2006 spring/summer migratory bird subsistence season in Alaska should be sent to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786–3306 or e-mail to *ambcc@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW, Washington, DC 20240, (703) 358–1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg" of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to "the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the U.S. Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory game bird hunting regulations, located at 50 CFR part 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (*i.e.*, dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin prior to October 1. Late hunting seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2005–06 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2005–06 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2005–06 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2005–06

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons (further described and discussed under the *Background and Overview* section).

Major steps in the 2005–06 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2005–06 duck hunting seasons in early June. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 19, 2005, and those for late seasons on or about September 16, 2005.

Request for 2006 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring/summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2006, for the spring/summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on or after March 11 and close prior to September 1.

Alaska Spring/Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring/summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

(a) *Alaska Migratory Bird Co-Management Council.* Proposals may be submitted by the public to the Co-management Council during the period of November 1–December 15, 2005, to be acted upon for the 2007 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES.**

(b) *Flyway councils.* (1) Proposed 2006 regulations recommended by the Co-management Council will be submitted to all Flyway Councils for review and comment. The Council's recommendations must be submitted prior to the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

(c) *Service regulations committee.* Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring/summer regulations for Alaska will be published in the **Federal Register** in the preceding fall.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2006 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2005, for Council comments and Service action at the late-season SRC meeting.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2005–06 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2004–05 final frameworks (see August 30, 2004, **Federal Register** (69 FR 52970) for early seasons and September 23, 2004, **Federal Register** (69 FR 57140) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2005–06 season. We seek additional information and comments on the recommendations in this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons, the request for tribal proposals, and the request for Alaska migratory bird subsistence seasons with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1 (California, Idaho, Nevada, Oregon, Washington, Hawaii, and the Pacific Islands)—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico/Virgin Islands, South Carolina, and Tennessee)—E. J. Williams, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Diane Pence, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7 (Alaska)—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached

agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval.

The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2005–06 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory game bird resource; and

(5) Tribal capabilities to establish and enforce migratory game bird hunting regulations.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2005–06 hunting season should submit their proposals as soon as possible, but no later than June 1, 2005.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption *Consolidation of Notices*. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's Division of Migratory Bird Management office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian

Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES.**

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new Supplemental Environmental Impact Statement for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Prior to issuance of the 2005–06 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998 and updated again in 2004. It is further discussed below under the heading *Regulatory Flexibility Act.* Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part. 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. Lastly, OMB has approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska. The OMB control number for the information collection is 1018–0124 (expires 10/31/2006). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of

property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—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. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2005–06 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: March 17, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2005–06 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. At this time, we are proposing no changes from the final 2004–05 frameworks established on August 30 and September 23, 2004 (69 FR 52970 and 57140). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/ Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2005–06 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks, scaup, and pintails).

The prescribed regulatory alternative for the Mississippi, Central, and Pacific Flyways would be based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). We propose to continue the constraint on closed seasons enacted in 2003. This constraint explicitly excludes from consideration closed hunting seasons in the Mississippi, Central, and Pacific Flyways whenever the mid-continent mallard population is at least 5.5 million. Closed seasons targeted at particular species or populations could still be necessary in some situations regardless of the status of mallards.

The prescribed regulatory alternative for the Atlantic Flyway would be based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region) and, thus, may differ from that in the remainder of the country.

We will propose a specific regulatory alternative for each of the Flyways during the 2005–06 season after survey information becomes available in late summer. More information on AHM is located at *http://migratorybirds.fws.gov/mgmt/ahm/ahm-intro.htm.*

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. The alternatives remained largely unchanged until 2002, when we (based on recommendations from the Flyway Councils) extended framework dates in the "moderate" and "liberal" regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest prior to considering any subsequent use (67 FR 12501).

For 2004–05, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will announce final regulatory alternatives in early June. Public comments will be accepted until May 1, 2005, and should be sent to the address under the caption **ADDRESSES.**

C. Zones and Split Seasons

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, a cooperative review and evaluation of the historical use of zone/split options was conducted. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate

experimental controls. Consequently, guidelines were established to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals. In 1996, the guidelines were revised to provide States greater flexibility in using their zone/split arrangements.

The next open season for changes to zone/split configurations will be in 2006, for the 2006–2010 period. In order to allow sufficient time for States to solicit public input regarding their selections of zone/split configurations in 2006, we will finalize the guidelines during the 2005 late-season regulations process. For the 2006–2010 period, we propose to continue with the guidelines used for 2001–2005. These are as follows:

The following zone/split-season guidelines apply only for the regular duck season:

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

2. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

3. Only minor (less than a county in size) boundary changes will be allowed for any grandfather arrangement, and changes are limited to the open season.

4. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

For the 2006–2010 period, any State may continue the configuration used in 2001–2005. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,

2. Split seasons (no more than 3 segments) with no zones, or

3. Two zones with the option for 2-way split seasons in one or both zones.

At the end of 5 years after any changes in splits or zones, States will be required to provide the Service with a review of pertinent data (*e.g.*, estimates of harvest, hunter numbers, hunter success, etc.). This review does not have to be the result of a rigorous experimental design, but nonetheless should assist us in ascertaining whether major undesirable changes in harvest or hunter activity occurred as a result of split and zone regulations.

D. Special Seasons/Species Management

iii. *Black ducks.* We continue to encourage the development of assessment procedures that can be used to inform black duck harvest management in the United States. We appreciate the progress being made by the Service's Division of Migratory Bird Management and the Atlantic and Mississippi Flyway Councils in determining optimal harvest rates and how these compare with our desire to meet population goals. We reiterate that any proposed changes to black duck hunting regulations at this time be accompanied by predicted changes in black duck harvest rates and consider their appropriateness towards meeting management objectives.

4. Canada Geese

B. Regular Seasons

In the Pacific Flyway, the current status and population trend information for Cackling Canada geese suggest that regulatory changes may be warranted this year.

6. Brant

In the Pacific Flyway, the current status and population trend information for Pacific Black Brant suggest that regulatory changes may be warranted this year.

9. Sandhill Cranes

During last year's waterfowl and sandhill crane hunting season, a group of hunters in Kansas accidentally shot at some whooping cranes. Two of the whooping cranes from this flock sustained injuries and were subsequently captured and treated by agency and university personnel. One of these birds died soon after capture and the other was transported to a captive-rearing facility in Maryland, however this second bird also died as a result of injuries sustained in the shooting. Service staff are working with staff from the Kansas Department of Wildlife and Parks to review this incident and make recommendations to minimize the potential conflicts with whooping cranes and hunting in this area. Pending the outcome of these discussions, regulatory changes for the Mid-Continent Population of sandhill cranes may be proposed this year.

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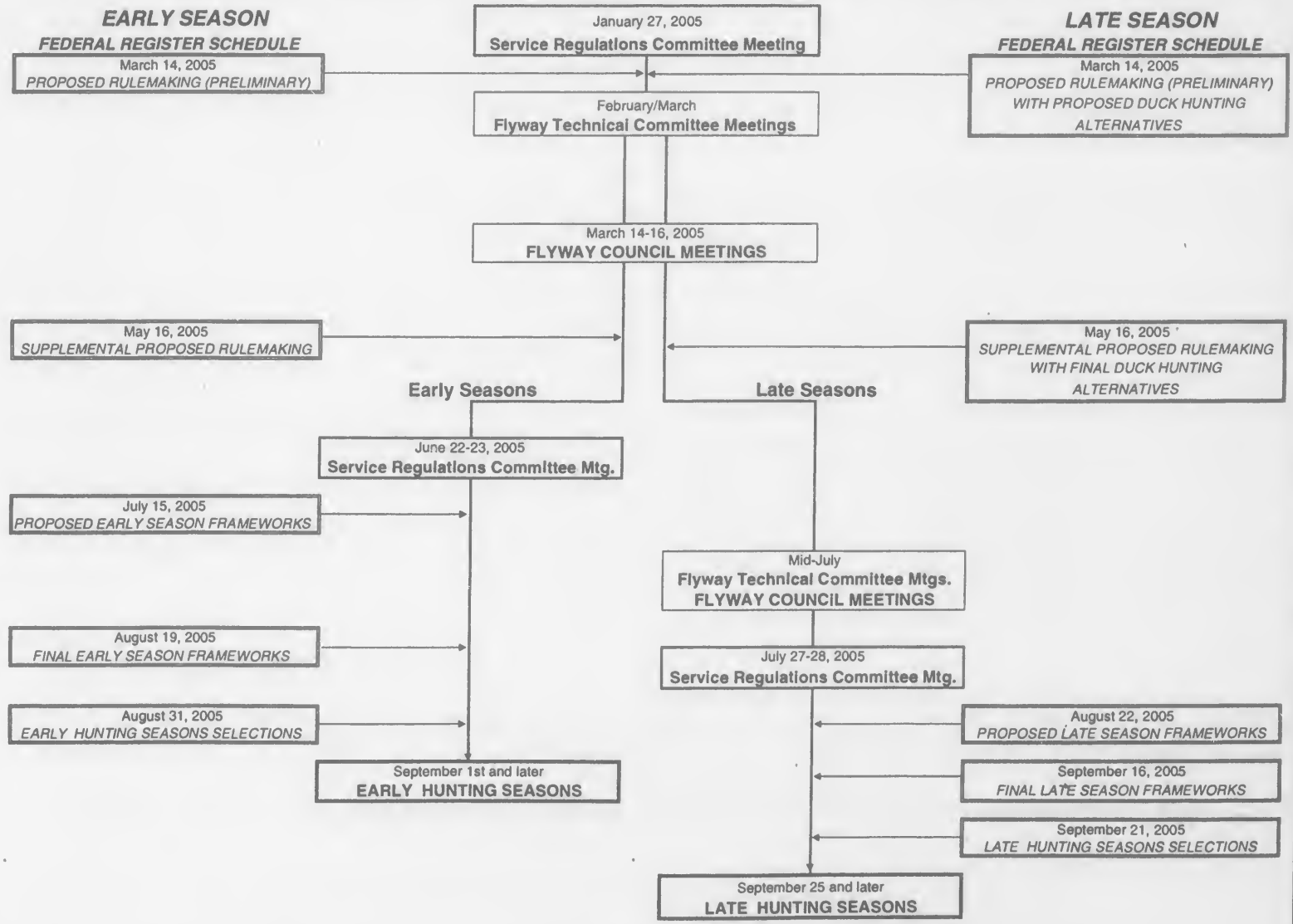
2005 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2005-06 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2
Pintail	<---ACCORDING TO THE PINTAIL HARVEST STRATEGY--->											
Black Duck	1	1	1	1	1	1	-	-	-	-	-	-
Scaup (d)	<---TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION--->											
Canvasback	<---0 OR 1. ACCORDING TO THE CANVASBACK HARVEST STRATEGY--->											
Redhead	2	2	2	1	2	2	1	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	-	-	-
Whistling Ducks	1	1	1	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	3	3	3	1	1	1	-	-	-

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-7 under the restrictive alternative, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(d) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 05-6816 Filed 4-5-05; 8:45 am]
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