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Contents

Federal Register

Vol. 71, No. 41

Thursday, March 2, 2006

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

7984 10793
7985 10823
7986 10825
7987 (See EO 11651) 10827

Executive Orders:

EO 11651 (See Proclamation 7987) 10827

7 CFR

319 10605

14 CFR

39 10605
65 10607

30 CFR

948 10764

36 CFR

1001 10608
1002 10608
1004 10608
1005 10608

40 CFR

Proposed Rules:

52 10626
745 10628

45 CFR

2522 10610

Proposed Rules:

2522 10630

50 CFR

600 10612
648 10612
660 10614
679 10625

Proposed Rules:

17 10631

Rules and Regulations

Federal Register
Vol. 71, No. 41
Thursday, March 2, 2006

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–019–3]

Phytosanitary Treatments; Location of Treatment Schedules and Other Requirements; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting an error in the amendatory instructions in our final rule that removed the Plant Protection and Quarantine Treatment Manual from the list of materials incorporated by reference and added treatment schedules and related requirements from that document to our phytosanitary treatments regulations. The final rule was effective and published in the **Federal Register** on June 7, 2005 (70 FR 33264–33326, Docket No. 02–019–1).

EFFECTIVE DATE: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–7467.

SUPPLEMENTARY INFORMATION: In a final rule effective and published in the **Federal Register** on June 7, 2005 (70 FR 33264–33326, Docket No. 02–019–1), we amended the plant health regulations by adding to 7 CFR part 305 treatment schedules and related requirements that had appeared in the Plant Protection and Quarantine Treatment Manual and by removing the Plant Protection and Quarantine Treatment Manual from the list of materials incorporated by reference into the regulations.

In the final rule, it was our intention to amend the regulations by, among other things, adding gender-neutral references in the third sentence of § 319.8. However, our amendatory instruction that was intended to accomplish this change was erroneous. This document corrects that error.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR part 319 is corrected by making the following correcting amendment:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.8 [Amended]

■ 2. In § 319.8(a), the third sentence is amended by adding the words "or she" immediately after the word "he" both times it occurs.

Done in Washington, DC, this 23rd day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–1941 Filed 3–1–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22526; Directorate Identifier 2005–NM–008–AD; Amendment 39–14499; AD 2006–05–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes. This AD requires repetitive inspections for cracking of certain fuselage internal structure, and repair if necessary. This AD results from fatigue tests and analysis that identified areas of the fuselage where fatigue cracks can occur. We are issuing this AD to prevent loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

DATES: This AD becomes effective April 6, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 6, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes. That NPRM was published in the **Federal Register** on September 29, 2005 (70 FR 56860). That NPRM proposed to require repetitive inspections for cracking of

certain fuselage internal structure, and repair if necessary.

Comments

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

Support for the Proposed AD

One commenter concurs with the contents of the proposed AD and has no additional comments.

Request To Revise Compliance Time

One commenter, on behalf of an airline, requests that we adjust the proposed grace period for the initial inspection to "greater than 1,000 cycles, but less than or equal to the required SSID [Supplemental Structural Inspection Document] program repetitive inspection interval" if no cracks were found during the SSID inspection. He provides no further justification for the request.

We disagree with the request to revise the grace period. The SSID program is an exploratory program intended for revealing cracks in structure with no prior history of fatigue cracking. The SSID program was substantiated by analysis, whereas this AD was prompted by cracks found during full-scale fatigue tests, and substantiated by updated analysis by Boeing. The inspections and compliance times appropriate for this AD are shorter than those of the SSID program. Because fatigue cracking has been found at the affected structure on the Boeing fatigue test airplanes, we have concluded that the SSID program alone will not adequately prevent undetected cracking of the structure, and that the more stringent inspections and repetitive intervals required by this AD are necessary. We have not changed the final rule regarding this issue.

Request To Revise Cost Estimate

The same commenter requests that we revise the cost estimate in the proposed AD to reflect the work-hour estimate specified in Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004 (the source of service information cited in the proposed AD). He states that 1,984 work hours would be an appropriate estimate as this figure includes time for access and close. Because these work hours are not normally provided during scheduled heavy maintenance checks, however, he considers the 260-work-hour estimate, as provided in the proposed AD, misleading.

We recognize that the work hours required for an individual operator to complete all actions associated with an AD may exceed the work hours specified in the proposed cost estimate. However, an AD cannot account for fleetwide variability. Further, the costs of compliance discussed in a proposed AD represent only the time necessary to perform the specific actions actually proposed. The cost estimate typically does not include incidental costs such as access and close. Therefore, we don't consider it appropriate to attribute those associated costs to the AD. We have not changed the final rule regarding this issue.

Explanation of Change Made to This AD

We have simplified paragraph (g) of this AD by referring to the "Alternative Methods of Compliance (AMOCs)" paragraph of this AD for repair methods.

Conclusion

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

Costs of Compliance

There are about 706 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

[Per inspection cycle]

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections	260	$65	None required	$16,900	107	$1,808,300

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 Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–05–02 Boeing: Amendment 39–14499. Docket No. FAA–2005–22526; Directorate Identifier 2005–NM–008–AD.

Effective Date

(a) This AD becomes effective April 6, 2006.

Affected ADs

(b) Inspections specified in this AD may be considered an alternative method of compliance (AMOC) for certain requirements of AD 2004–07–22, amendment 39–13566, as specified in paragraph (i)(2) of this AD.

Applicability

(c) This AD applies to all Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by fatigue tests and analysis that identified areas of the fuselage where fatigue cracks can occur. We are issuing this AD to prevent loss of the structural integrity of the fuselage, which could result in rapid depressurization 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.

Inspections

(f) Do initial and repetitive inspections for fuselage cracks using applicable internal and external detailed inspection methods, and repair all cracks, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2500, dated December 21. 2004, except as required by paragraph (g) of this AD. Do the initial and repetitive inspections at the times specified in paragraph 1.E. of the service bulletin, except as required by paragraph (h) of this AD. Repair any crack before further flight after detection.

Exceptions to Service Bulletin Procedures

(g) If any crack is found during any inspection required by this AD, and the bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

AMOCs

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

(2) Accomplishment of the inspections specified in this AD is considered an AMOC for the applicable requirements of paragraphs (c) and (d) of AD 2004–07–22 under the following conditions:

(i) The inspections specified in this AD must be done within the compliance times specified in AD 2004–07–22. The initial inspection specified in this AD must be done at the times specified in paragraph (d) of AD 2004–07–22, and the inspections specified in this AD must be repeated within the intervals specified in paragraph (f) of this AD.

(ii) The AMOC applies only to the areas of Supplemental Structural Inspection Document for Model 747 Airplanes, Document D6–35022, Revision G, dated December 2000, that are specified in Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 16, 2006.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–1828 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No. FAA–2004–17334; SFAR No. 103]

RIN 2120–AI18

Process for Requesting Waiver of Mandatory Separation Age for Certain Federal Aviation Administration (FAA) Air Traffic Control Specialists

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; disposition of comments.

SUMMARY: On January 7, 2005, the FAA published Special Federal Aviation Regulation No. 103 establishing the procedures and some standards by which an air traffic controller in a flight service station, enroute or terminal facility, or at the David J. Hurley Air Traffic Control System Command Center may request a waiver of the mandatory separation age. The FAA requested comments on the SFAR. This action confirms that SFAR No. 103 remains in effect as adopted and disposes of the comments.

ADDRESSES: You can view the complete document for the final rule by going to *http://dms.dot.gov.* You can also go 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: Wanda Reyna, ATO Workforce Services (ATO–A) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3056.

SUPPLEMENTARY INFORMATION:

Background

Section 8335(a) of Title 5 of the United States Code mandates that the Secretary of Transportation, under regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions or mandatory separation provisions of the statute until that controller becomes 61 years of age. The Transportation, Treasury, and Independent Agencies Appropriations Act for fiscal year 2004, H.R. 2673, 108th Cong. (2004) directed the Secretary to issue a regulation establishing the procedures by which an air traffic control specialist may request a waiver of the mandatory separation

age. The FAA accordingly amended 14 CFR part 65 to add Special Federal Aviation Regulation (SFAR) No. 103 (70 FR 1634), effective January 7, 2005, and requested public comments by February 7, 2005.

Discussion of Comments

The docket received comments from 16 individuals. Many of the commenters essentially took issue with the "exceptional skills and experience" standard that will be used by the Administrator of the FAA to grant an exception. Congress established this standard in 5 U.S.C. 8835(a). This rule implements the process by which the Congressionally mandated standard will be applied.

Some commenters also expressed concern over the information FAA will rely upon to make the determination, as well as the lack of a mental or medical evaluation. The FAA has carefully tailored this rule to include the most relevant and necessary information for making the determination of whether a controller possesses the requisite exceptional skills and experience. Any controller granted a waiver will still have to meet the rigorous medical standards for air traffic controllers, including passing the annual air traffic controller physical examination.

A few commenters raised the question of whether allowing controllers to work past mandatory retirement will compromise safety. Congress, in effect, addressed this issue when it limited the eligibility for a waiver to controllers with *exceptional* skills and experience. The FAA will use the procedures in this rule, including review of all requests by the Air Traffic Manager and the senior executive manager in the Air Traffic Manager's regional chain of command, to assure that safety is not compromised.

Finally, some commenters were concerned with the fact that there is no right to appeal the denial or revocation of a waiver. While every applicant will be given full and due consideration, denial or revocation falls solely within the discretion of the Administrator. Accordingly, there is no right to appeal or grieve a denial or termination of an exemption.

Conclusion

After consideration of all comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Therefore, SFAR No. 103 remains in effect as adopted.

Issued in Washington, DC, on February 23, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–1951 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–13–P

PRESIDIO TRUST

36 CFR Parts 1001, 1002, 1004 and 1005

RIN 3212–AA00

Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Final rule.

SUMMARY: The Presidio Trust (Trust) was created by Congress in 1996 to manage most of the former U.S. Army post known as the Presidio of San Francisco, California. Pursuant to law, administrative jurisdiction of approximately 80 percent of this property (Area B) was transferred to the Trust on July 1, 1998. On June 30, 1998, the Trust adopted final interim regulations establishing the basic requirements for the management of Area B. By this rulemaking, the Trust is giving notice of its adoption of those final interim regulations, which were published on June 30, 1998 at 63 FR 35694, as final regulations.

DATES: Effective Date: This final rule is effective on April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION:

Background

The Presidio Trust is a wholly-owned government corporation created pursuant to Title I of the Omnibus Parks and Public Lands Management Act of 1996, 16 U.S.C. sec. 460bb note, Public Law 104–333, 110 Stat. 4097 (Trust Act). Pursuant to sec. 103(b) of the Trust Act, the Secretary of the U.S. Department of the Interior transferred administrative jurisdiction to the Trust of all of Area B of the former Presidio of San Francisco Army post, as shown on the map referenced in the statute, on July 1, 1998. Notice of such transfer was published in the **Federal Register** on June 12, 1998 (63 FR 32236).

Section 104(j) of the Trust Act authorizes the Trust, "in consultation with the Secretary [of the U.S. Department of the Interior], to adopt and to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities' under the Trust Act. The regulations adopted as final herein cover such matters for Area B of the Presidio as resource protection, public use and recreation, vehicles and traffic safety, and commercial and private operations.

The Trust promulgated these regulations as final interim regulations on June 30, 1998, at 63 FR 35694, in order to provide immediately for public safety, good order, and efficient management of the property that was transferred to the Trust's jurisdiction on July 1, 1998. The Trust provided a public comment period of 60 days on the final interim regulations that closed on August 31, 1998. These have been the operative regulations for management of the area under the Trust's administrative jurisdiction from June 30, 1998 to date. They can be found at 36 CFR parts 1001—General Provisions, 1002—Resource Protection, Public Use and Recreation, 1004—Vehicles and Traffic Safety, and 1005—Commercial and Private Operations.

Shortly after adopting the final interim regulations, on September 18, 1998, the Trust published a notice of proposed rulemaking containing a proposal for more extensive and revised regulations for management of Area B. These proposed regulations were published at 63 FR 50024, and contained proposed 36 C.F.R. Parts 1001—General Provisions, 1002—Resource Protection, Public Use and Recreation, 1003—Vehicles and Traffic Safety, 1004—Commercial and Private Operations, 1005—Rights-of-Way, and 1006—Presidio Trust Symbols. The period for public comment on these proposed regulations closed on January 8, 1999. On January 19, 1999, the Trust held certain of these proposed regulations in abeyance until further notice. See 64 FR 2870.

After consideration of all comments received on both the proposed regulations and the final interim regulations, the Trust decided to adopt the final interim regulations as final regulations for management of Area B. This decision was taken at the December 9, 2002, meeting of the Trust's Board of Directors (Resolution 03–7) and was posted on the Trust's public Web site, but due to an administrative oversight, notice of the Trust's action was not promptly published in the **Federal Register.**

Since their adoption in June 1998, the final interim regulations have served the public well and have provided clear, concise guidance to those charged with enforcing the Trust's regulations. The

final interim regulations have been working well since the Trust began administering a portion of the Presidio on July 1, 1998, and at this juncture, the Trust has elected not to change a system of rules that has proven to be generally effective and workable. The Trust remains open to comments on these final regulations and suggestions for their improvement for consideration in connection with a future rulemaking.

II. Summary of the Final Interim Regulations

The final interim regulations were designed to deviate as little as necessary from the regulations for the Presidio that were in place during the approximately four-year period in which the National Park Service (NPS) had administrative jurisdiction of the entire Presidio. A detailed discussion of the final interim regulations was published in the **Federal Register** on June 30, 1998, at 63 FR 35694, including a description of the revisions made to the NPS regulations and a section by section analysis.

The final interim regulations have proven effective since the Trust's adoption of them in June 1998, and the Trust has decided to retain them as the final regulations for management of the area of the Presidio under its administrative jurisdiction. Pursuant to sec. 104(i) of the Trust Act, day-to-day law enforcement activities and services in the area to be administered by the Trust will continue to be conducted primarily by the U.S. Park Police.

The final regulations are virtually identical to the final interim regulations. The Trust has not made any substantive revisions to the final interim regulations, but has made minor, non-substantive revisions to correct typographical errors. In adopting these interim rules as final regulations, the Trust has considered the one comment it received on the final interim regulations. The comment received, including the name and address of the commenter, will be placed in the public record and made available for public inspection and copying.

III. Summary of Comment and Response

The Trust received comments from one commenter, a Senior Historian with the NPS. It is not clear whether the commenter was writing on behalf of himself or the agency that employs him. This commenter wrote a one page letter dated August 27, 1998 concerning the definition of "cultural resource" in § 1001.4 of the regulations. The commenter objected to the definition on the grounds that it was limited to resources that are less than 50 years of age; instead, in his view, it should protect resources that are 50 years of age or older. In addition, the commenter noted that the final interim regulations did not contain a requirement limiting the height of construction to no more than two or three stories in Area B, in order to preserve the historic landscape, buildings, structures, sites and objects at the Presidio.

The Trust's response to this comment regarding the definition of cultural resource is that this definition is identical to the definition used by the NPS in 36 CFR 1.4. With respect to the comment on construction height, the Trust referred the commenter to the Final General Management Plan Amendment for the Presidio of San Francisco and the accompanying Environmental Impact Statement. These documents established for new construction a height of 60 feet at the Letterman complex and 50 feet elsewhere in the Presidio. The Trust has not promulgated regulations on this topic.

Regulatory Impact

This rulemaking will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. This final rule will neither interfere with an action taken or planned by another agency nor raise new legal or policy issues. In short, little or no effect on the national economy will result from this final rule. This final rule also will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Therefore, it is not an economically significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this final rule is not a "major rule" under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. sec. 801 *et seq.*

The Trust has determined and certifies that, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and Executive Order 13272, this final rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined that this final rule is not a "significant energy action" as defined in Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The Trust has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12630 and has determined that the final rule does not pose a risk of a taking of constitutionally protected private property.

The Trust has determined and certifies that, pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. sec. 1502 *et seq.*; and Executive Order 12875, this final rule does not compel the expenditure of $100 million or more in any given year on local, State, or tribal governments or private entities.

This final rule conforms with the Federalism principles set out in Executive Order 13132 and would not impose any compliance costs on the States or have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it has been determined that this final rule does not have Federalism implications. Similarly, pursuant to Executive Order 13175, the Trust has determined that this final rule does not preempt tribal law or otherwise have implications for tribal governments.

Environmental Impact

The Trust has determined that each of the actions described in this document is categorically excluded from further environmental review pursuant to 36 CFR 1010.7(a)(10) because they will have no significant impact, either individually or cumulatively, on the human environment.

Paperwork Reduction Act

The information collection requirements of these final regulations, which are specified in sec. 1001.8, are coextensive with those of the existing NPS regulations, which have previously been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Other Applicable Authorities

The Presidio Trust has drafted and reviewed these final regulations in light of Executive Order 12988 and has determined that they meet the applicable standards provided in sections 3(a) and (b) of that order.

List of Subjects

36 CFR Part 1001

National parks, Penalties, Public lands, Recreation and recreation areas.

36 CFR Part 1002

National parks, Public lands, Recreation and recreation areas.

36 CFR Part 1004

Bicycles, National parks, Public lands, Recreation and recreation areas, Traffic regulations.

36 CFR Part 1005

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks.

Karen A. Cook,

General Counsel.

■ Accordingly, the interim final rule amending 36 CFR parts 1001, 1002, 1004, and 1005, which was published at 63 FR 35694 on June 30, 1998, is adopted as final with the following changes:

PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

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

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

■ 2. Amend § 1002.21 by revising paragraph (a) to read as follows:

§ 1002.21 Smoking.

(a) The Board may designate a portion of the area administered by the Presidio Trust, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Smoking in an area or location so designated is prohibited.

* * * * *

■ 3. Amend § 1002.22 by revising paragraph (a)(2) to read as follows:

§ 1002.22 Property.

(a) * * *

(2) Leaving property unattended for longer than 24 hours, except in locations where longer time periods have been designated or in accordance with conditions established by the Board.

* * * * *

■ 4. Amend § 1002.50 by revising paragraph (a) to read as follows:

§ 1002.50 Special events.

(a) Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events are allowed: Provided, however, There is a meaningful association between the area administered by the Presidio Trust and the events, and the observance contributes to visitor understanding of the significance of the area administered by the Presidio Trust, and a permit therefor has been issued by the Executive Director. A permit shall be denied if such activities would:

(1) Cause injury or damage to resources of the area administered by the Presidio Trust; or

(2) Be contrary to the purposes of the Presidio Trust Act; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses.

* * * * *

■ 5. Amend § 1002.51 by revising paragraph (a) to read as follows:

§ 1002.51 Public assemblies, meetings.

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within the area administered by the Presidio Trust, provided a permit therefor has been issued by the Executive Director.

* * * * *

[FR Doc. 06–1964 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–4R–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2522

RIN 3045–AA46

AmeriCorps Grant Applications From Professional Corps

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final action amends title 45 Code of Federal Regulations, part 2522.240(b)(2), to remove the restriction on certain professional corps programs from applying through State Commissions for AmeriCorps State competitive funds. The amendment realigns the regulations with the authorizing statutory language.

DATES: The direct final rule is effective May 1, 2006, without further notice, unless the Corporation receives adverse written comments by April 3, 2006. If the Corporation receives any adverse comments, we will publish a timely withdrawal in the **Federal Register** indicating that we are withdrawing the amendment due to adverse comments.

ADDRESSES: You may mail or deliver your comments to Nicola Goren, Associate General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW., Room 10611, Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 606–3467, or send them electronically to *professionalcorpscomments@cns.gov* or through the Federal Government's one-stop rulemaking Web site at *http://www.regulations.gov*. Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington DC headquarters.

During and after the comment period, you may inspect all public comments about this rule in suite 10600, 1201 New York Avenue, NW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

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 rule. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Nicola Goren, Associate General Counsel, Corporation for National and Community Service, (202) 606–6676. T.D.D. (202) 606–3472. Persons with visual impairments may request this rule in an alternative format.

SUPPLEMENTARY INFORMATION:

I. Background

The National and Community Service Act of 1990 sets a maximum allowable living allowance for full-time AmeriCorps programs, but provides an exception to that maximum for certain professional corps programs. Specifically, section 140(c) allows professional corps to provide a living allowance in excess of the statutory maximum if the professional corps meets several conditions. At issue for purposes of this rule is the statutory requirement that, to be allowed to provide a living allowance in excess of the maximum, the applicant professional corps may apply for AmeriCorps funds only "by submitting an application to the Corporation for assistance on a competitive basis." In essence, this means that, under the statute, professional corps programs wishing to provide a living allowance in

excess of the maximum allowable living allowance may apply for State competitive funds through a State commission, or directly to the Corporation as part of a National Direct or National Professional Corps program, or any other National program, including Direct programs for States or Territories without a State commission. Such a professional corps may not apply for funds through a State commission's formula application process.

When the Corporation published regulations implementing the AmeriCorps program in 1994, the regulatory provision implementing this statutory exception went further than the statute requires by requiring professional corps programs seeking an exemption from the maximum living allowance to apply only directly to the Corporation. This excluded those professional corps programs wishing to provide a living allowance in excess of the maximum from applying for State competitive funding.

In July 2005, the Corporation published a final AmeriCorps rule which, among other things, reinforced the Corporation's commitment to professional corps and low-cost AmeriCorps programs, and encouraged States to include them in their portfolios as a way to reduce costs. At the time we issued that rule, we did not include an amendment to this pre-existing regulatory provision. This amendment brings the Corporation's regulations into alignment with the authorizing statute and the Corporation's support for professional corps programs.

II. Final Action and Comments

The Corporation is issuing the amendment as a direct final rule, without prior proposal, under the good cause exception for notice and public procedure under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)), because we view the revision as non-controversial and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register,** we are publishing a separate document that will serve as the proposal to amend 45 CFR 2522.240(b)(2) if adverse comments are filed. This direct final rule will be effective May 1, 2006, without further notice, unless the Corporation receives adverse comments by April 3, 2006.

If the Corporation receives adverse comments, the Corporation will publish a document withdrawing the final rule and informing the public that the rule will not take effect. The Corporation will then address public comments received in a subsequent final rule based on the proposed rule. The Corporation will not institute a second comment period. Any one interested in commenting should do so at this time. If the Corporation receives no adverse comments, this rule will be effective on May 1, 2006, and no further action will be taken on the proposed rule.

III. Statutory and Executive Order Reviews

Executive Order 12866

The Corporation has determined that this direct final rule, while a significant regulatory action, is not an "economically significant" rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. As a "significant" regulatory action, this rule was reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Corporation has determined that this regulatory action, if promulgated, will not result in a significant impact on a substantial number of small entities. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

The direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive 13132.

The direct final rule does not have tribal implications as specified in Executive Order 13175. The rule will not have a substantial direct effect 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.

List of Subjects in 45 CFR Part 2522

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

■ For the reasons stated in the preamble, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 2. Amend § 2522.240 by revising paragraph (b)(2)(ii) to read as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

* * * * *

(b) * * *

(2) * * *

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application to the Corporation, and may not be included in a State's application for AmeriCorps program funds distributed by formula under § 2521.30(a)(2) of this chapter.

* * * * *

Dated: February 24, 2006.

Frank R. Trinity,

General Counsel.

[FR Doc. 06–1934 Filed 3–1–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 051209329–6046–02; I.D. 120205A]

RIN 0648–AT19

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2006 Specifications

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

ACTION: Final rule; 2006 Atlantic mackerel, squid and butterfish specifications.

SUMMARY: NMFS announces final specifications for the 2006 Atlantic mackerel, squid, and butterfish (MSB) fisheries. The intent of this final rule is to promote the development and conservation of the MSB resources.

DATES: Effective April 3, 2006, through December 31, 2006.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*. The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA)and the summary of impacts and alternatives contained in this final rule. No comments were received on the IRFA or the economic impacts of the rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 2298.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Proposed 2006 specifications for the MSB fisheries were published on December 27, 2005 (70 FR 76436), with public comment accepted through January 11, 2006. These final specifications are unchanged from those that were proposed (see Table 1). A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 648.21 and § 600.516(c), require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow Loligo squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for Atlantic mackerel. In addition, the regulations at § 648.21(g) allow the specification of research quotas (RQ) to be used for research purposes.

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2006.

Specifications	*Loligo*	*Illex*	Mackerel	Butterfish
Max OY	26,000	24,000	N/A	12,175
ABC	17,000	24,000	335,000	4,545
IOY	[1] 16,872.5	24,000	[2] 115,000	1,681
DAH	16,872.5	24,000	[3] 115,000	1,681
DAP	16,872.5	24,000	100,000	1,681
JVP	0	0	0	0
TALFF	0	0	0	0

[1] Excludes 127.5 mt for RQ.
[2] IOY may be increased during the year, but the total ABC will not exceed 335,000 mt
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.

Loligo squid

The *Loligo* squid quota is divided into quarterly allocations (See Table 2).

TABLE 2. PERCENT ALLOCATIONS OF *Loligo* QUOTA

Quarter	Percent	Metric Tons [1]	RQ
I (Jan-Mar)	33.23	5,606.70	N/A
II (Apr-Jun)	17.61	2,971.30	N/A
III (Jul-Sep)	17.30	2,918.90	N/A
IV (Oct-Dec)	31.86	5,375.60	N/A
Total	100	16,872.50	127.5

[1] Quarterly allocations after 127.5 mt RQ deduction.

The 2006 directed fishery for *Loligo* will be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels thereafter restricted to a 2,500–lb (1,134–kg) Loligo squid trip limit per single calender day until the end of the respective quarter. The directed fishery will close when 95 percent of the total annual DAH has been harvested, with vessels thereafter restricted to a 2,500–lb (1,134–kg) *Loligo* squid trip limit per single calender day for the remainder of

the year. Quota overages from Quarter I will be deducted from the allocation in Quarter III, and any overage from Quarter II will be deducted from Quarter IV. By default, quarterly underages from Quarters II and III carry over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for Loligo squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent will be applied to Quarter III.

Comments and Responses

There were five sets of comments received. Four were from industry members and associations: Garden State Seafood Association; the American Pelagic Association; the East Coast Pelagic Association, and Atlantic Pelagic Seafood. The fifth was from a private citizen.

Comment 1: Four commenters supported setting JVP and TALFF at zero.

Response: This action sets JVP and TALFF for mackerel at zero.

Comment 2: Four commenters were concerned about NMFS's ability to use the FMP's in-season adjustment mechanism, should it become necessary to raise mackerel OY, DAH, and DAP based on industry performance, and two of them requested that the final 2006 specifications include a provision that would enable NMFS to implement a speedier in-season adjustment.

Response: NMFS will keep close watch on mackerel catch throughout 2006 so that, should an in-season adjustment become necessary, NMFS can get one in place as quickly as possible. The in-season adjustment procedure is the only regulatory mechanism available for making such a modification to the specifications outside of the annual specifications process. This procedure is specified in the FMP, and Council action would be required to enact a modification. NMFS will use all available data sources and projection techniques to identify the need for such an adjustment as early as possible.

Comment 3: One commenter stated that the proposed Atlantic mackerel DAH was too low, and should be set at 165,000 mt.

Response: The Atlantic mackerel DAH is set at 100,000 mt to take into account the actual performance of the fishery in recent years, which has never exceeded 60,000 mt, and often has fallen well below 50,000 mt; and the industry's expectation of increased harvests in 2006 as a result of recent investments in vessels and shoreside processing facilities. This figure represents a balance between actual past harvest and reasonably expected increases in harvests for 2006.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA consists of the IRFA and the summary of impacts and alternatives contained in this final rule. No comments were received on the IRFA or the economic impacts of the rule. A copy of the IRFA is available from the Council (see **ADDRESSES**). A summary of the analysis follows:

Statement of Objective and Need

A statement of the need for and objectives of the rule is contained in the preamble to the proposed rule and is not repeated here.

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

The number of potential fishing vessels in the 2006 fisheries are 406 for *Loligo* squid/butterfish, 80 for *Illex* squid, 2,414 for Atlantic mackerel, and 2,016 vessels with incidental catch permits for squid/butterfish, based on vessel permit issuance. Because all entities participating in this fishery are small entities, as defined in Section 601 of the Regulatory Flexibility Act, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The IOY specification under the action for Atlantic mackerel (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt; in 2003 they were 30,738 mt; and for 2004 they were 53,781 mt. Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this action. However, there is the potential for an increase in revenues as a result of this action. Based on 2004 data, the mackerel fishery could increase its landings by 46,219 mt in 2006, if it takes the entire IOY. In 2003, the last year for which there are complete financial data, the average value for mackerel was $234 per mt. Using this value, the mackerel fishery could see an increase in revenues of $10,815,246 as a result of this action.

The IOY specification for *Illex* (24,000 mt) represents a slight constraint on revenues in this fishery, as compared to the landings in 2004. *Illex* landings for 2001–2003 averaged 4,350 mt; in 2003 they were 6,389 mt; and in 2004 they were 25,059 mt. Therefore, the proposed action represents a reduction in landings, from 2004, of 1,059 mt. In 2003, the last year for which there are complete financial data, the average value for *Illex* was $626 per mt. Using this value, the *Illex* fishery could see a decrease in revenues of $662,934 as a result of the proposed action. But, the *Illex* landings for 2004 were 4.4 percent higher than the approved quota for that year. Thus, the better comparison to use in evaluating the impact of the action is how that action compares to what would have happened had the 2004 landings reached, but not exceeded the quota. If the quota had not been exceeded in 2004, then this action would not represent a potential reduction in *Illex* landings. This action thus represents no constraint on the fishery in 2006.

Under the final specifications for butterfish (IOY = 1,681 mt), landings will not be constrained relative to the 2001–2004 fisheries. During the period 2001–2004, annual butterfish landings averaged 1,535 mt. Compared to the most recent 2 years for which complete information is available, 2003 and 2004, when landings were 473 mt and 422 mt, respectively, the action is not expected to reduce revenues in this fishery, but could increase those revenues. Based on 2003 data, the value of butterfish was $1,269 per mt.

The Council analysis evaluated two additional alternatives for mackerel. One of these alternatives would have set the ABC at 347,000 mt. This was rejected on biological grounds because that level of ABC is not consistent with preventing overfishing, as defined in the FMP (the overfishing threshold, F=0.25, results in a yield estimate of 369,000 mt, minus the estimated Canadian catch of 34,000 mt, that is less than 347,000 mt). Both of the alternatives would have set IOY at 165,000 mt. This IOY would not represent a constraint on vessels in this

fishery, so no impacts on revenues in this fishery would be expected as a result of either of these alternatives. However, an IOY of 165,000 mt was rejected by the Council because it was too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors.

For *Illex*, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with that alternative. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid.

For butterfish, one alternative considered would have set IOY at 5,900 mt, while another would have set it at 9,131 mt. Both of these amounts exceed the landings of this species in recent years. Therefore, neither alternative would represent a constraint on vessels in this fishery or would reduce revenues in the fishery. However, both of these alternatives were rejected by the Council because they would likely result in overfishing and the additional depletion of the spawning stock biomass of butterfish.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the Atlantic mackerel, squid and butterfish fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following Web site: *http://www.nero.noaa.gov.*

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

Dated: February 24, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–1963 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050921244–6049–02; I.D. 091305A]

RIN 0648–AP38

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Limited Entry Fixed Gear Sablefish Fishery Permit Stacking Program

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

ACTION: Final rule.

SUMMARY: NMFS is implementing portions of Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for 2007 and beyond. Amendment 14, approved by NOAA in August 2001, created a permit stacking program for limited entry permits with sablefish endorsements. Amendment 14 was intended to provide greater season flexibility for sablefish fishery participants and to improve safety in the primary sablefish fishery.

DATES: Effective April 3, 2006.

ADDRESSES: Copies of Amendment 14 and its Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 866–806–7204. Copies of the Finding of No Significant Impact (FONSI), Supplemental Initial Regulatory Flexibility Analysis (IRFA), Supplemental Final Regulatory Flexibility Analysis (FRFA), and the Small Entity Compliance Guide (SECG) are available from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, phone: 206–526–6150.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, and by e-mail to *DavidRostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Kevin Ford (Northwest Region, NMFS), phone: 206–526–4646 or 206–526–6115; fax: 206–526–6736 and; e-mail: *jamie.goen@noaa.gov* or *kevin.ford@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: *www.gpoaccess.gov/fr/index.html.*

Background

Amendment 14 introduced a permit stacking program to the limited entry, fixed gear primary sablefish fishery. Under this permit stacking program, a vessel owner may register up to three sablefish-endorsed permits for use with their vessel to harvest each of the primary season sablefish cumulative limits associated with the stacked permits. Amendment 14 also allows a season up to 7 months long, from April 1 through October 31, which allows an ample period for vessels to pursue their primary season sablefish cumulative limits.

This final rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The portions of Amendment 14 that were implemented for the 2001 primary sablefish season allowed individual fishery participants to more fully use their existing vessel capacity, reduced overall capacity in the primary fixed gear sablefish fishery, and significantly increased safety in the fishery. This rule does not change any of those benefits, but further completes the implementation of Amendment 14 by preventing excessive fleet consolidation, ensuring processor access to sablefish landings from the primary season, and maintaining the character of the fleet through owner-on-board requirements. The background and rationale for the Council's recommendations, as well as an explanation of why NMFS will not be implementing the Council's recommendation for a hail-in requirement and some modifications to the permit stacking program that the Council is considering for future implementation are summarized in the

proposed rule (70 FR 59296, October 12, 2005).

Further detail appears in the EA/RIR prepared by the Council for Amendment 14 and in the proposed and final rule to implement Amendment 14 for the 2001 primary sablefish season. The proposed rule for the 2001 season was published on June 8, 2001 (66 FR 30869), the final rule was published on August 7, 2001 (66 FR 41152), and a correction to the final rule was published on August 30, 2001 (66 FR 45786). In addition, an advanced notice of proposed rulemaking announcing the control date was published on April 3, 2001 (66 FR 17681), and the notice of availability for Amendment 14 was published on May 9, 2001 (66 FR 23660). NMFS approved Amendment 14 to the Groundfish FMP on July 30, 2001. The proposed rule to implement the additional Amendment 14 provisions in this final rule was published on October 12, 2005 (70 FR 59296). NMFS requested public comment on the proposed rule through December 12, 2005. See the preamble to the proposed rule for additional background information on the fishery and on this rule.

In the final rule implementing the initial permit stacking provisions (66 FR 41152, August 7, 2001), the following provisions were implemented: (1) up to three sablefish endorsed permits may be registered for use with a single vessel; (2) the limited entry, fixed gear primary sablefish season opens on August 15 and ends on October 31, 2001; (3) a vessel may fish for sablefish during the primary season with any of the gears specified on at least one of the limited entry sablefish endorsed permits registered for use with that vessel; (4) no person may hold (own or lease) more than three sablefish endorsed limited entry permits unless that person owned more than three permits as of November 1, 2000; (5) no partnership or corporation may own a sablefish endorsed limited entry permit unless that partnership or corporation owned a permit as of November 1, 2000; (6) cumulative limits for species other than sablefish and for the sablefish daily trip limit fishery remain per vessel limits and are not affected by permit stacking; and (7) the limited entry daily trip limit fishery for sablefish will be open during the primary season for vessels not participating in the primary season.

Beginning in 2002, NMFS implemented the full April 1 through October 31 season via the Pacific Coast groundfish final specifications and management measures published on March 7, 2002 (67 FR 10490).

In its June 8, 2001, proposed rule, NMFS announced its intention to divide Amendment 14 implementation into two separate regulatory processes. Implementation of this second portion of Amendment 14 required NMFS to return to the Council for further clarification. On February 14, 2002, NMFS notified fixed gear permit holders by letter to let them know the agency would be requesting further clarification from the Council. NMFS received further clarification at the Council's April 2002 meeting.

This final rule implements further permit stacking regulations that include the following provisions: (1) permit owners and permit holders would be required to document their ownership interests in their permits to ensure that no person holds or has ownership interest in more than three permits; (2) an owner-on-board requirement for permit owners who did not own sablefish-endorsed permits as of November 1, 2000; (3) an opportunity for permit owners to add a spouse as co-owner; (4) vessels that do not meet minimum frozen sablefish historic landing requirements would not be allowed to process sablefish at sea; (5) permit transferors would be required to certify sablefish landings during mid-season transfers; and, (6) a definition of the term "base permit."

In the future, NMFS expects to propose another rule to implement additional provisions of Amendment 14 as explained in the preamble to the proposed rule dated October 12, 2005 (70 FR 59296). Such provisions may include the following: (1) adding a declaration system for enforcement purposes that would require all sablefish endorsed permit owners, including those exempt from the owner-on-board requirement, to call into a phone-in system and declare which permit(s) they will be fishing; and (2) implementing a permit stacking program fee system in accordance with Magnuson-Stevens Act requirements at 304(d)(2). The Council has also discussed, but has not prioritized analysis or development of provisions to: (1) allow a person who had 30% or greater ownership interest in a partnership or corporation that was a first generation owner to be exempt from the owner-on-board provision if he/she wishes to own a permit under his/her own name, even if he/she did not own a permit under his/her own name as of November 1, 2000; and (2) revise the accumulation cap on the total permits a person, partnership or corporation could hold through leasing.

Finally, as described in more detail in the proposed rule, NMFS decided not to propose a hail-in requirement as initially recommended by the Council. The hail-in requirement would have required fishers to provide 6 hours advance notice to NMFS Enforcement when making a sablefish landing in the primary sablefish season. Fishers were to provide landings times, hail weights, and landings locations as part of the hail-in procedure. The Council, its Enforcement Consultants and its Groundfish Advisory Subpanel, concurred with NMFS determination that this hail-in requirement would be unnecessarily burdensome for fishers.

Comments and Responses

NMFS received seven letters of comment on the proposed rule to implement portions of Amendment 14 for 2007 and beyond: two letters were received from state governments, one letter was received from an industry organization, and four letters were received from members of the public. These comments are addressed here:

Comment 1: The Washington Department of Fish and Wildlife (WDFW) is in the process of a comprehensive, agency-wide review of potential changes to their state fish ticket system. In the interim, to respond to new regulations for the primary sablefish fishery, beginning in 2007, WDFW will require the Federal permit number to be entered into the state fish ticket field currently reserved for dealer's use. This information, along with appropriate identifiers, would be captured separately from WDFW's routine state fish ticket data entry, and subsequently, entered into Pacific Fisheries Information Network (PacFIN). WDFW will also require a separate state fish ticket to be filled out for sablefish catch attributed to each permit.

The Oregon Department of Fish and Wildlife (ODFW) will record Federal permit numbers on state fish tickets, but is not able to modify their data system to enter and transfer that data into PacFIN at this time.

Response: As stated in the proposed rule (70 FR 59296, October 12, 2005), WDFW, ODFW and California Department of Fish and Game (CDFG) should require that Federal sablefish-endorsed permit numbers be written somewhere on the state fish ticket, as appropriate. It is beneficial to have these Federal limited entry sablefish-endorsed permit numbers entered into the PacFIN database so that enforcement agents could query a given Federal permit number and their associated state fish ticket landings. However, until such time, having the Federal sablefish-endorsed permit number on the paper state fish ticket would allow hand searching by enforcement agents of

paper state fish tickets for investigations.

NMFS is requesting this change to aid in enforcement of the owner-on-board provision and mid-season transfers. Adding a Federal sablefish-endorsed permit number to the state fish ticket is expected to aid enforcement agents by creating a record of which sablefish permit was being fished on a given fishing trip. Thus, if enforcement agents boarded a vessel at sea, they could record which owners were on board the vessel. At a later time, they could then verify which permit the sablefish landings were credited to on the state fish ticket and double-check that the owner of that permit was on board if the owner was not exempt from the owner-on-board provisions. For mid-season transfers, a mid-season certification is required on the permit office form for enforcement purposes, because it is a means to associate specific amounts of landings to date with an aggregate amount reported on state fish tickets for a particular permit owner. If during a post-season audit of landings associated with a permit, the landings exceed the amount available to be landed on the permit, NMFS may begin enforcement proceedings against any party that had an ownership interest in the permit during the calendar year, including the vessel owner or operator. Adding a Federal sablefish-endorsed permit number to the state fish ticket is expected to aid enforcement agents by creating a record of which sablefish permit is attributed to which state fish ticket. This system will allow enforcement agents to attribute overages of sablefish landings to the appropriate party.

Currently, only the CDFG has added a line for Federal permit information on their state fish tickets and enters that information into the PacFIN database. In the proposed rule, NMFS provided alternative ways to implement the owner-on-board and mid-season transfer provisions depending on whether or not WDFW and ODFW would require the Federal sablefish-endorsed permit number to be written on the state fish ticket and whether that information would be entered into PacFIN.

NMFS understands that system and funding constraints make it difficult to change the state fish ticket system to provide information to PacFIN and to reprint the state fish tickets with a line for the Federal permit number. While the ability to pull state fish ticket data and permit information directly from PacFIN is ideal, it is not necessary to implement the owner-on-board requirement or mid-season transfers. As long as the Federal sablefish-endorsed permit number is required to be written somewhere on the state fish ticket, NMFS enforcement can audit state fish tickets, as needed, to determine whether the appropriate permit owner was on board the vessel or to determine a particular permit's catch. NMFS appreciates that WDFW and CDFG will provide Federal permit information into the PacFIN database.

Because CDFG already requires the Federal permit number on the state fish ticket and because WDFW and ODFW will require it beginning in 2007, NMFS will implement the provisions of the sablefish permit stacking program that allows for mid-season transfers and requires only the owner of the sablefish endorsed permit being fished to be onboard the vessel while that permit is being fished. NMFS acknowledges that WDFW and ODFW will continue to work towards an improved state fish ticket system to meet the growing needs of fisheries management and enforcement.

Comment 2: ODFW needs to be able to validate Federal permit numbers listed on state fish tickets with real-time access to the NOAA Federal permit database. ODFW stated that ODFW, WDFW, and CDFG cannot verify Federal permit numbers on state fish tickets with existing systems.

Response: Federal permit information is available on our website at *www.nwr.noaa.gov* and is updated weekly. Click on "Groundfish & Halibut," then click on "Federal Permits," then click on "Groundfish Limited Entry Permits," and click on "List of Current Permits." In addition, while the state's ability to validate Federal permit numbers listed on state fish tickets may be ideal, it is not necessary to implement the owner-on-board requirement or mid-season transfers. NMFS enforcement agents can check state fish tickets and compare the Federal permit numbers listed on the tickets with those listed in the NMFS Permit Office database, as needed. NMFS will not hold the states responsible for validating Federal permit information. If the states are concerned with validating Federal permit number, they can request that the Federal permit onboard the vessel be shown at the time the state fish ticket is filled out. Also, it is in the fisherman's best interest to ensure that the correct permit number is recorded on the state fish ticket in order to maintain their permit catch history.

Comment 3: One commenter wrote to support the owner-on-board requirement, citing its implementation in other fisheries as being effective at: preventing harvesters from becoming sharecroppers for permit owners, and keeping the price of the cost of entry into the fishery within reach of fishermen. Another commenter wrote in opposition to the owner-on-board requirement, stating that it would be: confusing to fishery participants, and should not be required of individuals who had fished their permits for a certain period of time (maybe 7–10 years.)

Response: NMFS continues to support the owner-on-board requirement. As NMFS stated in its final rule implementing the initial provisions of Amendment 14, "Allowing persons who do not fish to own fishing privileges and then rent those privileges out to fishers is often referred to as 'share-cropping' the fishing privileges. Members of the West Coast sablefish fleet were concerned that without an owner-on-board provision, permit ownership could flow out of fishing communities and into the hands of speculative non-fishing buyers. To ensure that only fishers could buy into the sablefish fleet, the Council included an owner-on-board provision in Amendment 14." (66 FR 41152, August 7, 2001). The Council carefully crafted Amendment 14's provisions to maintain a sablefish fleet populated by vessel owner-operators. Eliminating the owner-on-board requirement would be contrary to the Council's intent to maintain the small business character of this fishery.

NMFS notes that while the owner-on-board requirement may make regulations more complex than the existing reguylatory regime, they are necessary to ensure the owner-operator character of the fleet is maintained. This provision was initially included in Amendment 14 because it had been developed and supported by permit owners.

NMFS disagrees with the commenter's suggestion that permit owners should be able to earn the right to be exempt from the owner-on-board requirement after fishing for a period of time. As stated above, the intent of the owner-on-board requirement is to maintain the owner-operator character of the fleet. Creating additional exemptions to the requirement would be contrary to Amendment 14.

Comment 4: Two commenters suggested that anyone who had owned at least 30 percent of a permit prior to November 1, 2000, should not be subject to the owner-on-board requirement (known colloquially as being "grandfathered" from the requirement.) One of these commenters has part ownership in a permit that was purchased prior to November 1, 2000, and sole ownership of a permit

purchased after that date. Amendment 14 had exempted entities that had purchased permits prior to November 1, 2000, from being subject to the owner-on-board requirement. However, Amendment 14 had specifically not exempted particular persons who were part owners of permits but not sole owners of permits from the owner-on-board provision. This commenter believes that he is being unfairly excluded from the exemption to the owner-on-board requirement. In his letter, he cites the particular challenge of owning two permits, wishing to fish those permits from two different vessels, and not being able to be on two vessels simultaneously.

Response: As stated above in the response to Comment 3, the intent of the owner-on-board requirement is to maintain the owner-operator character of the fleet. Amendment 14 provided an exemption to this requirement to permit owning entities that had owned a permit prior to November 1, 2000. Amendment 14 also specifically did not exempt a person who had some percentage of interest in an exempted partnership or corporation, but who did not individually own a permit prior to the cutoff date, from the owner-on-board requirement. This and other restrictions on the exemption to the owner-on-board requirement were intended to transition the fleet to an owner-on-board fleet.

Subsequent to its adoption of Amendment 14, the Council considered whether to exempt permit owners who had partial ownership in a permit prior to November 1, 2000, from the owner-on-board requirement. While the Council expressed some support for this notion, it has declined to further discuss or analyze a revision to the original owner-on-board requirements and exemptions from Amendment 14.

Comment 5: One commenter wrote in support of the limit on the number of permits that may be owned or leased by an individual, and in support of requirements for documentation of permit ownership interests. Another commenter wrote in opposition to the limit on the number of permits that may leased. This second commenter suggested that permit holders who had participated in the fishery prior to November 1, 2000, should be allowed to own up to three permits, and lease up to an additional three permits per vessel owned prior to November 1, 2000.

Response: Federal regulations at § 660.334(d)(4)(ii) state, "No person, partnership, or corporation may have ownership interest in or hold more than three permits with sablefish endorsements, except for persons, partnerships, or corporations that had ownership interest in more than three permits with sablefish endorsements as of November 1, 2000." This regulation has been in place since August 2001 and the proposed rule for the action implemented via this final rule did not propose to revise this provision. NMFS appreciates the first commenter's support of the action the agency did propose, which was to require documentation of ownership interest in order to facilitate more thorough agency enforcement of this requirement.

The proposed rule (October 12, 2005; 70 FR 59296) stated that the issue of whether to increase the number of permits that can be held was discussed by the Council and the Groundfish Advisory Panel (GAP) in 2002. At that time, the Council requested that the GAP look into alternatives that would revise the accumulation cap on the total permits an individual person, partnership or corporation could hold through leasing and report back to the Council at a later meeting. This issue has not yet been revisited and would require further analysis and a rulemaking before it could be implemented by NMFS. Therefore, a change in the number of permits that can be held is not being considered in this final rule.

Comment 6: The commenter understands the need for designating a base permit associated with the vessel length in order to maintain the characteristics of the fleet. However, the commenter suggests relaxing the restriction that the permit be within 5 ft (1.52 m) of the vessel length to within 10 ft (3 m). The commenter feels this would allow fishermen to make slight modifications to their vessel while still maintaining the character of the fleet, not changing the amount of blackcod they could catch, and allowing vessels to make modifications to participate in other fisheries. In addition, relaxing the length would make it somewhat easier to buy and sell permits to match a vessel.

Response: The requirement that the vessel length be within 5 ft (1.52 m) of the length marked on the permit is currently in regulation at 50 CFR 660.334(c)(2)(i) and is not part of this rulemaking. 50 CFR 660.334(c)(2)(i) states that, "A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under § 660.335 (b) or a change in the size endorsement." NMFS agrees that relaxing the limitations on the length (size) endorsement on the permit would increase flexibility. NMFS suggests that the commenter request that the Council analyze and revisit vessel size endorsements for the fixed gear fleet and consider making a recommendation to NMFS. If NMFS considers changes to the size endorsement requirement, it would do so through a separate rulemaking.

Comment 7: One commenter wrote in support of the restriction of opportunities to process sablefish at-sea as a mechanism for ensuring that shore-based processing plants have access to sablefish landings from the primary sablefish season. A second commenter wrote to express his concern that the prohibition on processing sablefish at-sea could constrain his practice of processing on-shore the sablefish that he catches. A third commenter wrote to ask for an exemption to the prohibition on processing sablefish at-sea for fishery participants who have purchased at-sea processing equipment since the November 1, 2000, cutoff date. This third commenter also complained that the fleet had not received adequate notice of this potential restriction prior to the publication of the proposed rule for this action.

Response: This final rule includes a prohibition on processing sablefish taken in the primary sablefish season at-sea unless the vessel has a sablefish at-sea processing exemption. In accordance with Amendment 14, exemptions to this prohibition will be provided to vessel owners who meet the qualification requirement of evidence of having processed: at least 2,000 lb (907.2 mt) round weight of frozen sablefish landed by the applicant vessel in any one calendar year in either 1998 or 1999, or between January 1, 2000 and November 1, 2000. As stated by the first commenter, the Council included this provision in Amendment 14 in order to maintain the character of the fishery, which included having the bulk of primary season sablefish being processed on shore.

NMFS agrees that this prohibition encourages shoreside processing. As stated in the Environmental Assessment for the sablefish permit stacking program (Pacific Council, March 2001), 'If the fishing season is extended and permits can be stacked, the extended and more flexible fishing opportunities may increase the probability that at-sea processing activity will occur (or expand). Processor vessels may be typical harvesting vessels using the harvesting crew as processor labor or they may be larger processors (catcher-processors and motherships) drawing their workers from noncoastal and coastal communities. This may result in

the relocation of processing jobs and income from coastal communities and shore-based processors to the processor vessels and the offloading ports. Such relocation of activities could have an adverse effect on coastal communities dependent on fisheries. Prohibition of at-sea processing would reduce the potential for relocation of processing jobs and income away from fishery dependent coastal communities and limit on-shore/off-shore allocation disputes. However, if at-sea freezing is the most efficient way to harvest and process sablefish, the provision would also result in the loss of some economic benefit to the nation. The Pacific Council viewed the benefits of preventing negative impacts on coastal communities and the equity and simplification that would result from establishing a clear line between processors and catcher vessels as outweighing potential efficiency concerns that may result.' NMFS agrees with the Pacific Council's cost/benefit analysis and is implementing the Pacific Council's recommendation to facilitate shoreside processing, thus assisting coastal fishing communities.

The second commenter wishes to continue processing his sablefish on shore. This regulation does not address shore-based processing of sablefish; therefore, his shore-based processing activities would not be affected by this regulation. Amendment 14 did not address limiting which shore-based processors would be permitted to process sablefish.

NMFS disagrees with the third commenter's statement that adequate notice of this restriction was not provided to the public. The prohibition on at-sea processing was discussed in 2001 as slated for future implementation in the advanced notice of proposed rulemaking (66 FR 17681, April 3, 2001) and in the proposed and final rules (66 FR 30869, June 8, 2001, and 66 FR 41152, August 7, 2001, respectively) implementing the initial portions of Amendment 14. In addition, implementation of the prohibition on at-sea processing of sablefish and the corresponding qualifying criteria was discussed in the Pacific Fishery Management Council's Spring 2001 (Volume 25, Number 1) and Summer 2001 (Volume 25, Number 2) newsletters.

Changes From the Proposed Rule

A definition for the term "Grandfathered" was added to the regulations in § 660.302, Definitions. Grandfathered or first generation, when referring to a limited entry sablefish-endorsed permit owner, means those permit owners who owned a sablefish-endorsed limited entry permit prior to November 1, 2000, and are, therefore, exempt from certain requirements of the sablefish permit stacking program within the parameters of the regulations at §§ 660.334 through 660.341 and § 660.372.

In § 660.334, Limited Entry Permits-endorsements, paragraph (d)(4)(vii) has been added to complement the same requirements listed at § 660.372, Fixed gear sablefish fishery management, paragraph (b)(4)(i). This requirement allows a person, partnership, or corporation that is exempt from the owner-on-board requirement to sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements.

Classification

NMFS has determined that the final rule is consistent with the Pacific Coast Groundfish FMP and with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA incorporates the IRFA, the supplemental IRFA (prepared by NMFS as a supplement to the IRFA prepared by the Council as part of the EA), a summary of the significant issues raised by the public comments in response to the supplemental IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from the NMFS (see ADDRESSES). A summary of the analysis follows.

This rule affects only the owners of the 164 limited entry permits with sablefish endorsements. These permit holders use longline or pot gear to participate in the limited entry, primary sablefish fishery. All of the permit owners and vessels in the Pacific Coast, limited entry, fixed gear fleet are considered small entities under Small Business Administration (SBA) standards.

NMFS and the SBA have already considered whether Amendment 14 would significantly affect the small entities involved in the limited entry, fixed gear sablefish fishery. The agencies concluded that while Amendment 14 would have significant effects on the limited entry, fixed gear sablefish fleet, those effects would be positive improvements in the safety of the fishing season, and in business planning flexibility. These conclusions were described in the final rule to implement Amendment 14 for the 2001 fishing season (August 7, 2001, 66 FR 41152) and in the Final Regulatory Flexibility Analysis prepared for that rule (July 19, 2001).

The regulatory changes implemented in this final rule follow out of the regulations implementing Amendment 14 (August 7, 2001, final rule) for 2007 and beyond. The regulatory changes in the August 7, 2001, final rule brought greater operational safety and more business planning flexibility to the participants in both the primary sablefish fishery and the daily trip limit fishery for sablefish. It allowed participants with greater harvest capacity to better match their sablefish cumulative limits with individual vessel capacity, it reduced overall primary fishery capacity, and it allowed the fishermen to use the longer season to fish more selectively and to increase their incomes by improving the quality of their ex-vessel product.

The regulatory changes implemented in this rule require permit owners and permit holders to document their ownership interests in sablefish-endorsed limited entry permits and are expected to have no effect on permit owners and permit holders beyond the time required to complete that documentation. The owner-on-board requirement will not affect the fishing behavior of persons who owned sablefish-endorsed permits before November 1, 2000, and will only affect those who consider purchasing permits after that time in that persons who do not wish to participate in fishing activities aboard a vessel may not wish to purchase sablefish-endorsed permits. Prohibiting vessels from processing sablefish at sea, if they do not meet minimum frozen sablefish historic landing requirements, is expected to simply maintain current sablefish landing and processing practices for both fishers and processors. This prohibition should, therefore, ensure that shore-based processors will continue to receive business from sablefish harvesters. Certification of current sablefish landings on a permit when conducting a mid-season permit transfer to another person is not expected to have any effect on permit owners or holders beyond the time required to complete the documentation. Defining the term "base permit" consistent with the FMP is not expected to have any effect on any participant in the groundfish fishery because it is only an administrative change. This final rule is also not

expected to have any effect on the 66 limited entry, fixed gear permit holders without sablefish endorsements because this program only applies to sablefish fishery participants with sablefish endorsements (i.e., primary sablefish fishery participants).

The criteria used to evaluate whether this final rule imposes "significant economic impacts" are disproportionality and profitability. Disproportionality means that the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. Profitability means that the regulation significantly reduces profit for a substantial number of small entities. These criteria relate to the basic purpose of the RFA, i.e., to consider the effect of regulations on small businesses and other small entities. This final rule will not impose disproportionate effects between small and large business entities because all limited entry fixed gear vessels, including the sablefish endorsed vessels affected by this rule, are small business entities. As described in the above paragraph, Amendment 14 to the FMP and implementing regulations, including the August 7, 2001, final rule, increased business planning flexibility and profitability overall for the affected small businesses. This final rule further implements provisions of Amendment 14, making the regulations more enforceable and maintaining the small business character of the fleet. Therefore, this final rule is not expected to change the overall increased profitability of the fleet gained through the August 7, 2001, final rule. However, the owner-on-board requirement may decrease the overall profitability gained from implementation of the initial permit stacking provisions from Amendment 14. An economic analysis of the owner-on-board provision from the supplemental IRFA (see **ADDRESSES**) shows that the owner-on-board requirement may cost second generation permit owners approximately $40,400 per person per year or approximately $15 million in lost income for all second generation permit owners, collectively discounted over a 20–year period. In addition, the permit value may decrease over time due to the reduced flexibility associated with use of the permit. Overall, when considering all of the provisions associated with Amendment 14, those implemented with the August 7, 2001, final rule and those implemented through this rulemaking, profitability is still expected to increase over the previous sablefish 3–tier management system.

The actions being implemented in this document are not expected to have significant impacts on small entities. Seven public comments were received on the proposed rule. None of these comments specifically addressed the IRFA. Comments 3, 4, and 7 in the preamble pertain to the economic impacts which were analyzed in the IRFA and FRFA. Responses to these comments were provided earlier in the preamble to this final rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a public notice that also serves as small entity compliance guide (the guide) was prepared. The guide and final rule will be sent to all holders of permits for the limited entry fixed gear sablefish fishery. Copies of this final rule and the guide are available from the NMFS Northwest Regional Office (see **ADDRESSES**) and are available on our website at *www.nwr.noaa.gov* (Click on "Groundfish & Halibut," then on "Public Notices").

The Council prepared an EA for Amendment 14 and the Assistant Administrator (AA) concluded that there will be no significant impact on the human environment as a result of this final rule. A copy of the EA is available from the Council (see **ADDRESSES**). In the EA/RIR prepared by the Council for this action, two main alternatives were considered, a no action alternative and a permit stacking regime alternative. The topics considered under each of these alternatives were permit stacking, accumulation, season length, at-sea processing, permit ownership/owner-on-board, and foreign control. Under the no action alternative, the primary limited entry, fixed gear sablefish fishery would continue under the 3–tier management program, with one permit associated with each participating vessel. In addition, permit stacking would not be allowed, the number of permits owned would not be limited, the season length would be 9–10 days and would likely shorten over time, vessels without sablefish endorsements would not be allowed to fish during the primary season, at-sea processing would be permitted, permit owners would not be required to be onboard their vessel during fishing operations, and any legal entity allowed to own a U.S. fishing vessel may own a permit.

Under the permit stacking regime alternative, 12 provisions, many of which include suboptions, were considered for the topics (permit stacking, accumulation, season length, etc.). Thus, the permit stacking regime alternative consists of many sub-alternatives, depending on the combination of provisions and suboptions adopted by the Council. Provisions 1 (allow a basic permit stacking program), 2 (gear usage), 4 (unstacking permits), and 8 (stacking non-sablefish limits and sablefish daily trip limits) address permit stacking. Provision 3 (accumulation limits) addresses accumulation. Provisions 5 (season duration), 9 (opportunities for unendorsed vessels), 11 (advanced notice of landings), and 12 (stacking deadline) address season length. Provision 6 (processing prohibition and freezer vessel length) addresses at-sea processing. Provision 7 (individual ownership only and owner-on-board requirement) addresses permit ownership/owner-on-board. Provision 10 (U.S. citizenship requirement) addresses foreign control. As mentioned previously, the final rule for Amendment 14 implemented most of these provisions. This final rule would implement parts of the following provisions: 2, 6, and 7. The preferred alternative recommended by the Council and implemented by NMFS was the permit stacking regime alternative with only certain options within each provisions being adopted as preferred.

The preferred alternative was selected because it best met the objectives of the action, which for the provisions implemented through this action (i.e., provisions 2, 6, and 7) included directing benefits towards fishing communities and preventing excessive concentration of harvest privileges. The EA/RIR for this action reviewed alternatives for their economic impacts. Of the provisions that would be implemented by this action, only provisions 6 and 7 may have economic effects. Provision 6 may prevent economic efficiencies from developing by restricting at-sea processing to vessels that had processed at-sea prior to November 1, 2000, and may limit a rise in permit prices from what they would have been if at-sea processing were allowed. Provision 7 may reduce flexibility, which may in turn reduce efficiency and limit the rise in permit prices compared to a regime where owner-on-board were not required and

permits were not limited to ownership by individuals.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA,) which has been approved by the Office of Management and Budget (OMB) under control number 0648–0203. Public reporting burden to determine ownership interests is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, or approximately $8.51 per respondent for the respondent's time. Public reporting burden for the provision to add a not-listed spouse as permit co-owner is estimated to average 0.33 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, or approximately $5.62 per respondent for the respondent's time. Public reporting burden for mid-season transfers of sablefish-endorsed permits is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, or approximately $8.51 per respondent for the respondent's time. Public reporting burden for the sablefish at-sea processing exemption is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, or approximately $8.51 per respondent for the respondent's time. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Fishing, Fisheries, and Indian fisheries.

Dated: February 24, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.302, the definition for "Permit holder" is revised, and new definitions for "Base permit," "Change in partnership or corporation," "Corporation," "Grandfathered," "Partnership," "Spouse," and "Stacking" are added in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Base permit, with respect to a limited entry permit stacking program, means a limited entry permit described at § 660.333(a) registered for use with a vessel that meets the permit length endorsement requirements appropriate to that vessel, as described at § 660.334(c).

* * * * *

Change in partnership or corporation means the addition of a new shareholder or partner to the corporate or partnership membership. This definition of a "change" will apply to any person added to the corporate or partnership membership since November 1, 2000, including any family member of an existing shareholder or partner. A change in membership is not considered to have occurred if a member dies or becomes legally incapacitated and a trustee is appointed to act on his behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

* * * * *

Corporation is a legal, business entity, including incorporated (INC) and limited liability corporations (LLC).

* * * * *

Grandfathered or first generation, when referring to a limited entry sablefish-endorsed permit owner, means those permit owners who owned a sablefish-endorsed limited entry permit prior to November 1, 2000, and are, therefore, exempt from certain requirements of the sablefish permit stacking program within the parameters of the regulations at §§ 660.334 through 660.341 and § 660.372.

* * * * *

Partnership is two or more individuals, partnerships, or corporations, or combinations thereof, who have ownership interest in a permit, including married couples and legally recognized trusts and partnerships, such as limited partnerships (LP), general partnerships (GP), and limited liability partnerships (LLP).

* * * * *

Permit holder means a vessel owner as identified on the United States Coast Guard form 1270 or state motor vehicle licensing document.

* * * * *

Spouse means a person who is legally married to another person as recognized by state law (i.e., one's wife or husband).

* * * * *

Stacking is the practice of registering more than one limited entry permit for use with a single vessel (See § 660.335(c)).

* * * * *

■ 3. In § 660.303, paragraph (c) is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

* * * * *

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter. For participants in the primary sablefish season (detailed at § 660.372(b)), the cumulative limit period to which this requirement applies is April 1 through October 31.

* * * * *

■ 4. In § 660.306, paragraph (b)(3) is added and paragraphs (e) and (g)(2) are revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(b) * * *

(3) Fail to retain on board a vessel from which sablefish caught in the primary sablefish season is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings against the sablefish endorsed permit's tier limit, or receipts

containing all data, and made in the exact manner required by the applicable state law throughout the primary sablefish season during which such landings occurred and for 15 days thereafter.

* * * * *

(e) *Fixed gear sablefish fisheries.* (1) Take, retain, possess or land sablefish under the cumulative limits provided for the primary limited entry, fixed gear sablefish season, described in § 660.372(b), from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(2) Beginning January 1, 2007, take, retain, possess or land sablefish in the primary sablefish season described at § 660.372(b) unless the owner of the limited entry permit registered for use with that vessel and authorizing the vessel to participate in the primary sablefish season is on board that vessel. Exceptions to this prohibition are provided at § 660.372(b)(4)(i) and (ii).

(3) Beginning January 1, 2007, process sablefish taken at-sea in the limited entry primary sablefish fishery defined at § 660.372(b), from a vessel that does not have a sablefish at-sea processing exemption, defined at § 660.334(e).

* * * * *

(g) * * *

(2) Make a false statement on an application for issuance, renewal, transfer, vessel registration, replacement of a limited entry permit, or a declaration of ownership interest in a limited entry permit.

* * * * *

■ 5. In § 660.334, paragraph (e) is redesignated as paragraph (f), and is revised; paragraphs (c)(3), (d)(4)(ii) and (iii) are revised; and paragraphs (d)(4)(iv) through (vii) and new paragraph (e) are added to read as follows:

§ 660.334 Limited entry permits endorsements.

* * * * *

(c) * * *

(3) *Size endorsement requirements for sablefish-endorsed permits.* Notwithstanding paragraphs (c)(1) and (2) of this section, when multiple permits are "stacked" on a vessel, as described in § 660.335(c), at least one of the permits must meet the size requirements of those sections. The permit that meets the size requirements of those sections is considered the vessel's "base" permit, as defined in § 660.302. Beginning in the Fall of 2006 with the limited entry permit renewal process (§ 660.335(a)), if more than one permit registered for use with the vessel has an appropriate length endorsement for that vessel, NMFS SFD will designate a base permit by selecting the permit that has been registered to the vessel for the longest time. If the permit owner objects to NMFS's selection of the base permit, the permit owner may send a letter to NMFS SFD requesting the change and the reasons for the request. If the permit requested to be changed to the base permit is appropriate for the length of the vessel as provided for in paragraph (c)(2)(i) of this section, NMFS SFD will reissue the permit with the new base permit. Any additional permits that are stacked for use with a vessel participating in the limited entry primary fixed gear sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 ft (1.5 m) longer or shorter than the size endorsed on the permit.

* * * * *

(d) * * *

(4) * * *

(ii) No individual person, partnership, or corporation in combination may have ownership interest in or hold more than 3 permits with sablefish endorsements either simultaneously or cumulatively over the primary season, except for an individual person, or partnerships or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. An individual person, or partnerships or corporations that had ownership interest in 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000. If, at some future time, an individual person, partnership, or corporation that owned more than 3 permits as of November 1, 2000, sells or otherwise permanently transfers (not holding through a lease arrangement) some of its originally owned permits, such that they then own fewer than 3 permits, they may then acquire additional permits, but may not have ownership interest in or hold more than 3 permits.

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(4)(i) and (ii) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or corporation is defined at § 660.302. A change in the partnership or corporation must be reported to SFD within 15 calendar days of the addition of a new shareholder or partner.

(iv) During 2006 when a permit's ownership interest is requested for the first time, NMFS anticipates sending a form to legally recognized corporations and partnerships (i.e., permit owners or holders that do not include only individual's names) that currently own or hold sablefish-endorsed permits that requests a listing of the names of all shareholders or partners as of November 1, 2000, and a listing of that same information as of the current date in 2006. Applicants will be provided at least 60 calendar days to submit completed applications. If a corporation or partnership fails to return the completed form by the deadline date of July 1, 2006, NMFS will send a second written notice to delinquent entities requesting the completed form by a revised deadline date of August 1, 2006. If the permit owning or holding entity fails to return the completed form by that second date, August 1, 2006, NMFS will void their existing permit(s) and reissue the permit(s) with a vessel registration given as "unidentified" until such time that the completed form is provided to NMFS. For the 2007 fishing year and beyond, any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process defined at § 660.335(a) and whenever a change in permit owner, permit holder, and/or vessel registration occurs as defined at § 660.335(d) and (e). SFD will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at § 660.335(a) or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (d)(4)(ii) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as "unidentified" until the permit owner owns and/or holds a quantity of permits appropriate

to the restrictions and requirements described in paragraph (d)(4)(ii) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (d)(4)(iii) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in "unidentified" status with respect to vessel registration until the partnership or corporation is able to transfer those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(v) For permit owners with one individual listed and who were married as of November 1, 2000, and who wish to add their spouse as co-owner on their permit(s), NMFS will accept corrections to NMFS' permit ownership records. Permit owners may add a not-listed spouse as a co-owner without losing their exemption from the owner-on-board requirements (i.e., grandfathered status). Their new grandfathered status will be as a partnership, as defined at § 660.302 which includes married couples. Individual permit owners will lose their individual grandfathered status when they add their not-listed spouse unless they also owned at least one permit as an individual and did not retroactively add a spouse as co-owner on that permit. In cases where married couples are listed as co-owners of the same permit, both individuals will be counted as owning one permit each and will have grandfathered status as a partnership. An individual within the married couple will not, however, be able to retain their exemption from owner-on-board requirements if they choose to buy another permit as an individual and did not own a permit as an individual as of the control date in NMFS "corrected" records (i.e., NMFS records after allowing a not-listed spouse to be added as co-owner). Members of partnerships and corporations will not be allowed to add their spouses to the corporate ownership listing as of November 1, 2000, for purposes of exempting them from the owner-on-board requirements. NMFS will send a form to permit owners with one individual listed on the permit as of November 1, 2000, to allow married individuals who wish to declare their spouses as having permit ownership interest as of November 1, 2000. Applicants will be required to submit a copy of their marriage certificate as evidence of marriage. Applicants will be provided at least 60 calendar days to submit an application to add a spouse as co-owner. Failure to return the completed form to NMFS SFD by July 1, 2006, will result in the individual listed on the permit in SFD records as of November 1, 2000, remaining on the permit. SFD will not accept any declarations to add a spouse as co-owner for couples married as of November 1, 2000, postmarked after the July 1, 2006, deadline.

(vi) For an individual person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, they may retain rights to an owner-on-board exemption as long as that individual person, partnership, or corporation obtains another permit by March 2, 2007. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died. NMFS will send out a letter to all individuals, partnerships or corporations who owned a permit as of November 1, 2000, and who no longer own a permit to notify them that they would qualify as a grandfathered permit owner if they choose to buy a permit by March 2, 2007.

(vii) A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died.

(e) *Sablefish at-sea processing prohibition and exemption*—(1) *General.* Beginning January 1, 2007, vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without sablefish at-sea processing exemptions at § 660.306(e)(3). A permit and/or vessel owner may get an exemption to this prohibition if his/her vessel meets the exemption qualifying criteria provided in paragraph (e)(2) of this section. The sablefish at-sea processing exemption is issued to a particular vessel and the permit and/or vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption is not transferable to any other vessel, vessel owner, or permit owner for any reason. The sablefish at-sea processing exemption will expire upon transfer of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.302.

(2) *Qualifying criteria.* A sablefish at-sea processing exemption will be issued to any vessel registered for use with a sablefish-endorsed limited entry permit that meets the sablefish at-sea processing exemption qualifying criteria and for which the owner submits a timely application. The qualifying criteria for a sablefish at-sea processing exemption are: at least 2,000 lb (907.2 mt), round weight, of frozen sablefish landed by the applicant vessel during any one calendar year in either 1998 or 1999, or between January 1 and November 1, 2000. The best evidence of a vessel having met these qualifying criteria will be receipts from frozen product buyers or exporters, accompanied by the state fish tickets or landings receipts appropriate to the frozen product. Documentation showing investment in freezer equipment without also showing evidence of how poundage qualifications have been met is not sufficient evidence to qualify a vessel for a sablefish at-sea processing exemption. All landings of sablefish must have occurred during the regular and/or mop-up seasons and must have been harvested in waters managed under this part. Sablefish taken in tribal set aside fisheries or taken outside of the fishery management area, as defined at § 660.302, does not meet the qualifying criteria.

(3) *Issuance process for sablefish at-sea processing exemptions.*

(i) The SFD will mail sablefish at-sea processing exemption applications to all limited entry permit owners with sablefish endorsements and/or fixed gear vessel owners and will make those applications available online at *www.nwr.noaa.gov/Groundfish-Halibut/Fisheries-Permits/index.cfm.* Permit and/or vessel owners will have at least 60 calendar days to submit applications. A permit and/or vessel owner who believes that their vessel may qualify for the sablefish at-sea processing exemption will have until July 1, 2006, to submit evidence showing how their vessel has met the qualifying criteria described in this section at paragraph (e)(2) of this section. Paragraph (e)(4) of this section sets out the relevant evidentiary standards and burden of proof. SFD will not accept applications for the sablefish at-sea processing exemption postmarked after July 1, 2006.

(ii) Within 30 calendar days of the deadline or after receipt of a complete application, the SFD will notify applicants by letter of determination whether their vessel qualifies for the sablefish at-sea processing exemption. A person who has been notified by the SFD that their vessel qualifies for a sablefish at-sea processing exemption will be issued an exemption letter by SFD that must be onboard the vessel at all times. After the deadline for the receipt of applications has expired and all applications processed, SFD will publish a list of vessels that qualified for the sablefish at-sea processing exemption in the **Federal Register**.

(iii) If a permit and/or vessel owner chooses to file an appeal of the determination under paragraph (e)(3)(ii) of this section, the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the vessel qualifies for a sablefish at-sea processing exemption. The appeal of a denial of an application for a sablefish at-sea processing exemption will not be referred to the Council for a recommendation, nor will any appeals be accepted by SFD after September 1, 2006.

(iv) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) *Evidence and burden of proof.* A permit and/or vessel owner applying for issuance of a sablefish at-sea processing exemption has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(i) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(ii) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(iii) A copy of a written receipt indicating the name of their buyer, the date, and a description of the product form and the amount of sablefish landed is the best evidence of the commercial transfer of frozen sablefish product.

(iv) Such other relevant, credible evidence as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(f) *Endorsement and exemption restrictions.* "A" endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments may not be transferred separately from the limited entry permit. Sablefish at-sea processing exemptions are associated with the vessel and not with the limited entry permit and may not be transferred at all.

* * * * *

■ 6. In § 660.335, paragraphs (g)(2) through (g)(6) are redesignated as paragraphs (g)(3) through (g)(7); paragraphs (c), (d)(1), (e)(1), and (e)(3) are revised; and new paragraphs (a)(4), (e)(4), and (g)(2) are added to read as follows:

§ 660.335 Limited entry permits renewal, combination, stacking, change of permit owner or holder, and transfer.

(a) * * *

(4) Limited entry permits with sablefish endorsements, as described at § 660.334(d), will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.334(d)(4)(iv).

* * * * *

(c) *Stacking limited entry permits.* "Stacking" limited entry permits, as defined at § 660.302, refers to the practice of registering more than one permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be stacked. Up to 3 limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.372. Privileges, responsibilities, and restrictions associated with stacking permits to participate in the primary sablefish fishery are described at § 660.372 and at § 660.334(d).

(d) * * *

(1) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.334 (d)(4). Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at § 660.335(g).

* * * * *

(3) *Sablefish-endorsed permits.* Beginning January 1, 2007, if a permit owner submits an application to transfer a sablefish-endorsed limited entry permit to a new permit owner or holder (transferee) during the primary sablefish season described at § 660.372(b) (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The transferee must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state fish tickets. As required at § 660.303(c), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(e) * * *

(1) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at § 660.335(g). Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements, as described at § 660.334(d), will not be approved until SFD has received complete documentation of permit ownership as required under § 660.334(d)(4)(iv).

* * * * *

(3) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(4) *Sablefish-endorsed permits.* Beginning January 1, 2007, if a permit owner submits an application to register a sablefish-endorsed limited entry

permit to a new vessel during the primary sablefish season described at § 660.372(b) (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or holder (transferee) associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state fish tickets. As required at § 660.303(c)), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(g) *Application and supplemental documentation.* * * *

(2) For a request to change a vessel registration and/or change in permit ownership or permit holder for sablefish-endorsed permits with a tier assignment for which a corporation or partnership is listed as permit owner and/or holder, an Identification of Ownership Interest Form must be completed and included with the application form.

* * * * *

■ 7. In § 660.372, paragraph (b)(1) is revised and paragraph (b)(4) is added to read as follows:

§ 660.372 Fixed gear sablefish fishery management.

* * * * *

(b) * * *

(1) *Season dates.* North of 36E N. lat., the primary sablefish season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon l.t. on April 1 and ends at 12 noon l.t. on October 31, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.370(c).

* * * * *

(4) *Owner-on-board Requirement.* Beginning January 1, 2007, any person who owns or has ownership interest in a limited entry permit with a sablefish endorsement, as described at § 660.334(d), must be on board the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. This person must carry government issued photo identification while aboard the vessel. A permit owner is not obligated to be on board the vessel registered for use with the sablefish-endorsed limited entry permit during the primary sablefish season if:

(i) The person, partnership or corporation had ownership interest in a limited entry permit with a sablefish endorsement prior to November 1, 2000. A person who has ownership interest in a partnership or corporation that owned a sablefish-endorsed permit as of November 1, 2000, but who did not individually own a sablefish-endorsed limited entry permit as of November 1, 2000, is not exempt from the owner-on-board requirement when he/she leaves the partnership or corporation and purchases another permit individually. A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. Additionally, a person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, may retain rights to an owner-on-board exemption as long as that person, partnership, or corporation purchases another permit by March 2, 2007. A person, partnership or corporation could only purchase a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation, or that have died.

(ii) The person who owns or who has ownership interest in a sablefish-endorsed limited entry permit is prevented from being on board a fishing vessel because the person died, is ill, or is injured. The person requesting the exemption must send a letter to NMFS requesting an exemption from the owner-on-board requirements, with appropriate evidence as described at § 660.372(b)(4)(ii)(A) or (B). All emergency exemptions for death, injury, or illness will be evaluated by NMFS and a decision will be made in writing to the permit owner within 60 calendar days of receipt of the original exemption request.

(A) Evidence of death of the permit owner shall be provided to NMFS in the form of a copy of a death certificate. In the interim before the estate is settled, if the deceased permit owner was subject to the owner-on-board requirements, the estate of the deceased permit owner may send a letter to NMFS with a copy of the death certificate, requesting an exemption from the owner-on-board requirements. An exemption due to death of the permit owner will be effective only until such time that the estate of the deceased permit owner has transferred the deceased permit owner's permit to a beneficiary or up to three years after the date of death as proven by a death certificate, whichever is earlier. An exemption from the owner-on-board requirements will be conveyed in a letter from NMFS to the estate of the permit owner and is required to be on the vessel during fishing operations.

(B) Evidence of illness or injury that prevents the permit owner from participating in the fishery shall be provided to NMFS in the form of a letter from a certified medical practitioner. This letter must detail the relevant medical conditions of the permit owner and how those conditions prevent the permit owner from being onboard a fishing vessel during the primary season. An exemption due to injury or illness will be effective only for the calendar year of the request for exemption, and will not be granted for more than three consecutive or total years. NMFS will consider any exemption granted for less than 12 months in a year to count as one year against the 3–year cap. In order to extend an emergency medical exemption for a succeeding year, the permit owner must submit a new request and provide documentation from a certified medical practitioner detailing why the permit owner is still unable to be onboard a fishing vessel. An emergency exemption will be conveyed in a letter from NMFS to the permit owner and is required to be on the vessel during fishing operations.

* * * * *

[FR Doc. 06–1961 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 022406B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for shallow-water species by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to allow the shallow-water species fishery in the GOA to resume.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 27, 2006, through 1200 hrs, A.l.t., April 1, 2006.

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

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

NMFS closed the shallow-water species fishery by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on February 23, 2006.

NMFS has determined that, approximately 124 mt remain in the first seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the shallow-water species fishery in the GOA to resume, NMFS is terminating the previous closure and is reopening directed fishing for shallow-water species by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species."

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 23, 2006.

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

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 27, 2006.

James P. Burgess,

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

[FR Doc. 06–1960 Filed 2–27–06; 2:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 41
Thursday, March 2, 2006

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–0502; FRL–8040–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Six Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for six major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania or the Commonwealth) SIP-approved generic RACT regulations. EPA is proposing to approve these revisions in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 3, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–0502 by one of the following methods:

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

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: EPA–R03–OAR–2005–0502, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–0502. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. 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 *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: On November 21, 2005, PADEP submitted revisions to the Pennsylvania SIP. These SIP revisions consist of source-specific operating permits, consent orders, and/or plan approvals issued by PADEP to establish and require RACT for sixteen individual sources pursuant to Pennsylvania's SIP-approved generic RACT regulations. This proposed rulemaking covers the Commonwealth's source-specific RACT determinations for six of those sources. The remaining RACT determinations submitted by PADEP on November 21, 2005 will be the subject of separate rulemakings.

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, Pennsylvania is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the "generic RACT regulations". A generic RACT regulation is one that does not, itself,

specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA), Consent Order (CO), or Operating Permit (OP). The Commonwealth then submits these PAs, COs, or OPs to EPA for approval as source-specific SIP revisions. EPA reviews these SIP revisions to ensure that the PADEP has determined and imposed RACT in accordance with the provisions of the SIP-approved generic RACT rules.

It must be noted that the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as a SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

II. Summary of the SIP Revisions

The following table identifies the sources and the individual consent orders (COs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA.—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Operating permit (OP #) consent order (CO#)	Source type	"Major source" pollutant
DLM Foods (formerly Heinz USA)	Allegheny	CO 211	Food Processing	NO_X.
NRG Energy Center (formerly Pittsburgh Thermal Limited Partnership).	Allegheny	CO 220	Steam Generation	NO_X.
Tasty Baking Oxford, Inc	Chester	OP–15–0104	Bakery Operations	VOC.
Siberline Manufacturing Company	Carbon	OP–13–0014	Paint and Lacquers Production.	VOC.
Adhesives Research, Inc	York	OP–67–2007	Surface Coating	VOC.
Mohawk Flush Doors, Inc	Northumberland	OP–49–0001	Surface Coating	VOC.

Interested parties are advised that copies of Pennsylvania's SIP submittals for these sources, including the actual COs and OPs imposing RACT, PADEP's evaluation memoranda and the sources' RACT proposals (referenced in PADEP's evaluation memoranda) are included and may be viewed in their entirety in both the electronic and hard copy versions of the docket for this final rule.

As previously stated, all documents in the electronic docket are listed in the *http://www.regulations.gov index*. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. In accordance with its SIP-approved generic RACT rule, the Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Proposed Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on November 21, 2005 to establish and require VOC and NO_X RACT for six individual sources pursuant to the Commonwealth's SIP-approved generic RACT regulations. EPA is soliciting public comments on this proposed rule to approve these source-specific RACT determinations established and imposed by PADEP in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely proposes to approve a state rule implementing a Federal standard, and

does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule to approve six source-specific RACT determinations established and imposed by the Commonwealth of Pennsylvania pursuant to its SIP-approved generic RACT regulations does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 22, 2006.

William Early,

Acting Regional Administrator, Region III.

[FR Doc. E6–2949 Filed 3–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–7762–7]

RIN 2070–AC83

Lead; Renovation, Repair, and Painting Program; Availability of Supplemental Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: On January 10, 2006, EPA proposed new requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. The proposal supports the attainment of the Federal government's goal of eliminating childhood lead poisoning by 2010. The proposal discussed requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; and for renovation work practices. EPA developed a draft analysis of the potential costs and benefits associated with this proposed rulemaking and included it in the docket for the proposed rule. With this document, EPA is announcing the availability of a revised economic analysis in the rulemaking docket. Comments on the revised economic analysis should be submitted to the docket for the proposed rule and must be received on or before April 10, 2006.

DATES: Comments must be received on or before April 10, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) no. EPA–HQ–OPPT–2005–0049, by one of the following methods.

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2005–0049. 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. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0049. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the regulations.gov index. 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 electronically through regulations.gov or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

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: Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC20460–0001; telephone number: (202) 566–0521; e-mail address:*wilson.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who performs renovations of target housing for compensation or dust sampling. Potentially affected entities may include, but are not limited to:

- Building construction (NAICS 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Other technical and trade schools (NAICS 611519), e.g., training providers.
- Engineering services (NAICS 541330) and building inspection services (NAICS 541350), e.g., dust sampling technicians.

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 the regulatory text at § 745.82 of the proposed rule. 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

In the **Federal Register** of January 10, 2006 (71 FR 1588) (FRL–7755–5), EPA proposed new requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. Pursuant to Executive Order 12866, EPA submitted to the Office of Management and Budget (OMB) a draft analysis of the potential costs and benefits associated with the proposed rulemaking. The draft analysis was contained in a document titled *Draft Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule* (Draft Economic Analysis). The Agency has since completed a revised economic analysis. As discussed in the proposed rule, the revised economic analysis was conducted using other assumptions for baseline activities as well as further enhancements to the analysis. Accordingly, the revised economic analysis contains the Agency's updated estimate of the potential costs and benefits of the proposed rule. In addition, the revised economic analysis also supplements the Agency's analysis of potentially adverse economic impacts on small entities as part of the initial regulatory flexibility analysis prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601*et seq*. The revised economic analysis serves other important purposes as well. It presents analyses that report the impact of the proposed rule on the paperwork burden, the financial condition of small entities, whether the regulation has a disproportionate effect on low-income and or minority persons, and the environmental health risk or safety risk to children due to the regulation. It specifically responds to the Unfunded Mandates Reform Act, and the National Technology Transfer and Advancement Act, as well as to Executive Orders 13132 (Federalism), 13175 (Tribal Implications), 13211 (Energy Effects), and 12898 (Environmental Justice).

A copy of the revised economic analysis, *Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule* (Economic Analysis), is now available in the docket for this action (EPA–HQ–OPPT–2005–0049). In addition to EPA's requests for comment in the proposed rule, EPA is seeking comments on all aspects of the Economic Analysis, including costs, benefits, and baseline assumptions. In particular, EPA requests comment on the studies used to estimate benefits and requests further submission of data or information regarding the estimated benefits of the proposed rule. Additionally, the Agency requests comments and information regarding available data to better estimate the number of small businesses affected by the proposed rule. In determining the number of small businesses affected by the proposed rule, the Agency applied the U.S. Economic Census data to the Small Business Administration's (SBA) definition of small business. However, applying the U.S. Economic Census data

requires either under or overestimating the number of small businesses affected by the proposed rule. For example, for many construction establishments the SBA defines small businesses as having revenues of less than $12 million. With respect to those establishments, the U.S. Economic Census data groups all establishments with revenues of $10 million or more into one revenue bracket. On the one hand, using data for the entire industry would overestimate the number of small businesses affected by the proposed rule and would defeat the purpose of estimating impacts on small business. It would also underestimate the proposed rule's impact on small businesses because the impacts would be calculated using the revenues of large businesses in addition to small businesses. On the other hand, applying the closest, albeit lower, revenue bracket would underestimate the number of small businesses affected by the proposed rule while at the same time overestimating the impacts. Comments on the Economic Analysis should be submitted to the docket for the proposed rule. The comment period on the proposed rule (and therefore this Economic Analysis) currently ends on April 10, 2006.

List of Subjects in Part 745

Environmental protection, Housing renovation, Lead, Lead-based paint, Reporting andrecordkeeping requirements.

Dated: February 24, 2006.

Susan B. Hazen,

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

[FR Doc. E6–2940 Filed 3–1–06; 8:45 am]

BILLING CODE 6560–50–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2522

RIN 3045–AA46

AmeriCorps Grant Applications From Professional Corps

ACTION: Proposed rule.

SUMMARY: The Corporation for National and Community Service is proposing to amend title 45 Code of Federal Regulations, part 2522.240(b)(2)(ii), to remove the restriction on certain professional corps programs from applying through State Commissions for AmeriCorps State competitive funds. The proposed amendment would realign the regulations with the authorizing statutory language. In the Rules Section of this **Federal Register**, the Corporation is taking direct final action on the proposed amendment because we view the amendments as non-controversial and anticipate no adverse comments. The Corporation has provided a detailed rationale for the amendment in the direct final rule. If the Corporation receives no adverse comments, the amendment set forth in the direct final action will become effective and we will take no further action on this proposed rule. If the Corporation receives adverse comments on the amendment, we will publish a timely withdrawal in the **Federal Register** of the direct final rule informing the public that the direct final rule will not take effect, and we will address public comments received in a subsequent final rule based on the proposed rule. The Corporation will not institute a second comment period on the subsequent final rule. Any one interested in commenting on this document should do so at this time.

DATES: To be sure your comments are considered, they must reach the Corporation on or before April 3, 2006.

ADDRESSES: You may mail or deliver your comments to Nicola Goren, Associate General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW., Room 10611, Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 606–3467, or send them electronically to *professionalcorpscomments@cns.gov* or through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov*. Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington DC headquarters.

During and after the comment period, you may inspect all public comments about this rule in suite 10600, 1201 New York Avenue, NW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

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 rule. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Nicola Goren, Associate General Counsel, Corporation for National and Community Service, (202) 606–6676. T.D.D. (202) 606–3472. Persons with visual impairments may request this rule in an alternative format.

SUPPLEMENTARY INFORMATION: For additional information, please see the direct final rule, which is published in the Rules section of this **Federal Register**.

Statutory and Executive Order Reviews

Executive Order 12866

The Corporation has determined that this proposed rule, while a significant regulatory action, is not an "economically significant" rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. As a "significant" regulatory action, this proposed rule was reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Corporation has determined that this regulatory action, if promulgated, will not result in a significant impact on a substantial number of small entities. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects in 45 CFR Part 2522

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

2. Amend § 2522.240 by revising paragraph (b)(2)(ii) to read as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

* * * * *

(b) * * *

(2) * * *

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application to the Corporation, and may not be included in a State's application for AmeriCorps program funds distributed by formula under § 2521.30(a)(2) of this chapter.

* * * * *

Dated: February 24, 2006.

Frank R. Trinity,

General Counsel.

[FR Doc. E6–2935 Filed 3–1–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU58

Endangered and Threatened Wildlife and Plants; Reinstated Proposed Rule To List the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the reinstated proposed rule to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). On November 17, 2005, the U.S. District Court for the District of Arizona vacated the January 3, 2003, withdrawal of the proposed rule to list the flat-tailed horned lizard, remanded the matter to us for further consideration in accordance with its August 30, 2005, and November 17, 2005, orders, and ordered us to make a new listing decision by April 30, 2006. Pursuant to the Court's November 17, 2005, order, on remand we "need only address the matters on which the court's August 30, 2005, Order * * * found the January 3, 2003, Withdrawal unlawful, which may summarily be identified as whether the lizard's lost historical habitat renders the species in danger of extinction in a significant portion of its range." To ensure our new final listing decision is based on the best scientific and commercial data currently available, we are reopening the public comment period on the 1993 proposed listing rule to solicit information and comment regarding the flat-tailed horned lizard's lost historical habitat.

DATES: We will accept comments from all interested parties until March 16, 2006. Comments received after the closing date may not be considered in the final decision on this action.

ADDRESSES: If you wish to comment on the specific issue identified by the District Court in its November 17, 2005, order for remand of the January 3, 2003, withdrawal of the proposed rule to list the flat-tailed horned lizard, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (CFWO), 6010 Hidden Valley Road, Carlsbad CA 92011.

2. You may hand-deliver written comments to the CFWO, at the address given above.

3. You may send comments by electronic mail (e-mail) to *fw8CFWOcomments@fws.gov*. Please submit Internet comments in ASCII format and avoid the use of special characters or any form of encryption. Please also include "ATTN: Flat-Tailed Horned Lizard" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our CFWO at phone number 760–431–9440. Please note that this Internet address will be closed at the termination of the public comment period.

4. You may fax your comments to 760–431–9624.

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 addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the CFWO at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address, by telephone at 760–431–9440, or by facsimile at 760–431–9624.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

To assist us in making a final listing determination based on the best scientific and commercial data available, we are reopening the public comment period on the proposed rule to list the flat-tailed horned lizard for 14 days to accept public comment on the specific issue identified in the District Court's November 17, 2005, order, namely whether the flat-tailed horned lizard's lost historical habitat renders the species likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Comments relevant to the identified issue for consideration during the remand of the January 3, 2003, withdrawal of the proposed rule to list the flat-tailed horned lizard that were previously submitted during prior comment periods on the proposed rule need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final determination.

Background

On November 29, 1993, we published a proposed rule to list the flat-tailed horned lizard as a threatened species pursuant to the Act (58 FR 62624). On July 15, 1997, we withdrew the 1993 proposed rule (62 FR 37852). Defenders

of Wildlife and other groups challenged the 1997 withdrawal decision. On June 16, 1999, the District Court for the Southern District of California granted summary judgment in our favor upholding our decision not to list the flat-tailed horned lizard. However, on July 31, 2001, the Ninth Circuit Court of Appeals reversed the lower court's ruling and directed the District Court to remand the matter back to us for further consideration in accordance with the legal standards outlined in its opinion (*Defenders of Wildlife* v. *Norton,* 258 F.3d 1136). On October 24, 2001, the District Court for the Southern District of California remanded the 1997 withdrawal. Consistent with the District Court's remand order, we published a reinstatement of the 1993 proposed listing of the flat-tailed horned lizard as threatened and opened a 120-day comment period (66 FR 66384, December 26, 2001). The District Court further ordered us to commence a 12-month schedule for a final listing decision in compliance with the Ninth Circuit Court's order. As a result, we published a withdrawal of the proposed rule to list the flat-tailed horned lizard on January 3, 2003 (68 FR 331). The Tucson Herpetological Society, and other environmental organizations and individuals challenged this withdrawal decision in the United States District Court for the District of Arizona.

On August 30, 2005, the District Court for the District of Arizona issued an order granting plaintiffs' motion for summary judgment "on the ground that the Secretary's withdrawal of the proposed rule violated the Endangered Species Act and the Ninth Circuit's remand order by failing to evaluate the lizard's lost habitat and whether that habitat was a significant portion of the range." The Service's failure to make this specific determination was the only violation cited by the District Court. The court upheld all other aspects of the January 3, 2003, withdrawal decision. On November 17, 2005, the District Court issued a subsequent order, consistent with its August 30, 2005, order, vacating the 2003 withdrawal and remanding the matter to us for further consideration. The District Court reinstated the 1993 proposed rule to list the flat-tailed horned lizard as a threatened species for the duration of the remand, and ordered us to make a new listing decision by April 30, 2006, stating that, "on remand the agency need only address the matters on which the court's August 30, 2005, Order * * * found the January 3, 2003, Withdrawal unlawful, which may summarily be identified as whether the lizard's lost historical habitat renders the species in danger of extinction in a significant portion of its range." The order indicates that, while the Court believes this determination is required by the Ninth Circuit's opinion, "the Secretary has wide discretion in delineating a significant portion of the lizard's range," including in defining the "range" of the species (which the Court states must include some lost habitat) and in choosing the point in time at which to examine the range. On December 7, 2005, we published a notice reinstating the November 29, 1993, proposed rule to list the flat-tailed horned lizard as a threatened species. For reasons outlined in this notice, we are now reopening the comment period on the proposed rule.

For your convenience, here is a list of the primary Federal Register documents pertaining to the proposed listing of the flat-tailed horned lizard as threatened:

Action	Date	FR citation
Proposed rule to list the flat-tailed horned lizard as threatened	November 29, 1993	58 FR 62624.
Withdrawal of proposed rule	July 15, 1997	62 FR 37852.
Reinstatement of proposed rule; reopening of comment period	December 26, 2001	66 FR 66384.
Withdrawal of proposed rule	January 3, 2003	68 FR 331.
Reinstatement of proposed rule	December 7, 2005	70 FR 72776.

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small, cryptically colored, phrynosomatid lizard that reaches a maximum adult body length (excluding the tail) of approximately 87 millimeters (3.4 inches). The lizard has a flattened body, short tail, and dagger-like head spines like other horned lizards. It is distinguished from other horned lizards in its range by a dark vertebral stripe, two slender elongated occipital spines, and the absence of external ear openings. The dorsal surface of the flat-tailed horned lizard is pale gray to light rusty brown. The ventral side is white and unmarked, with the exception of a prominent umbilical scar.

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California, Arizona, and northwestern Mexico. The species is documented in the Coachella Valley in Riverside County, California; the Imperial and Borrego Valleys in Imperial and eastern San Diego Counties, California; south of the Gila River and west of the Gila and Butler Mountains in Yuma County, Arizona; east of the Sierra de Juarez in the Laguna Salada and Yuha Basins in northeastern Baja California Norte, Mexico; and north and west of Bahia de San Jorge to the delta of the Colorado River in northwestern Sonora, Mexico (Grismer 2002, Rodriguez, 2002). The flat-tailed horned lizard occurs at elevations up to 800 meters (2,600 feet) above sea level, but most populations are below 300 meters (980 feet) elevation. Various descriptions and estimates of the historical and current ranges of the flat-tailed horned lizard are described in the November 29, 2003, proposed rule (58 FR 62624); July 15, 1997, withdrawal of the 1993 proposed rule (62 FR 37822); and January 3, 2003, withdrawal of the 1993 proposed rule (68 FR 331).

In 2003, the Flat-tailed Horned Lizard Interagency Coordinating Committee released a revised version of the 1997 Flat-tailed Horned Lizard Rangewide Management Strategy (Flat-tailed Horned Lizard Interagency Coordinating Committee 2003). The 2003 Rangewide Management Strategy, includes a map of the approximate historical and current range boundaries of the flat-tailed horned lizard. Using the geographic information system shape files used to develop the range map, we calculated the area of the historical and current ranges of the flat-tailed horned lizard in the United States and Mexico. Based on this information, we estimated the historical range (United States and Mexico) to be approximately 6,183,647 acres (2,502,433 hectares), which with the exclusion of the historic Lake Cahuilla would be reduced to approximately 4,874,238 ac (1,972,534 ha), and the current range (United States and Mexico) to be approximately 3,962,543 acres (1,603,884 hectares). A copy of this report can be viewed on the Carlsbad Fish and Wildlife Office's Web site at *http://www.fws.gov/carlsbad/.*

For additional background information and previous Federal actions related to the listing determinations for the flat-tailed horned lizard, please refer to the January 3,

2003 **Federal Register** notice (68 FR 331).

Author

The primary author of this notice is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 17, 2006.

Marshall Jones, Jr.,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–3005 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 41
Thursday, March 2, 2006

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of Draft Food for Peace Pub. L. 480 Title II Program Policies and Proposal Guidelines (FY 07)

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480, as amended), notice is hereby given that the Draft Food for Peace Pub. L. 480 Title II Program Policies and Proposal Guidelines (FY 07) are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–102, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600. The draft guidelines may also be found at *http://www.usaid.gov/our_work/ humanitarian_assistance/ffp/fy07_myap.html*. Individuals who have questions or comments on the draft guidelines should contact Lisa Witte at the above address, at (202) 712–5162 or *lwitte@usaid.gov*. The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

Lisa Witte,

Acting Chief, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 06–1933 Filed 3–1–06; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0031]

Availability of an Environmental Assessment for Field Testing Marek's Disease-Newcastle Disease Vaccine, Serotypes 2 and 3, Live Virus, Live Marek's Disease Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Marek's Disease-Newcastle Disease Vaccine, Serotypes 2 and 3, Live Virus, Live Marek's Disease Vector. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before April 3, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0031 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0031.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785, fax (515) 232–7120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing

requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Intervet, Inc.

Product: Marek's Disease-Newcastle Disease Vaccine, Serotypes 2 and 3, Live Virus, Live Marek's Disease Vector.

Field Test Locations: Alabama, Arkansas, Delaware, Georgia, Maryland, Missouri, North Carolina, and South Carolina.

The above-mentioned product is a live recombinant virus consisting of the avirulent Herpesvirus of Turkeys (HVT) vector expressing a gene of Newcastle disease virus. The vaccine is for use in chickens as an aid in the prevention of disease caused by Marek's disease virus and Newcastle disease virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 24th day of February 2006.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–2945 Filed 3–1–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Revision and Extension of a Currently Approved Information Collection; Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request renewal of the information collection currently approved and used in support of the FSA Farm Loan Programs (FLP).

DATES: Comments on this notice must be received on or before May 1, 2006 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523; Telephone (202) 690–4014; Electronic mail: *mike.cumpton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: (7 CFR 1965–A) Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases.

OMB Control Number: 0560–0158.

Expiration Date: September 30, 2006.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: Section 331 of the CONACT (7 U.S.C. 1981), in part, authorizes the Secretary of Agriculture to modify, subordinate and release terms of security instruments, leases, contracts, and agreements entered into by FSA. That section also authorizes transfers of security property as the Secretary deems necessary to carry out the purpose of the loan or protect the Government's financial interest. Section 335 of the CONACT (7 U.S.C. 1985), provides servicing authority for real estate security; operation or lease of realty; disposition of property; conveyance of real property interest of the United States; easements; and condemnations. The information collection required by the Act relates to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a government loan. The information to be collected will primarily be financial data not already on file, such as borrower asset values.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average .40 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 31,366.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Annual Burden on Respondents: 12,697 hours.

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 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. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Michael Cumpton, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523.

Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on February 22, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–2928 Filed 3–1–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Natural Resources Conservation Service's (NRCS) intention to request an extension and revision for a currently approved information collection, Long-Term Contracting.

DATES: Comments on this notice must be received by 60 days after publication in the **Federal Register** to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact *Phyllis I. Williams,* Agency Office of Management and Budget (OMB) Clearance Officer, NRCS, U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mail Stop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.williams@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Long-Term Contracting.

OMB Number: 0578–0013.

Expiration Date of Approval: August 31, 2006.

Type of Request: Extension and revision of a currently approved collection for which approval will expire.

Abstract: The primary objective of NRCS is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources. The purpose of Long-Term Contracting information collection is to provide for programs to extend financial and technical assistance through easements and long-term contracts to landowners and others. These programs provide for making land use changes and installing conservation measures and practices to conserve, develop, and use the soil, water, and related natural resources on private lands. For cost-share programs, Federal financial and technical assistance is based on a conservation plan or schedule of operations that is made a part of an agreement, contract, or easement for a period of time of no less than 1 year and no greater than 10 years. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan or schedule of operations. In return for this agreement, Federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment. For easement programs, NRCS purchases from participants, a conservation easement and provides for the easement's protection and management for the life of the easement.

The information collected through this package is used by NRCS to ensure the proper use of program funds, including application for participation, easement acquisition, contract implementation, conservation planning, and application for payment.

NRCS will ask for a 3-year OMB approval, with revision, within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.42 hours or 85.2 minutes per response.

Respondents: Farms, individuals, or households, or State, local, or tribal governments.

Estimated Number of Respondents: 31,920.

Estimated Total Annual Burden on Respondents: 22,432.

Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology. Comments may be sent to: Phyllis I. Williams, Agency OMB Clearance Officer, U.S. Department of Agriculture, NRCS, 5601 Sunnyside Avenue, Mail Stop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.williams@wdc.usda.gov.*

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

Signed in Washington, DC, on February 14, 2006.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. E6–2809 Filed 3–1–06; 8:45 am]

BILLING CODE 3410–16–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of a Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC from Tuesday through Wednesday, March 14–15, 2006, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 10, 2006

9–10:30 a.m. Planning and Budget Committee
10:30 a.m.–12:30 p.m. Technical Programs Committee
1:30–4 p.m. Executive Committee
4–5 p.m. Committee of the Whole on Rulemaking Plan (Closed Session)

Wednesday, January 11, 2006

9 a.m.–Noon Ad Hoc Committee on Passenger Vessels (Closed Session)
1:30–3 p.m. Board Meeting

ADDRESSES: All meetings will be held at the Embassy Suites Hotel-Convention Center, 900 10th Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the January 11, 2006 Board Meeting Minutes
- Committee of the Whole on Rulemaking Report
- Ad Hoc Committee on Passenger Vessels Report
- Technical Programs Committee Report

- Planning and Budget Committee Report
- Executive Committee Report
- Election of Officers

All meetings are accessible to persons with disabilities. An assistive listening system will be available at the Board meetings. Members of the general public who require sign language interpreters must contact the Access Board by Wednesday, March 1, 2006. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E6–2925 Filed 3–1–06; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, March 10, 2006, 9:30 a.m. Commission Meeting.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of February 17, 2006 Meeting

III. Announcements

IV. Staff Director's Report

V. Management and Operations

- February 15, 2006—Letter to Senate Subcommittee on the Constitution
- February 15, 2006—Corrective Action Plan

VI. Program Planning

- Voting Rights Act Statutory Report
- Anti-Semitism Findings and Recommendations
- Minorities in State Foster Care and Adoption
- Annual Program Planning

VII. Strategic Planning

- Working Group on Strategic Planning

VIII. Future Agenda Items

FOR FURTHER INFORMATION CONTACT: Audrey Wright, Office of the Staff Director (202) 376–7700.

Kenneth L. Marcus,

Staff Director, Acting General Counsel.

[FR Doc. 06–2031 Filed 2–28–06; 3:27 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Submission for OMB Review; Comment Request; Economic Development Administration Reauthorization Act of 2004 Implementation Information Collections

AGENCY: Economic Development Administration, Commerce.

SUMMARY: The Department of Commerce's Economic Development Administration (EDA) published an interim final rule revising its regulations to reflect the amendments made to its authorizing statute, the Public Works and Economic Development Act of 1965 (PWEDA), by the Economic Development Administration Reauthorization Act of 2004. In connection with its reauthorization and publication of an interim final rule, EDA conducted a review of its forms and other information collections to ensure that they are consistent with the statute and the regulations, as well as with current EDA practices and policies. As part of this review and in accordance with the Paperwork Reduction Act of 1995, EDA published a notice in the November 14, 2005 **Federal Register** providing the general public and other federal agencies with a 60-day period in which to comment on EDA's information collections.

Concurrent with the publication of this notice, EDA is submitting for Office of Management and Budget (*OMB*) clearance the proposed information collections set forth in this notice. EDA is requesting OMB approval of these information collections no later than April 30, 2006. Additionally, as part of its continuing effort to reduce paperwork and respondent burden under the Paperwork Reduction Act, EDA is providing the general public and other federal agencies with an opportunity to comment on the proposed information collections set forth in this notice.

DATES: Written comments on the proposed information collections contained in this notice must be submitted on or before April 3, 2006 to the contact person listed in the **ADDRESSES** section of this notice.

ADDRESSES: Interested parties are invited to submit written comments on the proposed information collections to David Rostker, EDA Desk Officer, facsimile: (202) 395–7285; e-mail: *David_Rostker@omb.eop.gov*. Please indicate "Comments on EDA Reauthorization Act of 2004 Implementation Information Collections" on each submission.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections contained in this notice should be directed to: Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, HCHB Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230; facsimile: (202) 482–4218; email: *dhynek@doc.gov*. Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce is subject to extensive security screening.

SUPPLEMENTARY INFORMATION:

I. Abstract

EDA's mission is to lead the federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA will fulfill its mission by fostering entrepreneurship, innovation and productivity through investments in infrastructure development, capacity building and business development in order to attract private capital investments and higher-skill, higher-wage jobs to regions experiencing substantial and persistent economic distress. In order to administer and monitor its economic development programs and its Trade Adjustment Assistance for Firms program effectively, EDA collects certain information from applicants for, and recipients of, EDA investment assistance.

On August 11, 2005 EDA published an interim final rule in the **Federal Register** (70 FR 47002) revising its regulations to reflect the amendments made to PWEDA by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373) (the "*2004 Act*"). With limited exceptions, the interim final rule (IFR) became effective on October 1, 2005. On December 15, 2005, EDA published a second interim final rule in the **Federal Register** (70 FR 74193) to put into effect immediately only those changes to the August 11, 2005 interim final rule specified in the Conference Report (H.R. Conf. Rep. No. 109–272) accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act (Pub. L. 109–108).

EDA conducted a review of its forms and other information collections to ensure that they are consistent with the amendments to PWEDA made by the

2004 Act and with the interim final rule. As part of its continuing effort to reduce respondent burden under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501 *et seq.*), on November 14, 2005 EDA published a notice in the **Federal Register** (70 FR 69137) providing the general public and other federal agencies with a 60-day period in which to comment on its information collections. EDA received two public comments regarding the Form ED–840P (Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance), which are addressed later in this notice as part of the Trade Adjustment Assistance for Firms discussion.

Concurrent with the publication of this notice, EDA is submitting for OMB clearance the proposed information collections set forth in this notice. EDA is requesting OMB approval of these information collections no later than April 30, 2006. As part of its continuing effort to reduce paperwork and respondent burden under the Paperwork Reduction Act, the general public and other federal agencies may submit comments on the proposed information collections set forth in this notice during the time period specified in the **DATES** section of this notice. Comments should be submitted to the contact person specified in the **ADDRESSES** section of this notice. When publishing a final rule during 2006, EDA will consider additional paperwork and respondent burdens (if any) resulting from changes to the interim final rule and will revise the information collections set forth in this notice as needed.

EDA forms are available for downloading, filling-in and printing (pdf file format) on EDA's Internet Web site at *http://www.eda.gov*. These forms are not currently transaction-based. EDA anticipates that certain of its forms and other information collections will be able to be filed online when EDA begins posting application packages and other forms on grants.gov, the electronic storefront for interactions between grant applicants and federal grant-making agencies. EDA does, however, generally accept submissions of information from respondents via electronic mail and magnetic media (*e.g.*, diskette).

II. Collections of Information

A. Trade Adjustment Assistance for Firms (OMB Control No. 0610–0091)

1. *Purpose:* Chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*; "*Trade Act*"), direct the Secretary of Commerce to accept petitions from firms that have been adversely affected by increased imports of articles like or directly competitive with their own. The Secretary of Commerce has delegated this statutory authority to EDA, which administers the Trade Adjustment Assistance for Firms program to assist trade-injured U.S. manufacturing and producing firms to develop and implement strategies for competing in the global marketplace. EDA uses Form ED–840P (Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance) to collect information from a petitioning firm to determine if it is eligible to apply for trade adjustment assistance. In addition, §§ 315.6 and 315.16 of the IFR set out requirements for submission of an appropriate adjustment proposal for technical assistance following certification. Section 315.9 of the IFR entitles a person or entity with a "substantial interest" in an accepted petition for TAA certification to request a public hearing on the petition, but requires submission of a written request in accordance with detailed procedures.

We propose consolidating into this OMB Control Number the following two information collections previously assigned OMB Control Nos.: 0610–0105 (Adjustment Assistance Proposals: Sections 315.6 and 315.16 of EDA's Interim Final Rule) and 0610–0106 (Request for Hearing: Section 315.9 of EDA's Interim Final Rule) to better account for all the information collections pertaining to EDA's Trade Adjustment Assistance for Firms Program. Accordingly, the information collections assigned to this OMB Control Number (0610–0094) now encompass the following requirements: (i) Form ED–840P; (b) request for a public hearing; and (c) requirements for an adjustment assistance proposal.

2. *Public Comments:* EDA received two public comments on the Form ED–840P, Petition by a Firm for Eligibility to Apply for Trade Adjustment Assistance. Both comments were submitted by EDA-sponsored Trade Adjustment Assistance Centers ("*TAACs*") and contained common themes and recommendations, many of which are reflected on the revised Form ED–840P submitted with the PRA package for OMB clearance. Under the TAA program, EDA funds a national network of eleven TAACs. One of the essential roles of a TAAC is to help interested firms complete the ED–840P, assemble the required supporting documentation, and submit the completed package to EDA for investigation. This service is provided at no cost to the firm.

Specifically, the commenters generally opined that the burden on firms seeking certification of eligibility from EDA seems excessive considering that firms must be experiencing threshold levels of economic distress in order to qualify for the TAA Program. EDA is sensitive to respondent burden and narrowly tailors its information collections to ensure that they are consistent with the law, efficient and meet agency needs in a manner that causes the least intrusion and burden on EDA clients. The revised (and streamlined) Form ED–840P submitted with the PRA package evinces this policy in large part by adopting many of the commenters' suggestions, which we agree will reduce overall burden on the petitioning (client) firm.

Both commenters also express concern that the "customer list" information collection (which requires petitioning firms to submit the names and contact persons for 8 or 9 customers—preferably customers who decreased their purchases from the firm during the petition period—of which the TAAC generally conducts telephone interviews with at least 3) is overly burdensome and discourages many firms from submitting certification petitions. The customer list interviews conducted by the TAACs are one of the most important components of the overall petition investigation process. The interviews allow the TAACs to verify independently a firm's claim that the increase in imports of like or directly competitive articles is an important cause of the firm's loss of sales or production and decline in employment (the cornerstone of the TAA Program). In an effort to reduce overall respondent burden and in response to this comment, EDA is reducing the number of customers that a firm must list from 8 or 9 down to 4.

The commenters also suggest that EDA eliminate the notarization requirement for the Form ED–840P. EDA agrees with this suggestion and proposes elimination of the notarization requirement on the revised Form ED–840P. However, EDA does not agree with the commenters' suggestion to eliminate the U.S. Harmonized Tariff Schedule as the primary indicator of increased imports of like or directly competitive articles, but does agree that alternative metrics to track imports accurately for purposes of the TAA Program are needed. EDA hopes to work with the TAACs and other stakeholders towards this goal.

Other comments aimed at reducing respondent burden include: eliminating the requirement that firms submit federal income tax returns and state

employment tax returns with their petition submissions; (ii) eliminating the "number of sales accounts" question from the Form ED–840P; and (iii) changing the requirement that the period covered by the petition must not end more than 120 days prior to the date the petition is submitted to EDA for investigation to180 days prior to submission. EDA agrees that eliminating the income and employment tax return requirements will go a long way to reducing respondent burden, as will eliminating the sales account question from the Form ED–840P. The revised Form ED–840P (and the instruction thereto) reflect these changes and EDA will revise section 315.8(b) of the IFR to reflect these changes when publishing a final rule during 2006. EDA does not agree with the suggestion to change the temporal scope of the petition from 120 days to 180 days prior to submission to EDA. We believe that, in order to maintain the integrity and relevance of the certification process, 120 days is an appropriate outer-limit for consideration of a petition. This is especially the case since (under the Trade Act) EDA has 60 days from receipt of the petition to complete its investigation.

Another comment suggests that EDA accept the electronic submission of petitions. While EDA does not currently accept petitions submitted electronically, we anticipate that certain of our forms and other information collections will be able to be filed online when EDA begins posting application packages and other forms on grants.gov, the electronic storefront for interactions between grant applicants and federal grant-making agencies. Finally, one comment suggests a change to the "interim decline" period set forth in 13 CFR 315.7(b)(2) and (3). This comment is outside the scope of our PRA submission to OMB, but since we received similar comments during the IFR public comment period, it will be addressed when EDA publishes a final rule during 2006.

3. *Method of Collection:* Paper Report.

4. *Data:*

Agency Form Number: ED–840P (Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance.)

Type of Review: Regular submission.

Affected Public: Manufacturing or producing firms.

Estimated Number of Annual Responses: 381.

Estimated Time per Response: 8 hours—Form ED–840P; 120 hours—Adjustment Assistance Proposal; 1 hour—request for hearing.

Estimated Total Annual Burden Hours: 23,201.

Estimated Total Annual Cost: $0.

B. Comprehensive Economic Development Strategies and Planning Investments (OMB Control No. 0610–0093)

1. *Purpose:* The Comprehensive Economic Development Strategy (CEDS) is the foundation for most of EDA's programs. Information gathered through the CEDS is needed by EDA to ensure that regions served by EDA-supported planning organizations have or are developing continuous community-based planning processes and have thoroughly thought out the types of economic development implementation activities that are needed in the region to alleviate unemployment, underemployment, and depressed incomes. Many of EDA's economic development assistance programs either require a CEDS or call for consistency with a CEDS. A major feature of EDA's investment strategy has always been to require a solid and inclusive comprehensive planning process before public works or economic adjustment assistance (with the exception of strategy development) investments are made.

In addition, section 214 of PWEDA (42 U.S.C3154) authorizes the Secretary to waive the CEDS requirement in "special impact areas" if the Secretary determines that the project proposed by the eligible recipient will fulfill a pressing need and will be useful in alleviating or preventing conditions of excessive unemployment or otherwise assist in providing useful employment opportunities for unemployed residents. Part 310 of the EDA regulations implements this provision of law and requires an applicant to provide information to determine the merit of its request for a waiver of the CEDS requirement. In determining if a project can claim special impact status, EDA considers a range of objective economic criteria, including changes in an area's economic base as a result of altered trade patterns, abnormally high unemployment rates for a two-year period, and designation as a Federally-Declared Disaster area, among others. The information collection associated with this requirement was formerly separately controlled as "Special Impact Area" under OMB Control No. 0610–0104. Inasmuch as the sole use of this information collection is in connection with determining whether the CEDS requirement should be waived, we propose placing it along with other CEDS-related collections under OMB Control Number 0610–0093.

2. *Public Comments:* None.

3. *Method of Collection:* Paper Report.

4. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 611.

Estimated Time per Response: Initial CEDS for District Organizations and other EDA-funded planning organizations—242 hours; CEDS for non-Districts and non-EDA-funded organizations—40 hours; Annual CEDS Report—40 hours; CEDS update—77 hours; Special Impact Area—8 hours.

Estimated Total Annual Burden Hours: 30,786.

(Initial CEDS for District Organizations and other EDA-funded planning organizations—3,630 hours; CEDS for non-Districts and non-EDA-funded organizations—3,360 hours; Annual CEDS Report—16,000 hours; CEDS update—7,700 hours; Special Impact Area—96 hours).

Estimated Total Annual Cost: $0.

C. Proposal and Application Requirements (OMB Control No. 0610–0094)

1. *Purpose:* The information collections contained in the Pre-Application for Investment Assistance (Form ED–900P) are necessary for EDA to evaluate on a preliminary basis whether investment proposals satisfy eligibility and programmatic requirements contained in PWEDA, the accompanying EDA's regulations and the applicable Announcement of Federal Funding Opportunity ("FFO") for the proposed project. For those investment proposals that EDA wishes to further pursue, the applicant is invited by EDA to submit a "formal" application for EDA investment assistance. The information collections contained in the Application for Investment Assistance (Form ED–900A) are necessary to allow EDA to make final determinations that applicants and projects meet eligibility and programmatic requirements contained in PWEDA, the accompanying regulations, the applicable FFO, and other federal authorities (*e.g.* OMB Circulars). The information collections contained in the formal application are also necessary to finalize the terms and conditions of the investment, including but not limited to the scope of work and non-federal share and other funding commitments for the project.

2. *Public Comments:* None.

3. *Method of Collection:* Paper Report.

4. *Data:*

Agency Form Numbers: ED–900P (Pre-Application for Investment Assistance); ED–900A (Application for Investment Assistance).

Affected Public: State and local governments; Indian Tribes; institutions of higher education; non-profit organizations; and for-profit organizations and private individuals (only for proposals and applications for training, research or technical assistance investments under Section 207 of PWEDA).

Estimated Number of Annual Responses: 1735.

Estimated Time per Response: ED–900P—8 hours; ED–900A—38 hours.

Estimated Total Annual Burden Hours: 37,550 (7,568 for ED–900P; 29,982 for ED–900A).

Estimated Total Annual Cost: $0.

D. Revolving Loan Fund Reporting and Compliance Requirements Grants (OMB Control No. 0610–0095)

1. *Purpose:* The information collections assigned to this OMB Control Number are necessary to implement, monitor and enforce the requirements of EDA's Revolving Loan Fund (*RLF*) investments. Specifically, subpart B of 13 CFR Part 307 sets forth specific restrictions and requirements applicable to RLF investments, including submission of financial and performance reports, audit requirements, use of RLF income, maintenance of loan documentation, capital utilization standard requirements, and RLF Plan obligations. Recipients must manage RLF investments in accordance with an RLF Plan, which must be submitted to and approved by EDA and passed by resolution of the RLF recipient's governing board prior to the initial disbursement of EDA funds. The RLF administrator must also monitor its borrowers and certify to EDA that they are in compliance with applicable civil rights and environmental law, flood hazard insurance and Davis-Bacon Act requirements.

2. *Public Comments:* None.

3. *Method of Collection:* Paper Report.

4. *Data:*

Agency Form Numbers: ED–209A (RLF Annual Report); ED–209S (RLF Semi-Annual Report); ED–209I (Income and Expense Statement).

Type of Review: Regular submission.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 596.

Estimated Time per Response: 15 hours for general regulatory/programmatic compliance; 40 hours to develop the RLF Plan; 12 hours for the Semi-Annual Report and the Annual Report; and 2 hours for the Income and Expense Statement.

Estimated Total Annual Burden Hours: 23,428 (8,940 hours for general Regulatory/Programmatic *Compliance*; 600 hours to develop the RLF Plan; 12,696 hours for the Semi-Annual Report and the Annual Report; and 1,192 hours for the Income and Expense Statement).

Estimated Total Annual Cost: $0.

E. Construction Investments (OMB Control No. 0610–0096)

1. *Purpose:* EDA investments under the Public Works and Economic Adjustment Programs help distressed communities revitalize and upgrade their physical infrastructure and economic development facilities. They provide grants to eligible applicants to promote long-range economic development in order to reduce unemployment, and increase income. The grants are used to design, build, improve or expand vital public infrastructure and economic development facilities. These facilities, in turn, help regions to attract new, or support existing businesses that will result in an environment where higher-skill, higher-wage jobs are created. EDA regulations at 13 CFR Part 305 include program requirements that are unique to construction awards. In some cases, these involve reporting or record keeping requirements.

EDA intends to discontinue the *Requirements for Approved Construction Investments* (RFACI) publication currently associated with this OMB Control No. 0610–0096. The purpose of the RFACI is to provide guidance to EDA grant recipients to ensure compliance with federal regulations pertaining to federally assisted construction projects. Much of the RFACI is based on EDA regulations, the "Common Rule" set forth by the U.S. Department of Commerce in 15 CFR Parts 14 and 24 and other federal authorities. The RFACI is intended to supplement and explain these federal requirements and does not replace or negate such requirements. Any inconsistencies or conflicts are resolved in favor of such federal requirements. EDA will continue the information collections required pursuant to 13 CFR Part 305 and federal law under OMB Control No. 0610–0096 with a change in its title from "Requirements for Approved Construction Investments (9th Ed.)" to "Construction Investments" to avoid confusion with the to-be-discontinued publication.

2. *Public Comments:* None.

3. *Method of Collection:* Paper Report.

4. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 707.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 14,140 hours.

Estimated Total Annual Cost: $0.

F. Award Amendment Requests and Project Service Maps (OMB Control No. 0610–0102)

1. *Purpose:* An EDA investment award stipulates a contractual relationship between the recipient and EDA, which outlines the obligations and responsibilities of each party. EDA must maintain the ability to approve or reject any proposed changes to that relationship in order to ensure its funds are used in the most effective manner. It is necessary that a recipient wishing to amend its investment award submit a request to EDA, otherwise, the parties may be working under two different understandings of the terms of the investment award. This requirement is listed in section 302.7(a) of the IFR. A project service map helps EDA to monitor a Project's economic development effect on different areas in the region it was intended to assist. This requirement is set forth in § 302.16(c) of the IFR.

2. *Public Comments:* None.

3. *Method of Collection:* Paper Report.

4. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; non-profit organizations; and for-profit organizations and private individuals (only for training, research or technical assistance projects under Section 207 of PWEDA).

Estimated Number of Annual Responses: 55 (20 planning investment amendments; 25 non-planning investments; and 10 project service maps).

Estimated Time per Response: 4 hours for amendments to planning investments; 16 hours for amendments to non-planning investments; and 6 hours for project service maps.

Estimated Total Annual Burden Hours: 540.

Estimated Total Annual Cost: $0.

G. Property Management (OMB Control No. 0610–0103)

1. *Purpose:* Section 314.3(f) of the IFR generally provides that a recipient may request in writing that EDA approve the incidental use of property acquired or improved with EDA investment assistance, provided that respondent is in compliance with applicable law and the terms and conditions of the investment assistance and the incidental use does not otherwise interfere with the scope of the EDA project or the economic useful life of the property. This information collection is necessary in order for EDA to ensure that the use of property acquired or improved with EDA investment assistance complies with the authorized uses of property set forth in section 314.3 of the IFR and the terms and conditions of the EDA investment assistance. In addition, § 314.10(d) of the IFR generally provides that a recipient must request in writing a release of EDA's property interest and disclose to EDA the intended future use of the real property or tangible personal property for which a release is sought. A recipient receiving an EDA release is required to record a restrictive covenant of use. This request and declaration of intentions are necessary in order for EDA to determine whether to grant the recipient's release request. The recordation of the covenant of use is necessary to provide notice to the respondent's successors-in-interest that there are use restrictions that attach to the property.

2. *Public Comments:* None.

3. *Method of Collection:* Paper Report.

4. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 45 (25 requests for incidental use; 20 release requests).

Estimated Time per Response: 6 hours per incidental use request; 12 hours per release request.

Estimated Total Annual Burden Hours: 390.

Estimated Total Annual Cost: $0.

III. Request for Comments

Public comments are invited with respect to each of the collections of information listed above on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will become a matter of public record.

Dated: February 27, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–2948 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1437]

Expansion of Foreign-Trade Zone 88, Great Falls, MT

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Great Falls International Airport Authority, grantee of Foreign-Trade Zone 88, submitted an application to the Board for authority to expand FTZ 88 at the Great Falls International Airport site (1,979 acres) within the Great Falls Customs port of entry (FTZ Docket 24–2005, filed 5/19/05);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 30412, 5/26/05) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 88 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 10th day of February 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–2983 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2006]

Foreign-Trade Zone 116—Port Arthur, Texas, Expansion of Manufacturing Authority-Subzone 116C, The Premcor Refining Group Inc., Port Arthur, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting authority on behalf of The Premcor Refining Group Inc. (Premcor), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 116C at the Premcor oil refinery complex in Port Arthur, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 21, 2006.

Subzone 116C (250,000 BPD capacity 800 employees) was approved by the Board in 1996 for the manufacture of fuel products and certain petrochemical feedstocks and refinery by–products (Board Order 848, 61 FR 54153–54154, 10/17/96, as amended by Board Order 1116, 65 FR 52696, 8/30/00).

The subzone consists of four sites (4,685 acres) in Port Arthur: *Site 1*—(3,581 acres) the main refinery complex is located at 1801 S. Gulfway Drive, 3 miles southwest of Port Arthur; *Site 2*—(775 acres) Lucas/Beaumont Terminal storage facility (1.7 mil. Barrels) located at 9405 West Port Arthur Road, 15 miles northwest of the refinery; *Site 3*—(243 acres) Fannet LPG storage terminal (3mil. Barrels) located at 16151 Craigen, near Fannett, some 25 miles west of the refinery; and *Site 4*: (86 acres) Port Arthur Products storage facility (1.8 mil barrels) located at 1825 H.O. Mills Road, 4 miles northwest of the refinery. The expansion request involves the addition of a crude unit and modifications and upgrades to other units within the refinery to increase the overall crude

distillation capacity of the refinery to 450,000 BPD and allow for the processing of a greater variety of crudes. No additional feedstocks or products have been requested.

Zone procedures would exempt the increased production from customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or
2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 1, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 16, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce, Export Assistance Center, 15600 John F. Kennedy Blvd., Suite 530, Houston, TX 77032.

Dated: February 21, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–2984 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of March 2006[1], interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping Duty Proceeding	Period
BRAZIL: Certain Hot–Rolled Carbon Steel Flat Products.	
A–351–828	3/1/05–2/28/06
CANADA: Iron Construction Castings.	
A–122–503	3/1/05–2/28/06
FRANCE: Brass Sheet & Strip.	
A–427–602	3/1/05–2/28/06
FRANCE: Stainless Steel Bar.	
A–427–820	3/1/05–2/28/06
GERMANY: Brass Sheet & Strip.	
A–428–602	3/1/05–2/28/06
GERMANY: Stainless Steel Bar.	
A–428–830	3/1/05–2/28/06
INDIA: Sulfanilic Acid.	
A–533–806	3/1/05–2/28/06
ITALY: Brass Sheet & Strip.	
A–475–601	3/1/05–2/28/06
ITALY: Stainless Steel Bar.	
A–475–829	3/1/05–2/28/06
JAPAN: Stainless Steel Butt–Weld Pipe Fittings.	
A–588–702	3/1/05–2/28/06
REPUBLIC OF KOREA: Stainless Steel Bar.	
A–580–847	3/1/05–2/28/06
RUSSIA: Silicon Metal.	
A–821–817	3/1/05–2/28/06
SPAIN: Stainless Steel Bar.	
A–469–805	3/1/05–2/28/06
TAIWAN: Light–Walled Welded Rectangular Carbon Steel Tubing.	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

Antidumping Duty Proceeding	Period
A–583–803	3/1/05–2/28/06
THAILAND: Circular Welded Carbon Steel Pipes & Tubes.	
A–549–502	3/1/05–2/28/06
THE PEOPLE'S REPUBLIC OF CHINA: Chloropicrin.	
A–570–002	3/1/05–2/28/06
THE PEOPLE'S REPUBLIC OF CHINA: Glycine.	
A–570–836	3/1/05–2/28/06
THE PEOPLE'S REPUBLIC OF CHINA: Tissue Paper Products.	
A–570–894	9/21/04–2/28/06
UNITED KINGDOM: Stainless Steel Bar.	
A–412–822	3/1/05–2/28/06
Countervailing Duty Proceeding.	
FRANCE: Brass Sheet and Strip.	
C–427–603	1/1/05–12/31/05
INDIA: Sulfanilic Acid.	
C–533–807	1/1/05–12/31/05
IRAN: In–Shell Pistachios Nuts.	
C–507–501	1/1/05–12/31/05
ITALY: Stainless Steel Bar.	
C–475–830	1/1/05–12/31/05
PAKISTAN: Cotton Shop Towels.	
C–535–001	1/1/05–2/17/05
TURKEY: Welded Carbon Steel Pipes and Tubes.	
C–489–502	1/1/05–12/31/05
Suspension Agreements.	
None..	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of March 2006. If the Department does not receive, by the last day of March 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 23, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, for Import Administration.

[FR Doc. 06–1930 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a

review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for April 2006

The following Sunset Reviews are scheduled for initiation in April 2006 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Canned Pineapple Fruit from Thailand (A–549–813) (2nd Review)	Zev Primor (202) 482–4114
Furfuryl Alcohol from the PRC (A–570–835) (2nd Review)	Jim Nunno (202) 482–0783
Furfuryl Alcohol from Thailand (A–549–812) (2nd Review)	David Goldberger (202) 482–4136
Stainless Steel Angle from Japan (A–588–856)	David Goldberger (202) 482–4136
Stainless Steel Angle from South Korea (A–580–846)	David Goldberger (202) 482–4136
Stainless Steel Angle from Spain (A–469–810)	David Goldberger (202) 482–4136
Countervailing Duty Proceedings.	
No countervailing duty proceedings are scheduled for initiation in April 2006..	
Suspended Investigations.	
No suspended investigations are scheduled for initiation in April 2006..	

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin"). The Notice of Initiation of Five-year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Puruant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initition.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 23, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, for Import Administration.

[FR Doc. 06–1928 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC") in response to requests from Jiangsu Jiushoutang Organisms–Manufacturers Co. Ltd. ("Jiangsu JOM"), Shanghai Sunbeauty Trading Co., Ltd. ("Shanghai Sunbeauty"), and Qingdao Wentai Trading Co. Ltd. ("Wentai"). The period of review ("POR") is September 1, 2004, through February 28, 2005. We have preliminarily determined that the new shipper reviews of Jiangsu JOM, Shanghai Sunbeauty, and Wentai should all be rescinded because the sales made by each were not *bona fide*. Much of the information upon which we relied to analyze the *bona fides* of the sales is business proprietary; therefore, our full analysis is set forth in: *Memorandum to James C. Doyle, Director, Office 9, from Scot T. Fullerton and Prentiss Lee Smith, Case Analysts, Office 9: Bona Fides Analysis and Intent to Rescind New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Jiangsu Jiushoutang Organisms–Manufactures Co., Ltd.*, dated February 23, 2006 ("*Jiangsu JOM Memo*"), *Memorandum to James C. Doyle, Director, Office 9, from Scot T. Fullerton and Prentiss Lee Smith, Case Analysts, Office 9: Bona Fides Analysis and Intent to Rescind New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Shanghai Sunbeauty Trading Co. Ltd.*, dated February 23, 2006 ("*Sunbeauty Memo*"), and *Memorandum to James C. Doyle, Director, Office 9, from Scot T. Fullerton and Prentiss Lee Smith, Case Analysts, Office 9: Bona Fides Analysis and Intent to Rescind New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Qingdao Wentai Trading Co. Ltd.*, dated February 23, 2006 ("*Wentai Memo*"), public versions of which are on file in the Central Records Unit, room B–099 of the main Commerce Building. Interested parties are invited to comment on this preliminary rescission determination.

EFFECTIVE DATE: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or P. Lee Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–1655, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2005, the Department received properly filed requests for a new shipper review, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930 ("the Act") and sections

351.214(b) and (c) of the Department's regulations, from Shanghai Sunbeauty and Jiangsu JOM under the antidumping duty order on freshwater crawfish tail meat from the PRC. On March 18, 2005, the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(b) and (c) of the Department's regulations, from Wentai under the antidumping duty order on freshwater crawfish tail meat from the PRC.

The Department determined that the requests met the requirements stipulated in section 351.214 of the Department's regulations. On April 29, 2005, the Department published its initiation of these new shipper reviews for the period September 1, 2004, through February 28, 2004. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Reviews*, 70 FR 23987 (May 6, 2005).

On June 2, 2005, the Department received Jiangsu JOM, Shanghai Sunbeauty and Wentai's section A questionnaire responses. On June 22, 2005, the Department received Jiangsu JOM and Shanghai Sunbeauty's section C & D questionnaire responses. On June 30, 2005, the Department received Wentai's section C & D questionnaire responses. On July 21, 2005, the Department issued its first supplemental questionnaire to Jiangsu JOM and Shanghai Sunbeauty. On July 25, 2005, the Department issued its first supplemental questionnaire to Wentai. On August 12, 2005, Wentai submitted its response to the Department's first supplemental questionnaire. On August 17, 2005, Jiangsu JOM and Shanghai Sunbeauty submitted their responses to the Department's first supplemental questionnaire. On August 18, 2005, Jiangsu JOM submitted a supplement to their August 17, 2005, submission. On September 19, 2005, the Department issued its second supplemental questionnaire to Jiangsu JOM and Shanghai Sunbeauty. On September 20, 2005, the Department issued its second supplemental questionnaire to Wentai. On October 3, 2005, Jiangsu JOM and Shanghai Sunbeauty submitted their responses to the Department's second supplemental questionnaire. On October 5, 2005, Wentai submitted its response to the Department's second supplemental questionnaire. On October 21, 2005, the Department rejected Jiangsu JOM's response to the Department's second supplemental questionnaire. On October 26, 2005, Jiangsu JOM resubmitted its response to the Department's second supplemental questionnaire.

On October 14, 2005, the Department extended the due date for the preliminary results of this new shipper review by 120 days from the original October 26, 2005, deadline until February 23, 2005. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review*, 70 FR 61117 (October 20, 2005).

From October 18 through October 21, 2005, the Department conducted verification of Jiangsu JOM's questionnaire responses at the company's facilities in Xinghua City, Jiangsu, China. *See* "Verification Report for Jiangsu JOM," dated February 17, 2006. From January 23 through January 24, 2006, the Department conducted verification of Jiangsu JOM's affiliated U.S. importer, Easy River Seafood Corp. ("Easy River"), in Alhambra, CA. *See* "Verification Report for Easy River," dated February 17, 2006.

From October 31 through November 1, 2005, the Department conducted verification of Shanghai Sunbeauty's questionnaire responses at the company's sales office in Shanghai, China. *See* "Verification Report for Shanghai Sunbeauty," dated February 17, 2006. From November 3 through November 4, 2005, the Department conducted verification of Shanghai Sunbeauty's questionnaire responses relating to its producer for the POR, Wuwei Xinhua Food Co. Ltd. ("Wuwei Xinhua"), in Wuwei County, Anhui Province, China. *See* "Verification Report for Wuwei Xinhua," dated February 21, 2006. From January 26 through January 27, 2006, the Department conducted verification of Shanghai Sunbeauty's affiliated importer, Seawind Inc. ("Seawind"), in Redmond, WA. *See* "Verification Report for Seawind," dated February 17, 2006.

From January 19 through 20, 2006, the Department conducted verification of Qingdao Wentai's questionnaire responses at the company's facilities in Qingdao, Shandong Province, China. *See* "Verification Report for Qingdao Wentai," dated February 17, 2006. The Department also conducted verification at the Qingdao Wentai's producer, Nanxian Shunxiang Aquatic Products Foodstuffs Co., Ltd.'s ("Shunxiang") facilities, from January 16 to January 17, 2006. *See* "Verification Report for Nanxian Shunxiang," dated February 17, 2006.

Scope of the Antidumping Duty Order

The product covered by this order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTSUS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Preliminary Intent to Rescind

Concurrent with this notice, we are issuing our memoranda detailing our analysis of the *bona fides* of Jiangsu JOM, Shanghai Sunbeauty, and Wentai's U.S. sales and our preliminary decision to rescind based on the totality of the circumstances of the sales. Although much of the information relied upon by the Department to analyze the issues is business proprietary, the Department based its determination that the new shipper sale made by Jiangsu JOM was not bona fide on the following: (1) The price and quantity for Jiangsu JOM's sale of crawfish tail meat were atypical of its post–POR sales and of other exports from the PRC of the subject merchandise into the United States during the period of review, (2) the relationship between Jiangsu JOM, and other crawfish tail meat exporters and producers, (3) customer of the single POR sale as compared to subsequent sales, and (4) other indicia of a non-*bona fide* transaction. The Department based its determination that the new shipper sale made by Shanghai Sunbeauty was not *bona fide* on the following: (1) The price and quantity for Shanghai Sunbeauty's sale of crawfish tail meat were atypical of its post–POR sales and of other exports from the PRC of the subject merchandise into the United States during the period of review, (2) payment of Seawind's POR purchase and cash deposit, (3) source and timeliness of payment from the POR customer, and (4) other indicia of a non-*bona fide* transaction. The Department based its determination that the new shipper sale made by Wentai was not

bona fide on the following: (1) The price and quantity for Wentai's sale of crawfish tail meat were atypical vis-a-vis other exports from the PRC of the subject merchandise into the United States during the period of review, (2) circumstances surrounding the sale and negotiation for the single POR sale, (3) exporter and producer's unreported business relationships, and (4) circumstances surrounding the formation of Wentai and Shunxiang.

Because the Department has found these sales to be non-*bona fide* they are not subject to review. *See Jiangsu JOM Memo*, *Sunbeauty Memo*, and *Wentai Memo*. Wentai, Shanghai Sunbeauty, and Jiangsu JOM each only made a single, non-*bona fide* sale during the POR. Therefore, the Department intends to rescind these reviews because there are no reviewable sales during the POR. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005).

Schedule for Final Results of Review

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with § 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with § 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. If a hearing is held, an interested party must limit its presentation only to arguments raised in its briefs. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification

At the completion of this new shipper review, either with a final rescission or a notice of final results, the Department will notify the U.S. Customs and Border Protection that bonding is no longer permitted to fulfill security requirements for shipments by the exporter/producter combinations Jiangsu JOM, Shanghai Sunbeauty, and Wentai of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication of the final rescission or results notice in the **Federal Register**. If a final rescission notice is published, a cash deposit of 223.01 percent *ad valorem* shall be collected for any entries exported/produced by Jiangsu JOM, Shanghai Sunbeauty, and Wentai. Should the Department reach a final result other than a rescission, an appropriate antidumping duty rate will be calculated for both assessment and cash deposit purposes.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: February 23, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–2967 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 7, 2005, the Department of Commerce published the preliminary results of the 2004–2005 administrative review of the antidumping duty order on certain preserved mushrooms from India. The review covers one manufacturer/exporter, Agro Dutch Industries, Ltd. (Agro Dutch). The period of review is February 1, 2004, through January 31, 2005.

Based on our analysis of the comments received, we have made changes in the margin calculations for Agro Dutch in this review. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one manufacturer/exporter: Agro Dutch. The period of review is February 1, 2004, through January 31, 2005.

On November 7, 2005, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from India (70 FR 67440) ("Preliminary Results"). We invited interested parties to comment on the preliminary results of review.

Agro Dutch filed its case brief on December 7, 2005. The petitioner filed a rebuttal brief on December 14, 2005.[1] Neither party requested a hearing. We

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act").

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated February, XX, 2006, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes From the Preliminary Results

Based on the information submitted and our analysis of the comments received, we have made certain changes to the margin calculations for Agro Dutch.

Specifically, we corrected certain arithmetic errors in the calculation of normal value in the margin calculation program. *See* Comment 1 of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentage exists:

Manufacturer/exporter	Margin (percent)
Agro Dutch Industries Ltd.	0.76

Assessment

The Department shall determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department will issue appropriate appraisement instructions for the company subject to this review directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, is not less than 0.50 percent). With respect to Agro Dutch, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all the U.S. sales examined and dividing this amount by the total entered value of the sales examined.

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 Agro Dutch will be 0.76 percent; (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 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) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent. This rate is the "All Others" rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f(2)) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 23, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues

Comment 1: Programming Errors in the Margin Calculation Program
Comment 2: Currency Conversion Errors in the Margin Calculation Program

[FR Doc. E6–2985 Filed 3–1–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–829]

Stainless Steel Bar From Italy: Final Results of Antidumping Duty Administration Review and Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 28, 2005, the Department of Commerce published the preliminary results of the third administrative review of the antidumping duty order on stainless steel bar from Italy. The period of review is March 1, 2005, through February 28, 2005. This review covers imports of stainless steel bar to the United States from UGITECH S.A. Based on our analysis of the comments received, we conclude that the final results do not differ from the preliminary results of review, in which we found that UGITECH S.A. did not make shipments of subject merchandise to the United States during the period of review. Therefore, we are rescinding the administrative review.

DATES: *Effective Date:* March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of this review (*see Stainless Steel Bar from Italy: Preliminary Results of Antidumping Duty Administration Review and Preliminary Rescission of Review*, 70 FR 62096 (October 28, 2005) ("Preliminary Results")), the following events have occurred:

We invited interested parties to comment on the preliminary results of this review. On November 28, 2005, we received a case brief from UGITECH S.A. ("UGITECH"), an Italian exporter/producer of the subject merchandise. No rebuttal briefs were submitted.

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 produced, 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 thick the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, or 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.

Period of Review

The period of review ("POR") is March 1, 2004, through February 28, 2005.

Analysis of Comments Received

In its November 28, 2005, submission, UGITECH agreed with the Department's findings in the *Preliminary Results* and asserted that the review should be rescinded. We received no other comments on the *Preliminary Results*.

Rescission of Administrative Review

In accordance with 19 CFR 351.213(d)(3), and consistent with the *Preliminary Results*, we are rescinding this review with respect to UGITECH, which reported that it made no shipments of the subject merchandise to the United States during the POR. As stated in the *Preliminary Results*, we examined shipment data furnished by U.S. Customs and Border Protection ("CBP"). *See* Memorandum to the File, "U.S. Customs and Border Protection Data," dated July 12, 2005. Based on this information, we are satisfied that there were no U.S. shipments of subject merchandise from UGITECH during the POR.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For UGITECH, antidumping duties shall be assessed at the rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

In accordance with the Department's clarification of its assessment policy (see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003)), in the event any entries were made during the POR through intermediaries under the CBP case number for UGITECH, the Department will instruct CBP to liquidate such entries at the all-others rate in effect on the date of entry. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Cash Deposit Rates

For UGITECH, the cash deposit rate will continue to be 33.00 percent. *See Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review*, 69 FR 32984 (June 14, 2004). This cash deposit rate shall remain in effect until publication of the final results of the next administrative review involving UGITECH.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues

to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These results of administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 23, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 06–1932 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Dartmouth College, et al., Notice of Consolidated Decision on Applications, for Duty–Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.
Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 05–047. Applicant: Dartmouth College, Thayer School of Engineering, Hanover, NH. Instrument: Magneto–opticKerr Effect Microscope. Manufacturer: Durham Magneto Optics,Ltd., UK. Intended Use: See notice at 70 FR 72609, December 6, 2005. Reasons: The foreign instrument provides:

1. Variation of the magnetic field configuration both in time and according to the relative strength of the three directional components.
2. Laser spot size to the order of 1.5 to 2.0 m.
3. Ability to rotate the time–varying applied magnetic field relative to the incoming light.
4. Modification of the sensor optics to maximize the signal in order to handle a variety of sample shapes and thickness.

5. Amenity to instruction of students.
Advice received from: The National Institute of Standards and Technology.
Docket Number: 05–055. Applicant: Rutgers, The State University of New Jersey, New Brunswick, NJ. Instrument: Near–Field Optical Microscope integrated to Micro–Raman. Manufacturer: Nanonics Imaging Ltd., Israel. Intended Use: See notice at 70 FR 77145, December 29, 2005. Reasons: The foreign instrument is a compatible accessory which is designed to be directly integrated with the applicant's existing Renishaw micro–Raman system. This microscope comes equipped with the Raman software module for the Renishaw Raman and CCD camera spectroscopy control and the Raman low–noise vibration isolation platform. The complete system will meet the applicant's requirements to characterize the chemical bonding and elastic strains in nanostructured materials. Advice received from: The National Institutes of Health.
Docket Number: 05–061. Applicant: University of Michigan, Ann Arbor, MI. Instrument: Application Specific Integrated Circuit. Manufacturer; Ideas ASA, Norway. Intended Use: See notice at 71 FR 2024, January 12, 2006. Reasons: The foreign instrument is a compatible accessory for a unique 3–. dimensional position sensitive CdZnTe semiconductor gamma–ray spectrometer. The article provides a multi–channel, charge–sensing amplifier with very low noise of about 300 electrons rms, for which three iterations have been developed in collaboration with Ideas ASA. The systems can get energy and 3–D position information for not only single–interaction events, but for multiple–interaction events by using electron drift times. Excellent energy resolution for both single–interaction events (0.8% FWHM at 662 keV) and multiple–interaction events (1.3% FWHM at 662 keV)has been achieved. A new scalable detector array system, with plug–in electronics, is required for further development of the spectrometer. Development of an equivalent device from a different source would cause a significant delay in this project.
Docket Number: 06–001. Applicant: Medical college of Georgia, Augusta, GA. Instrument: Micromanipulator System. Manufacturer: Luigs & Neuman, Germany. Intended Use: See notice at 71 FR 4895, January 30, 2006. Reasons: The foreign instrument is an ancillary device which provides micromanipulator staging and control that will be used to maneuver electrophysiology equipment, that requires precision in its location, which will be centered around a multi–photon confocal microscope. No known domestic manufacturers produce a micromanipulator system which is compatible with this equipment. Advice received from: The National Institutes of Health.
The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended use of it and we know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–2986 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.
Docket Number: 05–059. Applicant: College of Staten Island, 2800 Victory Blvd., Staten Island, NY 10314. Instrument: Plasma System. Manufacturer: Diener Electronic GmBh & Co., KG, Germany. Intended Use: The instrument is intended to be used to study and develop:
1. Nanotechnolgy with focused ion beams, including electronic properties of carbon nanowires direct written with nano–scaled ion beams on carbonaceous substrates
2. Micro- and nano–scale light emitting diodes on diamond, with the aim to develop single molecule and single

photon electrically driven light sources operating at room temperature
3. Development of high–pressure, high–temperature diamond anvil cells with internally heated anvils for hydrothermal and and shear stress experiments.

The instrument will also be used in courses on materials science.Application accepted by Commissioner of Customs: December 20,2005.

Docket Number: 06–002. Applicant: The University of Puerto Rico at Mayaguez, Dept. Of Chemistry, Mayaguez, Puerto Rico 00680 Instrument: Electron Microscope, Model JEM–2010 Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for experimental studies including the characterization of gold and silver nanostructures, structure-property relations in semiconductor nanoparticles, nanowire formations and nanorods, structural fuel cell performance and the catalytic activity of Pt, Ru and Pt–Ru nanostructures, and the structure of functionalized organic–based nanofibers. The instrument will also be used in a variety of courses. Application accepted by Commissioner of Customs: January 20,2006.
Docket Number: 06–003. Applicant: Oklahoma State University, 203 Whitehurst, Stillwater, OK 74048–3011. Instrument: Electron Microscope, Model JEM–2100F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for studies including:

1. Decomposed metal complexes at low temperatures which yield nanocrystalline products that are useful catalysts, electrode materials for batteries and supercapacitors, corrosion inhibitors, photovoltaics, and sorbants for pollutants.
2. Semiconducting nanoparticles (as small as 2 nm), single wall nanotubes and the electrical conductivity of either a semiconductor or a metal, depending on the diameter and helicity of the tube.
3. Virus–vector interactions in several important plant disease inducing viruses, that are vectored by fungi, for understanding emerging diseases in plants.

It will also be used for graduate student training in electron microscopy. Application accepted by Commissioner of Customs: January 23, 2006.
Docket Number: 06–004. Applicant: University of North Texas, Department of Materials Science and Engineering, 3940 N. Elm, Research Park Room E132, Denton, TX 76203. Instrument: Mass Spectrometer, Model Nova 200 NanoLab. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used in a central research facility for studies in materials science, chemistry, biology and physics. For example, in materials science and engineering, it will be used to study shape–memory metallic alloys, aluminum alloys for automotive uses, porous ceramic thin films and strained Si substrates for microelectronic devices, polymer nanocomposites, characterization of ion beam–solid interaction, optoelectronic thin films for solid state lighting and photovoltaic applications, and ceramic materials for low temperature solid oxide fuel cells. Application accepted by Commissioner of Customs: February 14, 2006.

Docket Number: 06–005. Applicant: University of Maryland, Materials Science and Engineering Department, Kim Building, Room 1237, College Park, MD 20742. Instrument: Electron Microscope, Model JEM–2100F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to characterize nanomaterials and nanocomposites at the atomic level. These include semiconductor nanostructures, polymeric materials, metal nanoparticles, ferroelectric/ferromagnetic oxide nanocomposites and semiconductor nanowires. Properties of materials examined include crystal structure and quality of material, structural defects, and morphology using techniques of electron diffraction, high resolution lattice imaging, bright/dark field imaging and obtaining electron diffraction patterns and images of areas as small as a few nanometers in diameter. The instrument will also be used in courses and for conducting individual graduate research projects. Application accepted by Commissioner of Customs: February 8, 2006.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–2988 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Villanova University, et al., Notice of Consolidated Decision on Applications, for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 05–058. Applicant: Villanova University, Villanova, Pa. Instrument: Electron Microscope, Model H–7600–2 TEM. Manufacturer: Hitachi High–Technologies Corp., Japan Intended Use: See notice at 71 FR 4895, January 30, 2006. Order Date: February 23, 2005.

Docket Number: 05–062. Applicant: University of Texas Medical Branch at Galveston, Galveston, TX. Instrument: Electron Microscope, Model JEM–2200FS. Manufacturer: JEOL Ltd., Japan.Intended Use: See notice at 71 FR 2024, January 12, 2006. Order Date: February 23, 2005.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–2987 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–603]

Final Results of Full Sunset Review: Brass Sheet and Strip from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 1, 2005, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order ("CVD") on brass sheet and strip from France pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and an adequate response from respondent interested parties, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of this sunset review, the Department finds that revocation of the CVD order would not be likely to lead to continuation or recurrence of a countervailable subsidy. Therefore, the Department is revoking this CVD order.

EFFECTIVE DATE: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Darla Brown or David Goldberger, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2849 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2005, the Department initiated a sunset review of the CVD order on brass sheet and strip from France pursuant to section 751(c) of the Act. *See Notice of Initiation of Five–Year ("Sunset") Reviews*, 70 FR 16800 (April 1, 2005).

On October 25, 2005, the Department published the preliminary results of the full sunset review of the instant order. *See Preliminary Results of Full Sunset Review: Brass Sheet and Strip from France*, 70 FR 61604 (October 25, 2005). Interested parties were invited to comment on our preliminary results. On December 7, 2005, we received case briefs from the Government of France and the European Union. On December 12, 2005, we received rebuttal briefs from domestic interested parties.

Scope of the Order

The merchandise subject to the CVD order is coiled, wound–on-reels (traverse wound), and cut–to-length brass sheet and strip (not leaded or tinned) from France. The subject merchandise has, regardless of width, a solid rectangular cross section over 0.0006 inches (0.15 millimeters) through 0.1888 inches (4.8 millimeters) in finished thickness or gauge. The chemical composition of the covered products is defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000; this order does not cover products with chemical compositions that are defined by anything other than C.D.A. or U.N.S. series. The merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated February 22, 2006, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review and Revocation

The Department determines that revocation of the CVD order would not be likely to lead to continuation or recurrence of a countervailable subsidy. As a result, we are revoking this order, effective May 1, 2005, the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation (*see* 65 FR 25304 (May 1, 2000)). We will notify the International Trade Commission of these results. Furthermore, we will instruct U.S. Customs and Border Protection to terminate suspension of liquidation, effective May 1, 2005.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 22, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–2926 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established to ensure regular communication between Government and the manufacturing sector. This will be the fifth meeting of The Manufacturing Council. For information about the Council, please visit its Web site at: *http://www.manufacturing.gov/council.*

DATES: March 22, 2006.

TIME: 10:30 a.m.

ADDRESSES: Donald E. Stephens Convention Center, Rosemont, Illinois. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than March 15, 2006, to The Manufacturing Council, Room 4043, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369). Interested parties are encouraged to visit

The Manufacturing Council Web site *(http://www.manufacturing.gov/council)* for the most up-to-date information about the meeting agenda and the Council. Please RSVP to the Executive Secretariat or *sam.giller@mail.doc.gov* if you plan to attend. This meeting is open to the public, however for entry to Convention Center, advance notification is requested.

Dated: February 24, 2006.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. E6–2946 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2006 Among Watch Producers Located in the United States Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2006 duty exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446, as amended by Pub. L. 103–465, Pub. L 106–36 and Pub. L. 108–429 ("the Act").

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2006 is 1,866,000 units for the Virgin Islands (65 FR 8048, February 17, 2000).

The criteria for the calculation of the calendar year 2006 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations (15 CFR 303.14).

The Departments have verified and adjusted the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with Section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2005 the Virgin Islands watch assembly firms shipped 266,607 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 2005 plus the creditable wages paid by the industry during calendar year 2005 to residents of the territory was $2,079,543.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 2006 Virgin Islands annual allocations, based on the data verified by the Departments, are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	200,000
Goldex Inc	50,000
Tropex, Inc	300,000

The balance of the units allocated to the Virgin Islands is available for new entrants into the program or producers who request a supplement to their allocation.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Director for Office of Insular Affairs, Department of the Interior.

[FR Doc. 06–1967 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121905A]

Endangered and Threatened Species; Recovery Plans; Reopening of Public Comment Period

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

ACTION: Notice; reopening of public comment period.

SUMMARY: NMFS is reopening the public comment period for the proposed Puget Sound Salmon Recovery Plan (Plan) for the Evolutionarily Significant Unit (ESU) of Puget Sound Chinook Salmon (*Oncorhynchus tshawytscha*) until March 16, 2006. The proposed Recovery Plan consists of a "Draft Puget Sound Recovery Plan" prepared by the Shared Strategy and a NMFS Supplement. NMFS is reopening the public comment period at the request of commenters to provide additional opportunity for public review and comment.

DATES: Written comments must be received by March 16, 2006.

ADDRESSES: Comments on the proposed Plan may be submitted by any of the following methods. Send written comments and materials to Elizabeth Babcock, National Marine Fisheries Service, Salmon Recovery Division, 7600 Sandpoint Way NE Seattle, WA 98115. Comments may be submitted by e-mail to *PugetSalmonPlan.nwr@noaa.gov*; include in the subject line of the e-mail comment the following identifier: Comments on Puget Sound Salmon Plan. Comments may also be submitted via facsimile (fax) to 206 526 6426.

Persons wishing to review the Plan can obtain an electronic copy (i.e., CDROM) from Carol Joyce by calling 503- 230–5408, or by e-mailing a request to *carol.joyce@noaa.gov*, with the subject line "CD-ROM Request for Puget Sound Salmon Plan". Electronic copies of the Shared Strategy Plan are also available on-line on the Shared Strategy Web site *http://www.sharedsalmonstrategy.org.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Babcock, NMFS Puget Sound Salmon Recovery Coordinator (206–526–4505), or Elizabeth Gaar, NMFS Salmon Recovery Division (503–230–5434).

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species.

NMFS' goal is to restore endangered and threatened Pacific salmon ESUs to the point where they are again secure, self-sustaining members of their

ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. The agency's approach to recovery planning has been to support and participate in locally led collaborative efforts involving local communities, state, tribal, and Federal entities, and other stakeholders to develop recovery plans.

On June 30, 2005, the Governor of Washington presented NMFS a locally developed recovery plan for Puget Sound Chinook salmon prepared by the Shared Strategy, a coalition of natural resource agencies, local governments, tribes, businesses, environmental groups, and other stakeholders. After review of the Shared Strategy's "Draft Puget Sound Salmon Recovery Plan", NMFS added a Supplement, which describes how the local plan satisfies ESA requirements, including additional actions that NMFS believes are necessary to support recovery. The Shared Strategy plan and the NMFS-prepared Supplement form a proposed Recovery Plan that meets the requirements of the ESA. The proposed Recovery Plan covers the range of the Puget Sound Chinook Salmon ESU (*Oncorhynchus tshawytscha*), listed as threatened on March 24, 1999 (64 FR 14307). The area covered by the proposed Recovery Plan is the 16,000-square-mile (41,440 square km) Puget Sound Basin, the second largest estuary in the United States. It encompasses twenty major river systems originating in the Cascade mountain range to the east and the Olympic mountain range to the west. The recovery planning area ends at the Canadian border, but includes the San Juan Islands.

NMFS published notice of the availability of the proposed Recovery Plan for public comment in the **Federal Register** on December 27, 2005 (70 FR 76445), with a comment period closing on February 27, 2005. At the request of several commenters, NMFS is reopening the comment period, which will now extend until March 16, 2006 to allow additional opportunity for public comment. The documents are available on the NMFS Northwest Region Salmon Web site at *http://www.nwr.noaa.gov/Salmon-Recovery-Planning/index.cfm.*

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 24, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–2991 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Electronic Response to Office Action and Preliminary Amendment Forms.

Form Number(s): PTO Form 1966 and PTO Form 1957.

Agency Approval Number: 0651–0050.

Type of Request: Extension of a currently approved collection.

Burden: 19,958 hours annually.

Number of Respondents: 117,400 responses per year.

Avg. Hours Per Response: The time needed to respond to the response to office action form and the preliminary amendment form is estimated to be 10 minutes (0.17 hours) each. This includes time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et. seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in interstate commerce, may file an application to register their mark. In some cases, the USPTO may issue Office Actions requesting missing information, or advising applicants of the refusal to register the mark. Applicants may also submit additional information voluntarily by providing a Preliminary Amendment. The USPTO administers the Trademark Act through 37 CFR Part 2, which contains the rules that implement the Act.

This collection of information is a matter of public record, and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include "0651–0050 copy request" in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before April 3, 2006 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 23, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–2965 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Fastener Quality Act Insignia Recordal Process.

Form Number(s): PTO 16–11.

Agency Approval Number: 0651–0028.

Type of Request: Extension of a currently approved collection.

Burden: 6 hours annually.

Number of Respondents: 37 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to complete a request for the recordal of an insignia or renewal of a recordal.

This includes the time to gather the necessary information, prepare the form, and submit the completed request.

Needs and Uses: Under Section 5 of the Fastener Quality Act of 1999, 15 U.S.C. 5401 *et seq.*, as implemented in 15 CFR 280.300 *et seq.*, certain industrial fasteners must bear an insignia identifying the manufacturer. Manufacturers use this collection to record fastener insignias and renew the recordals with the USPTO so that these fasteners can be traced to their manufacturers. After the manufacturer submits a complete application for recordal of a fastener insignia, the USPTO will issue a Certificate of Recordal, which remains active for five years. The USPTO uses this information to maintain the Fastener Insignia Register, which is open to public inspection.

Affected Public: Businesses or other for-profits.

Frequency: On occasion and renewal every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

• E-mail: *Susan.Brown@uspto.gov.* Include "0651–0028 copy request" in the subject line of the message.

• Fax: 571–273–0112, marked to the attention of Susan Brown.

• Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before April 3, 2006 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: February 23, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–2966 Filed 3–1–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.359A/B]

Early Reading First; Notice Reopening the Early Reading First (ERF) Fiscal Year (FY) 2006 Competition

AGENCY: Office of Elementary and Secondary Education, Department of Education.

SUMMARY: On January 18, 2006, we published in the **Federal Register** (71 FR 2916) a notice inviting applications for the Early Reading First FY 2006 competition. The deadline date for eligible applicants to transmit their pre-applications for funding under this competition was February 21, 2006 (as announced in the correction notice in the **Federal Register** on January 24, 2006 (71 FR 3829)).

We now are reopening the pre-application phase of the Early Reading First FY 2006 competition for two groups of eligible applicants:

Group 1: To afford eligible applicants a further opportunity to complete the electronic submission of their pre-applications for funding under this program, including those who may have experienced difficulties with the registration process, we are reopening the pre-application phase of the Early Reading First FY 2006 competition until March 9, 2006 for all eligible local educational agencies (LEAs) that were previously included on the posted Early Reading First eligible LEA lists and for eligible entities located in communities served by those eligible LEAs (Group 1).

These Group 1 applicants must submit their pre-applications electronically through Grants.gov as specified in the January 18, 2006 **Federal Register** notice inviting applications (Application Notice) (71 FR 2916). Group 1 applicants that submit their pre-applications pursuant to this notice must download, complete and submit an entirely new pre-application package through Grants.gov, as described in detail later in this notice under **SUPPLEMENTARY INFORMATION**, A. Group 1 Applicants—Electronic Submission Requirements, unless their previous submission was successfully submitted through Grants.gov by 4:30 p.m. (timely) or between 4:30 p.m. and midnight (late) on the original deadline of February 21, 2006.

Group 2: We also are reopening the pre-application phase of the Early Reading First FY 2006 competition for eligible LEAs that were inadvertently omitted from the FY 2006 eligible LEA lists posted on the Early Reading First Web site and for eligible entities located in communities served by those LEAs (Group 2). These Group 2 applicants will have an additional 30-day period from the date of this notice to submit their pre-applications.

These Group 2 applicants must submit their pre-applications in paper format by mail or hand delivery rather than electronically. Although the Department generally requires electronic submission of Early Reading First applications through Grants.gov, the Grants.gov system will not accept a limited category of pre-applications with a different deadline, such as these, within an overall competition. Therefore, the Department is requiring submission by paper format for this small group of eligible applicants.

The new pre-application deadline dates for these two groups are as follows:

DATES: *Deadline for Transmittal of Group 1 Pre-Applications (All Eligible LEAs Previously Included on the FY 2006 Early Reading First Eligible LEA Lists and Eligible Entities Located in Communities Served by those LEAs):* March 9, 2006 (by 4:30 p.m., Washington DC, time).

Pre-applications from Group 1 applicants for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically (or by mail or hand delivery if you are an applicant that previously qualified in this Early Reading First FY 2006 competition for an exception to the electronic submission requirement), please refer to the **SUPPLEMENTARY INFORMATION** section in this notice.

We do not consider a pre-application that does not comply with the deadline announced in this notice and submission requirements. Applicants that previously successfully submitted their complete pre-applications on or before the original deadline date of February 21, 2006, including those that were not timely because they submitted their pre-applications between 4:30 p.m. and midnight on that date, are not required to resubmit their applications.

Deadline for Transmittal of Group 2 Pre-Applications (Eligible LEAs Listed in this Notice and Other Eligible Entities Located in Communities Served by those LEAs): April 3, 2006.

For Group 2 applicants, the submission requirements for pre-applications for grants under this competition are changed from the originally required electronic submission. Group 2 applicants must submit their pre-applications in paper

format by mail or hand delivery. For information about how to submit your paper application by mail or hand delivery, please refer to the **SUPPLEMENTARY INFORMATION** section in this notice.

We do not consider an application that does not comply with the deadline and submission requirements announced in this notice.

Deadline for Intergovernmental Review: The deadline date for Intergovernmental Review under Executive Order 12732 remains as originally published, July 7, 2006.

SUPPLEMENTARY INFORMATION:

A. Group 1 Applicants

Group 1 Applicants—Electronic Submission Requirements

Pre-applications for grants under the Early Reading First program—CFDA Number 84.359A from Group 1 applicants must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov* as specified in the January 18, 2006 Application Notice (71 FR 2916). This notice is available at the following Web site: *http://www.ed.gov/legislation/FedRegister/announcements/2006-1/011806c.html.*

You must be fully registered with Grants.gov before you can submit your pre-application. As described in the January 18, 2006 Application Notice (71 FR 2916), this registration process can take 5 or more days to complete.

We will reject your pre-application if you submit it in paper format (unless you are an applicant that previously qualified in this Early Reading First FY 2006 competition for an exception to the electronic submission requirement as described in section IV.6.a. of the January 18, 2006 Application Notice (71 FR 2916)).

To submit a pre-application under this reopened competition, you must download and complete an entirely new pre-application package from Grants.gov (unless your previous submission was successfully submitted by February 21, 2006 at 4:30 p.m. (timely) or between 4:30 p.m. and midnight (late), in which case you are not required to submit anything further). You will need to enter data in all of the required forms and attach your narrative responses to this new pre-application package before submission. If you try to submit a pre-application package that was downloaded from Grants.gov before the original pre-application deadline of February 21, 2006, your submission will be rejected by the Grants.gov system.

B. Group 2 Applicants

1. Correction of Eligible LEA Lists

For eligible LEAs specifically identified in this notice as being erroneously omitted from the original Early Reading First FY 2006 eligible LEA lists and for eligible entities located in communities served by those LEAs (Group 2 applicants), we are reopening the Early Reading First FY 2006 competition pre-application deadline for an additional 30 days from the date of this notice.

As indicated in the application package for this competition, lists of eligible LEAs (by State) are posted on the Early Reading First Web site at *http://www.ed.gov/programs/earlyreading/eligibility.html.* However, the eligible LEA lists that the Department originally posted were not correct because they omitted a number of eligible LEAs and included other LEAs that were not eligible.

Under this competition, eligible applicants are (a) one or more LEAs that are eligible to receive a subgrant under the Reading First program (title I, part B, subpart 3, Elementary and Secondary Education Act of 1965, as amended (ESEA)); (b) one or more public or private organizations or agencies (including faith-based organizations) located in a community served by an eligible LEA; or (c) one or more eligible LEAs, applying in collaboration with one or more eligible organizations or agencies. To qualify under paragraph (b) of this definition, the organization's or agency's application must be on behalf of one or more programs that serve preschool-age children (such as a Head Start program, a child care program, or a family literacy program such as Even Start, or a lab school at a university).

We have corrected the lists of eligible LEAs for this competition by adding the following eligible LEAs and removing the following ineligible LEAs:

Eligible LEAs (Added to the Corrected Eligible LEA Lists):

- *Georgia:* Wilkinson County.
- *New York:* Alexander Central School District; Baldwinsville Central School; Ballston Spa Central School; Beacon City School District; Bridgewater-West Winfield; Brockport Central School District; Cairo-Durham Central School District; Canandaigua City School District; Central Islip Union Free School; Central Square Central School District; Chester Union Free School District; Coxsackie-Athens Central School District; Dalton-Nunda Central School District; Elmira Heights Central School District; Freeport Union Free School District; Greenburgh Central School District; Lancaster Central School District; Liberty Central School District; Little Flower Union Free School District; Long Beach City School District; Mexico Central School District; Minisink Valley Central School District; Mohawk Central School District; Mount Pleasant-Cottage Union Free School District; Northeastern Clinton Central School District; Oneida City School District; Peekskill City School District; Remsen Central School District; Riverhead Central School District; Roosevelt Union Free School District; South County Central School District; South Huntingon Union Free School District; Spencer-Van Etten Central School District; Union Endicott Central School; Valley Central School District (Montgomery); Westbury Union Free School.
- *Massachusetts:* Everett; Fitchburg.
- *North Dakota:* Beach Public School; Underwood Public School District.
- *Oregon:* Bend-Lapine Administrative School District 1; Canby School District 86; Central School District 13J; Coquille School District 8; Eugene School District 4J; Klamath County School District; Ontario School District 8C; Springfield School District 19; Yamhill-Carlton School District 1.

Ineligible LEAs (Removed From the Corrected Eligible LEA Lists):

- *North Dakota:* Sherwood 2; Spiritwood 26; St. Thomas 43; Stanton 22; Wishek 19; Wolford 1.
- *Vermont:* Windham Northwest Supervisory Union.

The corrected eligible LEA lists are posted at: *http://www.ed.gov/programs/earlyreading/eligibility.html.*

2. Group 2 Applicants—Paper Submission Requirements

Pre-applications from Group 2 applicants for grants under the Early Reading First program—CFDA Number 84.359A must be submitted in paper format by mail or hand delivery (rather than electronically) as follows.

a. Submission of Paper Pre-Applications by Mail

If you are a Group 2 applicant as described in this notice, you may mail (through the U.S. Postal Service or a commercial carrier) your pre-application to the Department. You must mail the original and two copies of your pre-application, on or before the pre-application deadline date specified in this **Federal Register** notice, 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 84.359A), 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 84.359A), 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 pre-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 pre-application is postmarked after the pre-application deadline date specified in this notice, we will not consider your pre-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.

3. Submission of Paper Pre-Applications by Hand Delivery

If you are a Group 2 applicant as described in this notice, you (or a courier service) may deliver your paper pre-application to the Department by hand. You must deliver the original and two copies of your pre-application by hand, on or before the pre-application deadline date specified in this **Federal Register** notice, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.359A), 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 Pre-applications: If you mail or hand deliver your pre-application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your pre-application.

(2) The Application Control Center will mail a grant pre-application receipt acknowledgment to you. If you do not receive the grant pre-application receipt acknowledgment within 15 business days from the pre-application deadline date in this notice, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

C. Group 1 and Group 2 Applicants—Additional Application Information

1. Address To Request Application Package

You may obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain an application via the Internet, use the following Web address: *http://www.ed.gov/programs/earlyreading/applicant.html.*

To obtain a copy from ED Pubs, write or call the 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 package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.359A/B.

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 under **FOR FURTHER INFORMATION CONTACT** in this notice.

2. Content and Form of Pre-Application Submission

All requirements concerning the content of the pre-application, including page-limit and limited appendices requirements, a competitive preference priority, and the selection criterion, together with the forms you must submit, are in the application package for this competition. Please also refer to the January 18, 2006 Application Notice (71 FR 2916) for further information governing this grant competition. This **Federal Register** notice is available at the following Web site: *http://www.ed.gov/legislation/FedRegister/announcements/2006–1/011806c.html.*

FOR FURTHER INFORMATION CONTACT: Jill Stewart, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C136, Washington, DC 20202–6132. Telephone: (202) 260–2533 or by e-mail: *Jill.Stewart@ed.gov* or Rebecca Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C138, Washington, DC 20202–6132. Telephone: (202) 260–0968 or by e-mail: *Rebecca.Haynes@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.

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: February 28, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 06–1993 Filed 3–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education Programs; State Personnel Development Grants Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for State Personnel Development Grants Program.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a funding priority for the Office of Special Education Programs—State Personnel

Development Grants Program authorized under the Individuals with Disabilities Education Act (IDEA). This priority may be used for competitions in fiscal year (FY) 2006 and later years. We take this action to focus attention on an identified national need to assist State educational agencies (SEAs) improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities; to promote the professional development of personnel as defined in section 651(b) of the IDEA to ensure that they have the knowledge and skills to deliver scientifically based instruction; and to recruit, and retain highly qualified special education teachers in accordance with section 602(10) and section 612(a)(14) of the IDEA.

DATES: We must receive your comments on or before April 3, 2006.

ADDRESSES: Address all comments about this proposed priority to Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4019, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *larry.wexler@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Wexler. Telephone: (202) 245–7571.

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 4019, 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)).

Proposed Priority

State Personnel Development Grants (SPDG)

Background of Proposed Priority

Research shows that teacher quality is strongly correlated with student academic achievement and that effective teachers are key to improving student outcomes. High quality, comprehensive professional development programs are essential to ensuring that personnel responsible for providing early intervention, education, and transition services to children with disabilities possess the knowledge and skills necessary to address their particular needs. The Department also believes that Federal support provided under the IDEA should be targeted to those educational programs, activities, and strategies that have been demonstrated through rigorous scientific research to be effective and have a proven track record of success. Many schools have experimented with lessons and materials that have proven to be ineffective at the expense of their students.

The State Personnel Development Grants program provides a vehicle for helping States ensure that SEAs and LEAs take steps to recruit, hire, and retain highly qualified special education teachers and that the professional development of special education teachers and other personnel is aimed at providing them with the knowledge and skills to deliver scientifically based instruction that is likely to improve outcomes for children with disabilities.

Proposed Priority

The Assistant Secretary proposes a priority to assist SEAs in reforming and improving their personnel preparation and professional development systems for teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel. The intent of the priority is to improve educational results for children with disabilities through the delivery of high quality instruction and the recruitment, hiring, and retention of highly qualified special education teachers.

In order to meet this priority an applicant must demonstrate that the project for which it seeks funding: (1) Provides professional development activities that improve the knowledge and skills of personnel as defined in section 651(b) of the IDEA in delivering scientifically based instruction to meet the needs of, and improve the performance and achievement of infants, toddlers, preschoolers, and children with disabilities; (2) implements practices to sustain the knowledge and skills of personnel who have received training in scientifically based instruction; and (3) implements strategies that are effective in promoting the recruitment, hiring, and retention of highly qualified special education teachers in accordance with section 602(10) and section 612(a)(14) of the IDEA.

Projects funded under this priority also must:

(a) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project;

(b) Budget $4,000 annually for support of the State Personnel Development Program Web site currently administered by the University of Oregon (*http://www.signetwork.org*); and

(c) If a project receiving assistance under this program authority maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

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 this notice 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 the actions proposed in this notice, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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.htm.*

Program Authority: 20 U.S.C. 1451–1455.

Dated: February 27, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–3006 Filed 3–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Model Demonstration Centers on Implementing Tertiary Level Behavioral Interventions Within a School-Wide Model for Children Who Are Not Responsive to Universal and Secondary Level Interventions; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326M.

Dates: Applications Available: March 2, 2006.

Deadline for Transmittal of Applications: April 17, 2006.

Deadline for Intergovernmental Review: June 16, 2006.

Eligible Applicants: Institutions of higher education (IHEs).

Estimated Available Funds: $1,200,000.

Estimated Average Size of Award: $400,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program promotes academic achievement and improves results for children with disabilities by supporting technical assistance, model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: Model Demonstration Centers on Implementing Tertiary Level Behavioral Interventions within a School-Wide Model for Children who are Not Responsive to Universal and Secondary Level Interventions.

Background

During the last several years, increased attention and an emerging research base have focused on a response to intervention model that identifies and addresses the needs of children who do not respond sufficiently to high quality class-wide academic instruction and remedial evidence-based interventions. This response to intervention model, while gaining attention with respect to students experiencing academic challenges, is also applicable to students experiencing behavioral challenges. Despite high quality class-wide behavioral strategies and remedial interventions, some children with behavioral challenges fail to make sufficient progress and require more individualized and intensive supports to be successful in their educational program.

The school setting is one of the most important settings for behavioral prevention and intervention programs and has been described as the ideal setting for these programs due to compulsory attendance and sustained contact with youth during the early years of development (Loeber & Farrington, 1998, Walker and Shinn, 2002). School-wide behavioral programs have received increased attention since the 1997 amendments to IDEA introduced the concept of "positive behavioral interventions and supports." The three-tiered prevention model, originally adapted from mental health literature, has emerged as the prevailing model for school-wide implementation of behavioral prevention and intervention programs. Components of the model include: (1) Universal interventions for all students; (2) secondary interventions for smaller groups of students who may require some additional remedial interventions in order to be successful in their educational program; and (3) tertiary

level interventions for those students who, despite a high quality universal program and subsequent evidence-based secondary interventions, fail to make substantial progress without the implementation of individualized, intensive interventions. Assessment of progress throughout the multi-level tiers of support is based on a student's response to interventions.

Currently, approximately one percent of all children who receive services under IDEA are children with emotional disturbances (ED). Students with ED are identified later than students with other disabilities, with the earliest identifications generally occurring at age nine (National Longitudinal Transition Study of Youth II). With evidence documenting the reduced effects of interventions that are implemented after antisocial and aggressive behaviors have persisted, early intervention is critical to mitigate and possibly reverse these negative behavioral trajectories (Webster-Stratton & Hammond, 1997 and Campbell, 1995). Young children who demonstrate significant, intractable, behavioral challenges and who do not respond sufficiently to universal or secondary interventions will need comprehensive tertiary level interventions to prevent extremely bleak outcomes both for the individual and society as a whole (Sprague, *et al.*, 2001).

In the 1987 National Longitudinal Transition Study of Youth, students with ED had the poorest outcomes of all students with disabilities. Unfortunately, these outcomes persisted in a follow-up study conducted ten years later (SRI, 2004). Negative outcomes included: Poor grades, dropping out, arrest, teenage pregnancy, and unemployment. Students with ED, in spite of their average to above average intelligence, are significantly more likely than students without ED to experience academic problems. These academic problems may become more significant for children who do not respond to universal efforts and secondary interventions and, due to their behavior problems, these children are frequently removed from instructional environments. For these students with intractable behavioral challenges, tertiary level interventions are critical to enable them to participate in the educational system.

Tertiary interventions are designed to focus on the needs of individuals who exhibit patterns of significant problem behavior that is dangerous or highly disruptive, impedes learning, or results in social or educational exclusion. Tertiary interventions are most effective when they are nested within a multi-tiered school-wide model. The goal of tertiary interventions is to diminish problem behavior and to increase the student's adaptive skills, access to instruction, and opportunities for an enhanced quality of life. Due to the complexity and intensity of behaviors targeted for intervention at this level and based on the individualized nature of the interventions implemented, a functional behavior assessment (FBA) is a necessary tool to assist educators in determining the most appropriate interventions designed to meet the student's specific needs.

An FBA is an evidence-based method of assessment that uses direct observation to develop hypothesis statements for behavior support plans and uses a comprehensive approach to identify antecedents and consequences that will help control problem behavior and to develop appropriate interventions (Horner, 1994). It provides data regarding the student's behavior and potential intervention strategies and assists educators in focusing on modifications that can be made to the environment to effect change in the student (Crone, Horner, & Hawken, 2004). Behavioral interventions based on FBAs are also three times more likely than those not based on FBAs to be effective in reducing problem behaviors and encouraging more appropriate behaviors (Carr, Turnbull, et al., 2001). Implementation of interventions that are effective in reducing problem behaviors likely will increase the student's exposure to instructional environments and result in improved achievement and more positive life outcomes.

Priority

The purpose of this priority is to support three (3) centers, each of which is to develop a behavioral model that incorporates scientific evidence-based, tertiary level interventions within a school-wide behavior model for students in elementary and middle school, in regular and special education classrooms. Each Center's model must apply and test research findings in typical settings where children with disabilities receive services to determine the services' usefulness, effectiveness, and general applicability to these typical settings. To meet this priority, a Center must design and implement a model that: (1) Targets the group of children who have not been responsive to universal behavioral strategies or secondary evidence-based interventions that have been shown to be effective based on scientific research and who require intensive and individualized behavioral interventions at the tertiary level; (2) is based on evidence-based practices, strategies, and interventions; (3) includes a process for the collection, analysis, and use of data for decision making; and (4) includes a professional development strategy. A Center's model must have the same critical components across different school levels but these components may be implemented slightly differently based on the age of the students.

Each Center must establish its model in at least three sites. A site must consist of, at a minimum, one elementary school and one middle school, and may include a pre-school or high school setting.

In order to be considered for funding under this priority, an IHE must demonstrate that the key staff responsible for implementing the model have expertise in the full continuum of school-wide behavioral interventions—universal, secondary, and tertiary—which may be demonstrated by having refereed publications on this topic or federally supported grants addressing this area. Key staff must also have demonstrated success implementing behavioral interventions and models in typical settings. In addition, the IHE must establish a partnership with a local educational agency (LEA) to facilitate the implementation of the model in school settings and increase the likelihood that school personnel will develop sufficient expertise in order to sustain the model after project completion.

Each Center must coordinate with the Model Demonstration Coordination Center (MDCC), a separate center funded by the Department's Office of Special Education Programs (OSEP) that is responsible for coordinating implementation and analyzing data to determine the effectiveness of the tertiary level intervention models. In 2005, OSEP awarded funds, through a contract, for the establishment of the MDCC. The MDCC is developing a data coordination plan and cross site data collection instruments, and will generate common evaluation questions, synthesize and analyze data collection, monitor fidelity of implementation, ensure reliability of data, and foster dissemination of information.

The start date for the projects funded under this competition is expected to be January 1, 2007. A meeting of all Centers funded under this priority as well as the MDCC will be held one month after the awards are made. The purpose of this meeting is to review and, as necessary, modify proposals and discuss collaboration among the Centers and the MDCC.

An applicant must describe, in its application—

(a) The sites where the model will be implemented and the methods used to recruit and select sites, including documentation of the implementation and fidelity of evidence-based universal and secondary practices and interventions and a reliable, effective process for determining which students have not responded to universal and secondary interventions and therefore require tertiary level interventions;

(b) The proposed model and the supporting evidence for the model as a whole or for the critical components that are included within the model; and

(c) The knowledge, experience, and capabilities of the key staff who will be responsible for the implementation of tertiary level interventions and the model.

To meet the requirements of this priority, each Center, at a minimum, must—

(1) Implement a model and a data collection plan that includes: a selection or screening procedure for children who are not responsive to universal or secondary level interventions, a method for linking interventions to problem behaviors, a detailed description of critical elements of the model, a process for collecting, evaluating and formulating decisions based on individual student and systems (*i.e.*, class, school, district) data, and a description of the system variables required to implement and sustain the model;

(2) Provide and document initial and continuing professional development to administrators, regular educators, and special educators on the use of tertiary level interventions nested within a school-wide behavior model;

(3) Collect data related to the fidelity of the implementation of the model and describe the methods of fidelity evaluation, as well as how these methods relate to continuing professional development and feedback provided to teachers and administrators;

(4) Identify methods for effectively increasing communication and collaboration among parents, community agencies, and school/Center staff;

(5) Collaborate with the other Centers funded under this competition and the MDCC in order to determine a plan for evaluating the impact of these models on children's behavior and academic progress and outcomes;

(6) Develop regular communication with OSEP's National Center on Positive Behavioral Supports and OSEP's other funded centers, as appropriate, to share information regarding topics such as successful strategies and less successful approaches for implementing behavioral interventions in schools;

(7) Develop strategies for the dissemination of implementation information, if the model proves to be successful, to specific audiences, including teachers, families, administrators, policymakers, and researchers. These dissemination strategies must involve collaboration with other technical assistance providers including parent centers funded by OSEP, organizations, and researchers;

(8) 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 Project Officer to be designated by OSEP and the document review board of OSEP's Dissemination Center;

(9) Budget for the Center's project director to attend a three-day Project Directors' meeting in Washington, DC during each year of the project; and

(10) If a Web site is maintained, format the information and documents on the Web site in a manner that meets a government or industry-recognized standard for accessibility.

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 a proposed priority. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,200,000.

Estimated Average Size of Award: $400,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

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*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.326M.

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 70 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the

application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; 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:* March 2, 2006.

Deadline for Transmittal of Applications: April 17, 2006.

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: June 16, 2006.

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 government wide Grants.gov Apply site in FY 2006. The Model Demonstration Centers on Implementing Tertiary Level Behavioral Interventions within a School-Wide Model for Children who are Not Responsive to Universal and Secondary Level Interventions—CFDA Number 84.326M is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.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.

You may access the electronic grant application for The Model Demonstration Centers on Implementing Tertiary Level Behavioral Interventions within a School-Wide Model for Children who are Not Responsive to Universal and Secondary Level Interventions 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, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, 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 date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• 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 you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• 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. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• 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 acknowledgment 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.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

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 84.326M), 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 84.326M), 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 84.326M), 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 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 has developed measures that will yield information on various aspects of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures 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.

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: Renee Bradley, U.S. Department of

Education, 400 Maryland Avenue, SW., room 4105, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7277.

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: February 27, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–3012 Filed 3–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, March 27, 2006, 1 p.m.–5:15 p.m., Tuesday, March 28, 2006, 8:30 a.m.–4 p.m.

ADDRESSES: Columbia Marriott, 1200 Hampton Street, Columbia, SC 29201.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

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

Monday, March 27, 2006:
1 p.m.—Combined Committee Session
5:15 p.m.—Adjourn
Tuesday, March 28, 2006:
8:30 a.m.—Approval of Minutes, Agency Updates
9 a.m.—Public Comment Session
9:15 a.m.—Chair and Facilitator Update
9:45 a.m.—Nuclear Materials Committee Report
10:45 a.m.—Strategic and Legacy Management Committee Report
11:45 a.m.—Public Comment Session
12 p.m.—Lunch Break
1 p.m.—Administrative Committee Report. Bylaws Amendment Proposal
1:30 p.m.—Waste Management Committee Report
2:30 p.m.—Facility Disposition and Site Remediation Committee Report
3:30 p.m.—Public Comment Session
4 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, March 27, 2006.

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 Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on February 24, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E6–2952 Filed 3–1–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting and retreat.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. 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:

Monday, March 20, 2006, 4 p.m.–7 p.m.
Tuesday, March 21, 2006, 8 a.m.–6 p.m.
Wednesday, March 22, 2006, 8 a.m.–5 p.m.

Opportunities for public participation will be held Tuesday, March 21, from 12:15 to 12:30 p.m. and 5:45 to 6 p.m.; and Wednesday, March 22, from 11:45 a.m. to 12 p.m. and 4 to 4:15 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered.

ADDRESSES: Shilo Inn, 1586 Blue Lakes Boulevard North, Twin Falls, ID 83301.

FOR FURTHER INFORMATION CONTACT: Shannon A. Brennan, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1216, Idaho Falls, ID 83415. Phone (208) 526–3993; Fax (208) 526–1926 or e-mail: *Shannon.Brennan@nuclear.energy.gov* or visit the Board's Internet home page at: *http://www.inelemcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Shannon A. Brennan for the most current agenda):

Board Retreat, Monday, March 20, 2006.

Open Meeting, Tuesday, March 21, 2006 and Wednesday, March 22, 2006.

- Idaho Cleanup Project Environmental Management Cleanup Status Report.
- Fiscal Year 2007 Budget.
- Long-Term Plans for Low-Level Radioactive Waste Management.
- Radioactive Waste Management Complex Stakeholder Involvement Discussion.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Shannon A. Brennan at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Shannon A. Brennan, Federal Coordinator, at the address and phone number listed above.

Issued at Washington, DC on February 24, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E6–2953 Filed 3–1–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Paducah. 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, March 16, 2006; 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

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

5:30 p.m.	Informal Discussion
6 p.m.	Call to Order Introductions Review of Agenda Approval of February Minutes
6:15 p.m.	Deputy Designated Federal Officer's Comments
6:35 p.m.	Federal Coordinator's Comments
6:40 p.m.	Ex-officios' Comments
6:50 p.m.	Public Comments and Questions
7 p.m.	Task Forces/Presentations • Wildlife Management Area—Tim Kreher • Water Disposition/Water Quality Task Force—End State Maps
8 p.m.	Public Comments and Questions
8:10 p.m.	Break
8:20 p.m.	Administrative Issues • Preparation for April Presentation • Budget Review • Review of Workplan • Review Next Agenda
8:30 p.m.	Review of Action Items
8:35 p.m.	Subcommittee Report • Executive Committee
8:50 p.m.	Final Comments
9 p.m.	Adjourn

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 David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m., on Monday through Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on February 23, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E6–2954 Filed 3–1–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge and rates adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) electric service base charge and rates. The current base charge and rates expire September 30, 2006. The current base charge is not sufficient to pay all annual costs including operation, maintenance, replacements, interest expense, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to pay all annual costs and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in March 2006. The

proposed base charge and rates are scheduled to become effective on October 1, 2006, and will remain in effect through September 30, 2007. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 31, 2006. Western representatives will explain the proposed base charge and rates at a public information forum on April 4, 2006, beginning at 10:30 a.m. MST, in Phoenix, Arizona (AZ). Interested parties can provide oral and written comments at a public comment forum on May 3, 2006, beginning at 10:30 a.m. MST, at the same location.

ADDRESSES: The meetings will be held at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ. Send comments to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov*. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm*. Western must receive comments by the end of the consultation and comment period to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: The proposed base charge and rates for BCP electric service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services and uprating payments. These annual costs are reduced by the projected revenue from water sales, visitor services, water pump energy sales, facility use charges, regulation and spinning reserve services, miscellaneous leases and late fees. The projected annual revenue requirement is the base charge for electric service and is divided equally between capacity and energy. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

The Deputy Secretary of the Department of Energy (DOE) approved the existing rate formula for calculating the base charge and rates in Rate Schedule BCP–F7 for BCP firm power service on August 11, 2005, (Rate Order No. WAPA–120, 70 FR 50316, August 26, 2005). The rate formula has been submitted to the Federal Energy Regulatory Commission for approval. Rate Schedule BCP–F7 became effective on October 1, 2005, for the period ending September 30, 2010. Under Rate Schedule BCP–F7 for FY 2007, the base charge is $62,177,350, the forecasted energy rate is 8.10 mills per kilowatthour (mills/kWh), the forecasted capacity rate is $1.48 per kilowattmonth (kWmonth) and the composite rate is 16.21 mills/kWh.

Under Rate Schedule BCP–F7, the proposed rates for BCP electric service will result in an overall composite rate increase of about 15 percent. The following table compares the current and proposed base charge and rates.

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current October 1, 2005 through September 30, 2006	Proposed October 1, 2006 through September 30, 2007	Percent change increase
Total Composite (mills/kWh)	14.05	16.21	15
Base Charge ($)	57,465,018	62,177,350	8
Energy Rate (mills/kWh)	7.03	8.10	15
Capacity Rate ($/kWmonth)	1.37	1.48	8

The increase in the base charge and rates is primarily the result of higher annual costs in operation and maintenance and lower revenue projections for the visitor center, as well as continued drought conditions. Additionally, the FY 2006 base charge and rates included a carry-over of non-reimbursable security costs from FY 2005, which had the effect of suppressing the FY 2006 base charge.

Legal Authority

Western will hold both a public information forum and a public comment forum. After considering comments, Western will recommend the proposed base charge and rates for final approval by the Deputy Secretary of Energy.

Western is establishing an electric service base charge and rates for BCP under the DOE Organization Act, (42 U.S.C. 7152); the Reclamation Act of 1902, (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939, (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

Interested parties may review and copy all brochures, studies, comments, letters, memorandums or other documents that Western initiates or uses to develop the proposed rates. These documents are available for inspection and copying at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it

is a rulemaking specifically involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council On Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 15, 2006.

Michael S. Hacskaylo,

Administrator.

[FR Doc. E6–2955 Filed 3–1–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

The Central Valley Project-Rate Order No. WAPA–128

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Change of Reactive Power and Voltage Control Revenue Requirement Component.

SUMMARY: The Western Area Power Administration (Western) is proposing to revise the transmission revenue requirement (TRR) for existing formula rates associated with Reactive Power and Voltage Control from the Central Valley Project (CVP) and other non-Federal Generation Sources Service (VAR Support). The TRRs for transmission service from the CVP transmission system, the Pacific Alternating Current Intertie (PACI), and the California-Oregon Transmission Project (COTP) are assigned a portion of the VAR Support costs under Rate Schedules CV–T1, CV–NWT3, PACI–T1, and COTP–T1 which extend through September 30, 2009. The proposed revision to the TRRs will remove the VAR Support costs from the TRRs. This formula rate will provide sufficient revenue to repay all annual costs, including interest expense, and repay required investment within the allowable period. Western will prepare a rate brochure that provides detailed information on the impact of this rate adjustment to all interested parties. This proposal is scheduled to go into effect on September 1, 2006, and will remain in effect through September 30, 2009. Publication of this **Federal Register** notice begins the formal process for the proposed revisions to the applicable revenue requirements.

DATES: The consultation and comment period begins today and will end April 3, 2006. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: Send written comments to Mr. Sean Sanderson, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, e-mail *ssander@wapa.gov*. Western will post information about the rate process on its Web site at *http://www.wapa.gov/sn/customers/rates/#currentrates/*. Western will post official comments received via letter and facsimile to its Web site after the close of the comment period. Western must receive the written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Sanderson, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4466, e-mail *ssander@wapa.gov*.

SUPPLEMENTARY INFORMATION: The current formula rates for transmission service on the CVP (CV–T1 and CV–NWT3), the PACI (PACI–T1), and the COTP (COTP–T1) transmission systems are based on a TRR that includes CVP and other non-Federal generator costs for providing VAR Support. The proposed revision to the TRR will remove the VAR Support costs from the TRRs. Western proposes to collect the revenue requirement for CVP VAR Support costs in the PRR under power rate schedule CV–F11. The removal of VAR Support costs will result in a more equitable treatment of all transmission customers.

The Deputy Secretary of Energy approved Rate Schedules CV–T1, CV–NWT3, PACI–T1, and COTP–T1 for transmission service and CV–F11 for Base Resource and First Preference Power on November 18, 2004 (Rate Order No. WAPA–115, 69 FR 70510, December 6, 2004), and the Federal Energy Regulatory Commission (Commission) confirmed and approved the rate schedules on October 11, 2005, under FERC Docket No. EF0–5011–000 (113 FERC 61,026). Rate Schedules CV–T1, CV–NWT3, PACI–T1, COTP–T1, and CV–F11 began January 1, 2005, and end on September 30, 2009.

The December 1, 2004, update of the approved rates resulted in annual CVP VAR Support costs of $336,070. Western currently estimates its annual costs associated with CVP and other non-Federal generator VAR Support to be $1,486,558. This cost was pro rata assigned to the respective transmission systems on a capacity basis and is one of the costs contained in Component 1 of the CVP, PACI, and COTP formula rates.

As part of the implementing of Western's Open Access Transmission Tariff, Western separated its merchant function from Western's reliability function. It has come to Western's attention, that by including the CVP and other non-Federal generation sources' reactive power and voltage control costs in Western's TRR, Western, in certain circumstances, may be treating its merchant in a manner that is not comparable with other transmission customers. Under Western's current rates, all transmission customers would pay Western for VAR Support. As a result, a transmission customer who also has a generator that is directly connected to Western's system and who has an obligation to provide reactive power within the bandwidth (commonly referred to as the deadband) would also pay Western for VAR Support. Western believes that both Federal generators and non-Federal generators should be treated comparably when they provide VAR Support.

To treat both Federal and non-Federal generators comparably, Western could either: (1) Roll all the VAR Support costs from both types of generators into Western's TRR or (2) Western could exclude all VAR Support from both types of generators from Western's TRR. Western's proposal is the latter.

Based on Western's understanding of the Commission's comparability requirements, Western has agreed to compensate the Calpine Construction Finance Company (CCFC), a non-Federal generator connected to the CVP transmission system, for reactive power costs subject to the outcome of this rate proceeding. Western will compensate

CCFC from December 2005 until new rates are in effect regardless of the outcome of this rate proceeding. At a minimum, such payments increase Western's annual costs for reactive power from approximately $341,000 to almost $1.2 million. While CCFC is the only entity that has currently sought to charge Western for reactive power, Western intends to treat every generator directly connected to Western's transmission system in a comparable fashion. Western cannot determine the cost associated with all such facilities. The obligation to provide such payments could create an open, indefinite, and undefined future liability for Western. Such costs could likely exceed $1.2 million. On the other hand, if Western excludes both the Federal and non-Federal generator costs for VAR Support in the TRR, it would ultimately fall to the customers who purchase power from the generator to pay for such costs. Customers who receive power from Western through Rate Schedule CV–F11 currently pay VAR Support costs in the PRR including the VAR Support associated with network service. Also included are VAR Support costs associated with the Rate Schedules PACI–T1 and COTP–T1 if not recovered from contracted sales. By excluding the VAR Support component from the TRR, Western can accurately determine the costs associated with transmission service. Furthermore, while Western's statutory customers, such as preference power customers, would be obligated to pay Western for all of the costs associated with reactive power from the United States generators in its power rates, the overall cost to Western's statutory customers would be lower and more predictable since they are paying for only the costs associated with the Federal generators.

As a result, Western seeks comments from all interested parties on Western's rate proposal. In addition, Western seeks particular comments on the following: (1) Whether Western should not make any changes to its rates (no action) and if Western takes no action, whether Western's current rates result in non-comparable treatment; (2) whether Western should remove the VAR Support component from Western's TRR and apply to the PRR for the CVP; Schedule of Rates for Base Resource and First Preference Power (CV–F11); and (3) whether including the costs associated with VAR Support in its TRR would be consistent with Western's statutory obligation to provide power at the lowest rates possible consistent with sound business principles. While Western seeks particular comments on the above, Western invites all interested parties to submit other comments related to the proposal. As part of Western's final decision, Western will evaluate all comments received before the end of the consultation and comment period.

Under the 2004 Power Marketing Plan, Base Resource and First Preference power is primarily CVP hydrogeneration available subject to water conditions and operating constraints. The Base Resource and First Preference power formula rates recover a PRR through percentages of costs to First Preference and Base Resource Customers.

Component 1 of the PRR for Base Resource and First Preference Power, as approved in the rate schedule (CV–F11), includes operations and maintenance (O&M), purchased power for project use and First Preference Customer loads, interest expense, annual expenses (including any other statutorily required costs or charges), investment repayment for the CVP, and the Washoe Project annual PRR that remains after project use loads are met. Revenues from project use, transmission, ancillary services, and other services are applied to the total PRR, and the remainder is collected from Base Resource and First Preference Customers.

The proposed rate formula change for CV–F11 for the Base Resource and First Preference PRR is listed in Table 1.

TABLE 1.—PROPOSED FORMULA RATE CHANGE FOR BASE RESOURCE AND FIRST PREFERENCE PRR (CV–F11)

	Existing rates ($000)[1]	Proposed rates ($000)[2]	Percent change
Base Resource and First Preference PRR	53,032	52,966	−0.13

Note 1: Includes the VAR Support costs from the CVP and CCFC.
Note 2: Includes only the CVP VAR Support costs.

Legal Authority

The proposed revision to the revenue requirements described above constitutes a minor rate adjustment. Western has determined that it is not necessary to hold a public information or comment forum for this proposed minor rate adjustment as defined by 10 CFR part 903. After review of public comments, and possible amendments or adjustments, Western will recommend the Deputy Secretary of Energy approve the proposed rates on an interim basis.

Western is establishing TRRs and a PRR for the formula rates for CV–T1, CV–NWT3, PACI–T1, and COTP–T1 transmission service and CV–F11 for Base Resource and First Preference Power under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, California. Many of these documents and supporting information are also available on the Web site under the "Current Rates" section located at *http://www.wapa.gov/sn/customers/rates/#currentrates/.*

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact

on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 16, 2006.

Michael S. Hacskaylo,

Administrator.

[FR Doc. E6–2956 Filed 3–1–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2060–0088; FRL–8039–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consolidated Emissions Reporting (Renewal); EPA ICR No. 0916.12, OMB Control No. 2060–0088

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0490, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Docket No. EPA–HQ–OAR–2005–0490, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0490. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For questions concerning today's action, please contact Bill Kuykendal, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code D205–01, Research Triangle Park, NC, 27711, telephone (919) 541–5372, e-mail at *kuykendal.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2005–0490, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA specifically solicits comments and information to enable it to:

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

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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 and provide specific examples.
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. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OAR–2005–0490, EPA ICR No. 0916.12, OMB Control No. 2060–0088.

Affected entities: Entities potentially affected by this action are generally State air pollution control agencies. An estimated 55 State and Territorial air pollution control agencies, as well as 49 local air agencies will be required to compile and report emissions information for large stationary point sources on an annual basis, and for smaller point sources, stationary nonpoint and mobile sources on a 3-year basis. Also, a portion of industry sources will be required by State and local air agencies to estimate and report PM2.5 and NH3 point source emissions.

Title: Consolidated Emissions Reporting (Renewal).

ICR numbers: EPA ICR No.0916.12, OMB Control No.2060–0088.

ICR status: This ICR is currently scheduled to expire on May 31, 2006.

Abstract: EPA has promulgated a Consolidated Emissions Reporting Rule (CERR) (40 CFR part 51, subpart A) to coordinate new emissions inventory reporting requirements with existing requirements of the Clean Air Act (CAA) and 1990 Amendments. Under the CERR, 55 State and Territorial air quality agencies, including the District of Columbia (DC), as well as an estimated 49 local air quality agencies, must annually submit emissions data for point sources emitting specified levels of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), carbon monoxide (CO), sulfur dioxide (SO_2), particulate matter less than or equal to 10 micrometers in diameter (PM_{10}), particulate matter less than or equal to 2.5 micrometers in diameter ($PM_{2.5}$), and ammonia (NH_3).

Every 3 years, States will be required to submit a point source inventory, as well as a statewide stationary nonpoint, nonroad mobile, onroad mobile, and biogenic source inventory for all criteria pollutants and $PM_{2.5}$, and NH_3. The emissions data submitted for the annual and 3-year cycle inventories for stationary point, nonpoint, nonroad mobile, and mobile sources will be used by EPA's Office of Air Quality Planning and Standards (OAQPS) to assist in developing ambient air quality emission standards, performing regional modeling, and in preparing national trends assessments and other special analyses and reports. Collection of $PM_{2.5}$ emissions data will be necessary to support implementation of the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). The information collected under the authority of the CERR is mandatory and as specified in the CERR cannot be treated as confidential by EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; 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 the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 2038.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 4.

Estimated total annual burden hours: 60,812.

Estimated total annual costs: $2,811,146. This includes an estimated burden cost of $2,580,246 and an estimated cost of $230,900 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 52,039 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease resulted from the elimination of the "One Time Activities" that were accounted for under the currently approved ICR. All respondents have incurred these one time burdens and thus these burdens do not recur in this renewal ICR.

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. At that time, 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.**

Dated: February 16, 2006.

William H. Lamason,

Acting Director, Air Quality Assessment Division.

[FR Doc. E6–2950 Filed 3–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8039–6; OEI–2005–16]

New—SORN—Kids Club; Privacy Act of 1974: Publication of New System of Record Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Publication of Kids Club Membership List.

SUMMARY: Pursuant to provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Region 5 Office of Public Affairs is giving notice that it proposes to publish a new system of records notice for the Kids Club Membership List. This system of records pertains to the collection of name, mailing address, age, and summaries of environmental projects from students in grades K–4. The kids club promotes environmental stewardship by encouraging kids in grades K–4 to receive recognition by completing environmental projects. Kids will receive a certificate and membership card for joining the club. Once kids complete a project, upon parent/guardian consent, it will be posted on *http://www.epa.gov/kids*.

DATES: This notice will be effective April 11, 2006.

ADDRESSES: Questions regarding this notice should be addressed to: Karen Reshkin, Public Access Coordinator, U.S. EPA Region 5, 77 W. Jackson Blvd. (P–19J), Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Megan Gavin, Environmental Education Coordinator, U.S. EPA Region 5, 77 W. Jackson Blvd. (P–19J), Chicago, IL 60604, Ph: (312) 353–5282.

SUPPLEMENTARY INFORMATION: EPA has established an official public docket for this action under Docket ID No. OEI–2005–16. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (*http://www.epa.gov/edocket/*). EPA Dockets can be used to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

Dated: February 21, 2006.

Linda A. Travers,

Acting Assistant Administrator and Chief Information Officer.

EPA–57

SYSTEM NAME:

Kids Club Membership List.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Public Affairs, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd. (P–19J), Chicago, IL 60604.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Kids in grades K–4 and their parent/guardian who are members in the Kids Club will be part of the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected will include name, mailing address, email address, age, date of membership, date of receipt of environmental projects, consent form from the parent, and summaries of environmental projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Environmental Education Act of 1990, 20 U.S.C. 5503(b)(2) (Pub. L. 101–619).

PURPOSE(S):

Kids Club Membership List promotes environmental stewardship to kids in grades K–4. Information submitted to the agency by members of the kids club will be maintained in a protected database system. Club promotes kids doing environmental education projects.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Routine Uses A, F, and H.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In a protected computer database. Data will be backed up on a CD which will be kept in a locked file cabinet. Hard copies will also be kept in a locked file cabinet.

RETRIEVABILITY:

By last name, city, state.

SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

Access will be limited to EPA staff in the Office of Public Affairs as well as SEE employees whose official duties require such access.

RETENTION AND DISPOSAL:

A schedule for retention and disposal is currently under development.

SYSTEM MANAGER(S) AND ADDRESS:

Elissa Speizman, Director, Office of Public Affairs, U.S. EPA Region 5, 77 W. Jackson Blvd. (P–19J), Chicago, IL 60604.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the Freedom of Information Office, Attention Privacy Act Officer. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD ACCESS PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the system manager. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the system manager. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

Record will come from children in grades K–4 as well as parents/guardians.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–2951 Filed 3–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2005–0005; FRL–8035–7]

Small Drinking Water Systems Variances—Revision of Existing National-Level Affordability Methodology and Methodology To Identify Variance Technologies That Are Protective of Public Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The 1996 amendments of the Safe Drinking Water Act (SDWA) provide States the authority to grant variances to small public water systems that cannot afford to comply with a primary drinking water standard. These variances allow a system to install and maintain technology that can remove a contaminant to the maximum extent that is affordable and protective of public health in lieu of technology that can achieve compliance with the regulation. One of the conditions for States to grant variances on a case-by-case basis is that the EPA must have found for systems of a similar size and with similar source water that there are no affordable technologies available that achieve compliance with the standard, but that there are affordable variance technologies that are protective of public health.

The EPA currently determines if there are affordable compliance technologies available to small systems by comparing (for a representative system) the current household cost of water plus the estimated additional cost to comply with a new rule to an affordability "threshold" of 2.5 percent of the median household income (MHI). Today=s **Federal Register** notice requests comment on revisions to this existing national-level affordability methodology for small drinking water systems and an approach for determining if an affordable variance technology is protective of public health. The Agency is committed to working with State and local officials and stakeholders to update and improve affordability analyses under the Safe Drinking Water Act.

DATES: Comments must be received on or before May 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2005–0005, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: OW–Docket@epa.gov*, Attention Docket ID No. OW–2005–0005.
- *Fax:* (202) 566–1749.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460.
- *Hand Delivery:* Water Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2005–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–1749.

FOR FURTHER INFORMATION CONTACT: Dan Olson, Standards and Risk Management Division, Office of Ground Water and Drinking Water, (4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460; telephone number: (202) 564–5239; fax number: (202) 564–3758; e-mail address: *olson.daniel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

Table of Contents

II. Background

This section provides the purpose of today's action, a brief statutory background on affordability-based small drinking water system variances, and how EPA currently determines if affordability-based variances can be made available to small drinking water systems.

A. What Is the Purpose of Today's Action?

Today's notice seeks comment on revisions to EPA's national affordability methodology for small drinking water systems and a methodology for determining if an affordable variance technology is protective of public health. EPA believes such revisions are needed to address variability in both incomes and costs across small systems, and to maintain transparency and consistency in determinations regarding affordability and protectiveness of public health. Neither the national affordability methodology nor the methodology for determining if an affordable variance technology is protective of public health imposes any requirement on any person or entity. Rather, these methodologies will be applied by EPA in evaluating small system affordability of future National Primary Drinking Water Regulations (NPDWRs), except regulations for microbial contaminants (including bacteria, viruses, or other organisms) or indicators for microbial contaminants. SDWA section 1415(e)(6)(B) states that small system variances are not available for microbial contaminants.

B. Statutory Background

Today's **Federal Register** requests comment on a revised approach for implementing the small systems variance provision of the 1996 SDWA amendments. The SDWA, as amended in 1996, includes a provision intended to help reduce the economic impact that certain new regulations will have on some small systems. For small systems with a service population of less than 10,000, SDWA section 1415(e) authorizes a primacy agency to grant a variance from compliance with a Maximum Contaminant Level (MCL) or treatment technique under certain conditions. (An MCL is the maximum permissible level of a contaminant in drinking water that is delivered to any user of a public water system. A treatment technique is an enforceable procedure or level of technological performance, which public water systems must follow to ensure control of a contaminant.) A primacy (primacy enforcement) agency may grant such a variance on a case-by-case basis for an NPDWR only if EPA has determined that there are no nationally affordable compliance technologies for small systems in the corresponding size category and with comparable source water quality and EPA has identified one or more affordable variance technologies that are protective of public health. In granting this variance, a primacy agency must provide public notice and an opportunity for a public hearing. The primacy agency must also make two system-specific determinations: (1) That the system cannot otherwise afford to comply (using the State's affordability criteria) through treatment, using an alternative source of water supply or restructuring or consolidation; and (2) that the terms of the variance ensure adequate protection of public health. In accordance with the SDWA, EPA evaluates the affordability of new drinking water rules for these categories of small systems: (1) A service population of 10,000 or fewer but more than 3,300; (2) a service population of 3,300 or fewer but more than 500; and (3) a service population of 500 or fewer but more than, or equal to, 25.

The legislative history of section 1415(e) does not provide guidance on how EPA is to interpret the term "affordable." However, the Senate Report for S 1316, the Senate version of the SDWA amendments of 1996 which contained similar small system variance provisions, includes the following discussion.

"Of the approximately 57,000 community water systems regulated under the Safe Drinking Water Act, nearly 54,000 serve populations of 10,000 or less. While EPA has taken steps to recognize the difficulties of small systems by establishing the Small System Technology Initiative, by forming the National Training Coalition, and by developing handbooks and computer software, the current Safe Drinking Water Act does not successfully address the problems of small systems.

The fundamental problem is one of economics. Maximum contaminant levels in national primary drinking water regulations have been based on the best available treatment techniques that are affordable for large systems. Because small systems do not enjoy the economies of scale that are available to large systems (infrastructure costs cannot be spread over a large number of households) drinking water regulations can have a much greater economic impact on small systems. EPA and the Congressional

Budget Office have published estimates indicating that systems serving more than 10,000 persons experience costs averaging less than $20 per household per year to comply with the current requirements of the Safe Drinking Water Act. By way of comparison, the average annual incremental household cost to comply with the requirements of the Safe Drinking Water Act for systems serving 25 to 100 persons is $145." (Senate Report No. 104–169, Nov 7, 1995, pp 54–55) [1]

This language underscores the Senates concern for the burden imposed on very small systems by NPDWRs, and provides an indication of the treatment cost data considered by the Senate at the time they developed these small system variance provisions. The House and Conference Reports do not provide any additional guidance on interpreting section 1415(e).

C. How Does EPA Currently Determine if Affordable Compliance Technologies Are Available to Small Drinking Water Systems?

As explained in the August 6, 1998 **Federal Register** notice (63 FR 42032), EPA currently determines if there are any affordable compliance technologies for a given NPDWR by comparing the estimated household costs to national-level affordability criteria based on household income. If EPA cannot identify affordable compliance technologies, then EPA must identify affordable variance technologies, pursuant to section 1412(b)(15) of the SDWA. A variance technology is one that provides the maximum contaminant removal, or inactivation, that is affordable, considering the quality of the source water to be treated and the expected useful life of the technology, and that the Agency determines is protective of public health. To date, EPA has found no NPDWRs "unaffordable" for small systems.

The focus of the current national-level affordability analysis is the household. Treatment technology costs are presumed affordable to the typical household if they do not cause median water bills to exceed an affordability threshold of 2.5 percent of MHI. This approach assumes that affordability to the median household in a system size category can serve as an adequate measure for the affordability of technologies to the size category as a whole.

[1] The average annual household increases cited in the report is for the cumulative impact imposed by the drinking water regulations at the time of the report. These are average costs across all systems in the size category including those with no impact. Treatment costs would not be derived in that manner for the options in this notice.

The current national-level affordability criteria consider current annual water bills, or baseline cost, the incremental cost of the new regulation, and the affordability threshold (i.e., 2.5 percent of MHI). For each NPDWR, EPA estimates the baseline cost using annual sales revenue per residential connection from the most recent Community Water System Survey (CWSS). The CWSS is a national survey that the Agency conducts and is designed to compile operating and financial information from a statistically representative sample of community water systems. EPA subtracts this baseline from the affordability threshold to yield an "expenditure margin." The Agency then compares this expenditure margin with the projected per household treatment costs for a new rule to make affordable technology determinations. As previously stated, this national affordability threshold currently sets the maximum affordable water bill at 2.5 percent of the MHI for the median system in a given size category (e.g., public water systems serving (1) a population of 10,000 or fewer but more than 3,300; (2) a population of 3,300 or fewer but more than 500; and (3) a population of 500 or fewer but more than, or equal to, 25).

Some stakeholders have argued that the current criteria are too stringent and fail to recognize situations in which a significant minority of systems within a size category may find a regulation unaffordable. After seven years of experience with the current criteria, EPA agrees it is time to consider refinements to address the situations of communities with below average incomes or above average drinking water and treatment costs.

In today's notice EPA has changed the term it uses to refer to the procedures for evaluating the affordability of compliance technologies. Today's notice refers to an "affordability methodology" rather than "affordability criteria." EPA believes the term "methodology" better describes its procedures for determining small system affordability of NPDWRs. EPA again reiterates that this methodology imposes no regulatory requirements on the public. Its only purpose is to guide EPA in making small system affordability determinations under the SDWA. EPA may continue to update and refine this methodology as appropriate in the future.

III. Affordability Methodology

As part of the 2002 appropriations process, Congress directed EPA to review and update the national-level affordability methodology. In response, EPA sought the advice of its Science Advisory Board (SAB) and the National Drinking Water Advisory Committee (NDWAC). This section summarizes the SAB and NDWAC recommendations to EPA for revising the national-level affordability methodology, presents the key issues EPA considered in evaluating its affordability methodology, and discusses a range of options for revising the existing national-level affordability methodology.

A. The EPA's Science Advisory Board Recommendations on Affordability

The EPA SAB is a public advisory group that provides extramural scientific information and advice to the Administrator and other EPA officials. The Board is structured to provide balanced and expert assessment of scientific matters related to problems facing the Agency.

In March 2002, the EPA asked the SAB to consider the economic issues associated with the current national-level affordability methodology, as well as the factors that were used to establish the methodology. The SAB's Environmental Economics Advisory Committee met twice to prepare recommendations regarding four key topics:

1. EPA's approach to determining affordability for small systems.
2. Components of the affordability determination method.
3. Source water and regional disparities.
4. Whether financial assistance should be considered in EPA's national-level affordability methodology.

The SAB's findings and recommendations on these topics were published in the report *Affordability Criteria for Small Drinking Water Systems: An EPA Science Advisory Board Report* (EPA–SAB–EEAC–03–004) which can be found in the EPA Docket. The discussion in today's notice summarizes the key findings with respect to the four general areas noted above.

1. EPA's Approach To Determining Affordability for Small Systems

The SAB found that EPA's approach to determining affordability for small systems addressed equity, efficiency, and administrative practicality considerations. However, the SAB recommended that the Agency consider some modifications to address long-term efficiency issues (i.e., allowing variances potentially inhibit movement toward small system consolidation) and to more effectively deal with the diversity among small systems.

2. Components of the Affordability Determination Method

a. *Measures other than median.* The SAB highlighted some concerns with relying on median household income as the basis for the affordability threshold for small systems. One concern is that it does not reflect income inequality within water systems. That is, even if the median household can afford to pay the increased water bill, poorer households within a water system may find it unaffordable. Another concern about using median household income arises from income inequality across water systems within a size class. That is, even if the median system in a size category can afford to pay for a treatment technology, poorer systems may find it unaffordable.

The SAB identified three approaches to account for these income inequalities. To address within-system income inequality, SAB suggested that EPA could keep the current affordability formula, but specify a lower household income percentile within water systems (instead of the current MHI) such as the 10th or 25th percentile. To address between-system income inequality, SAB suggested that EPA could consider whether a significant percentage of systems (e.g., 10 percent or 25 percent) fall below the threshold, even when the median system does not. A third approach that may address both issues involves basing the threshold on some statistical measure of dispersion, such as variance or standard deviation, in addition to the mean (i.e., basing it on 1.5 standard deviations below the mean household income within a system size category).

b. *Alternatives to 2.5 percent as the income percentage.* The SAB highlighted the fact that the national affordability threshold has never been exceeded and that there was evidence suggesting that some small water systems have genuinely struggled with compliance costs. They believe that this suggests that the 2.5 percent threshold is too high, and that a lower cutoff should be used resulting in a greater likelihood that small systems variances would be authorized.

c. *Alternatives to the expenditure baseline calculation.* The use of an expenditure baseline (e.g., current water bills) potentially has the effect of causing early regulations to be considered affordable, whereas later, if the affordability threshold is exceeded, even regulations with trivial costs could be found unaffordable to small systems. The SAB recommended eliminating the expenditure baseline from the formula and evaluating the affordability of each set of regulations incrementally (i.e., where the cost of each new rule is compared to a percentage of household income). EPA notes that in practice, this has not been an issue, as the expenditure margin calculated using 2.5 percent of MHI has widened, not narrowed, over time.

3. Source Water and Regional Disparities

a. *Ground water versus surface water.* The SAB noted that a significant number of (typically) small rural communities have historically relied on ground water as their source of supply with little or no treatment. For these communities to comply with new drinking water regulations, they may incur costs of establishing a Awhole treatment system@ rather than simply adding onto an existing system. While this may be more likely for groundwater systems, the SAB noted that some surface water supplies also require little treatment. The SAB also noted that there is great variation in treatment costs for both surface water and ground water systems. Therefore, the SAB recommended that the affordability methodology not differentiate between ground water and surface water systems.

b. *Regional versus national basis.* The SAB discussed making determinations on a regional or even local basis as well as adding an urban/rural distinction. The SAB stated that "regional income measures and expenditure baselines would capture affordability relative to the resources available in a community more accurately than the national values; however, a national affordability threshold is necessary to implement the fairness goal."

4. Financial Assistance

Funding is available to assist small systems through the Drinking Water State Revolving Loan Fund and the Rural Utilities Service of the U.S. Department of Agriculture. However, it is not available to all systems because affordability is only one criterion used in awarding this type of assistance. The SAB stated that since this funding is only available to some systems, it should not affect the national-level affordability determination.

B. The National Drinking Water Advisory Council's Recommendations on Affordability Criteria

One of the formal means by which EPA works with its stakeholders is the National Drinking Water Advisory Council. The NDWAC, comprised of members of the general public, State and local agencies, and private groups concerned with safe drinking water, advises the EPA on everything that the Agency does relating to drinking water. To assist in this process, the NDWAC forms work groups of experts to perform assessments of specific drinking water issues. The work groups prepare reports and recommendations that the NDWAC considers when making its recommendations to EPA.

The NDWAC Affordability Work Group met five times between September 2002 and January 2003. The NDWAC Work Group was comprised of 18 individuals representing an array of backgrounds and perspectives. Collectively, these individuals brought into the discussion the perspectives of State, local, and tribal governments, environmental and consumer groups, drinking water utilities, small system advocates, technical assistance providers, and academia.

The NDWAC Work Group was specifically asked—based on six charge questions posed by EPA—to provide advice on EPA's national-level affordability methodology, the process used to derive the methodology, and EPA's approach to applying this methodology to NPDWRs. The six questions were as follows:

1. Should MHI or another income measure (such as per capita income) be used for the income level?

2. Should 2.5 percent or another percentage be used as the income percentage for determining the maximum affordable water bill, and what is the basis for an alternative selection?

3. How should the expenditure baseline be adjusted to account for new rules?

4. Should separate affordability criteria be developed for surface and ground water systems?

5. Should financial assistance be incorporated in the calculations of the expenditure baseline?

6. Should regional affordability criteria be developed, given current data limitations?

The NDWAC's findings and recommendations on these topics were published in the report *Recommendations of the National Drinking Water Advisory Council to U.S. EPA on Its National Small Systems Affordability Criteria* (NDWAC, 2003) and can be found in the EPA Docket. The discussion in today's notice summarizes the key findings with respect to the six general areas noted earlier.

1. Should MHI or Another Income Measure (Such as Per Capita Income) Be Used for the Income Level?

The NDWAC found that since the MHI is clearly defined and available for all regions of the nation, it was the most appropriate income metric to use for this purpose at the time of the report. The NDWAC members noted that a better metric may be found in the future.

2. Should 2.5 Percent or Another Percentage Be Used as the Income Percentage for Determining the Maximum Affordable Water Bill, and What Is the Basis for an Alternative Selection?

The NDWAC recommended that EPA replace its current approach with an incremental approach where the cost of each new rule is compared to a percentage of household income (*e.g.*, one percent) because it "is theoretically sounder, is simpler to administer, and has greater transparency than the current EPA method." The NDWAC observed that the incremental approach permits EPA to assess each new rule independently of the cumulative costs of preceding regulations. While this recommendation does not involve calculating a maximum water bill, the NDWAC did recommend that the incremental affordability threshold be set at a fixed percent of MHI.

The NDWAC stated that the incremental percentage of MHI could be based on an analysis of willingness to pay measures (comparable expenditures as a percent of MHI), defensive expenditures (i.e., bottled water or point-of-use/filter devices), or other considerations related to household affordability such as a "doubling of current water bills." The NDWAC did not believe that an affordability threshold should be greater than twice the amount of current household water bills. The NDWAC stated that national data indicated the average water bill for households amounted to 0.5–0.6 percent of MHI. In addition, NDWAC stated that one percent of MHI was approximately equal to 1.5 times the cost of point-of-use technologies used to treat water. Based on these observations, the NDWAC recommended that EPA use one percent of MHI as the incremental affordability threshold.

3. How Should the Expenditure Baseline Be Adjusted To Account for New Rules?

The NDWAC recommended an incremental approach that eliminates the need for establishing or updating an expenditure baseline.

4. Should Separate Affordability Criteria Be Developed for Surface and Ground Water Systems?

The NDWAC recommended that EPA use the same criteria for surface water and ground water systems. The NDWAC Work Group observed not only minimal cost differences between surface and ground water systems, but also that treatment costs vary widely for both types of systems.

5. Should Financial Assistance Be Incorporated in the Calculations of the Expenditure Baseline?

The NDWAC recommended an incremental approach that eliminates the need for establishing or updating an expenditure baseline. However, if EPA retains its present approach to making the national affordability determination, the NDWAC recommended incorporating financial assistance into the calculations if the financial support is generally available to all systems nationwide. The NDWAC further recommended that States consider the availability of financial assistance in their analysis and calculations when determining whether a variance should be granted to a particular system, regardless of EPA's approach to making the national affordability determination.

6. Should Regional Affordability Criteria Be Developed, Given Current Data Limitations?

The NDWAC recommended that EPA establish differential regional affordability criteria when sufficient supporting data are available. In particular, the NDWAC recommended that EPA separate the MHI into rural and urban categories to more accurately reflect actual ability and willingness to pay.

7. NDWAC Perspective

The NDWAC adopted the Work Group report with minor modifications to some of the Work Group's recommendations, and provided additional recommendations and perspective on affordability issues associated with small public water systems. These are summarized below. The recommendations of the NDWAC Work Group were made in the context of the SDWA requirement to make affordability-based variances available to small systems when the statutory criteria are satisfied. However, the NDWAC did not believe that this is generally the best approach for addressing affordability issues at small systems. The NDWAC stated specifically that "significant practical, logistical, and ethical issues mitigate against the use of variances."

The NDWAC noted that the regulatory burden associated with the procedures for obtaining a variance (40 CFR part 142, subpart K) may be substantial to both small drinking water systems and primacy (primacy enforcement) agencies. Furthermore, the NDWAC found that "the potential acceptance of lower water quality for disadvantaged communities is ethically troublesome."

The NDWAC believes that alternatives to the variance process, including cooperative strategies (*e.g.*, State leadership to promote consolidation or other types of cooperation among small systems), and targeted use of funding to disadvantaged water systems (*e.g.*, supporting individual households with a Low-Income Water Assistance Program funded through Congressional appropriation) are more appropriate means to address affordability issues associated with small public water systems that cannot afford to comply with a NPDWR.

8. NDWAC Work Group—Minority View

Through its representative on the Work Group, the National Rural Water Association (NRWA) filed a minority report indicating disagreement with the recommendations of the majority of the Work Group members. The minority report is entitled *Small and Rural Community Affordability Consensus Report* and is included as an appendix to the NDWAC Report. The NRWA Report identifies three issues on which it dissents from the NDWAC recommendations.

First, the NRWA Report states that the NDWAC Work Group recommended affordability level is "clearly unaffordable for millions of low-income families and many communities by any reasonable definition of affordable." The NRWA Report also identifies a problem with the use of median household income (MHI) as a metric for determining affordability, noting that, "The fact that a certain level of expenditure is affordable to the median income household in a community tells us very little about the ability of the low-income households in the community to afford the same levels of expenditure." To address these concerns, the NRWA suggested an alternative "Safe and Affordable Variance Approach" under which EPA would list variance technologies for each applicable rule, and States would decide on a case by case basis if a variance technology is appropriate. Under this approach, all NPDWRs would be found potentially "unaffordable" at the national level, and it would be up to States to determine

which small systems actually could not afford to comply and thus were eligible for a variance.

Second, NRWA found that the NDWAC Work Group recommendations do not "provide a reasonable and workable small systems variance technology program as mandated in the SDWA." NRWA expressed concern that the NDWAC Work Group's recommended affordability level was designed to avoid requiring EPA "to determine a variance technology policy, which incidentally is the Congressionally prescribed solution to unaffordable EPA rules."

Finally, the NRWA identified concerns with the NDWAC recommendations regarding consolidation, USDA Program Initiatives, low-income water assistance programs (LIWAP) and other potential federal initiatives. NRWA found these to be "steps in the wrong direction for assisting small and low-income communities to comply with rules because each recommendation shares a common theme of eroding local government authority, control and protection."

In developing the proposed revisions to its national affordability methodology, EPA has carefully considered the recommendations of both the NDWAC majority report, and the NRWA minority report.

C. Key Factors Considered in Developing Affordability Methodology Options

Based on the recommendations of the SAB, the NDWAC and the NRWA, the Agency identified three key factors that it considered in developing revisions to its affordability methodology: Variability in household costs of water treatment, variability in small system ability to pay, and the need for improved implementation at the Federal level of the small system variance provisions of the SDWA. This section discusses these issues.

1. Variability in Household Costs of Water Treatment

Within and among the approximate 50,000 small systems in the U.S., there are a number of factors that affect the household cost of a given technology. Among these, the SDWA requires the Agency to consider two: population served and source water quality.

a. *Population served.* EPA currently selects the median sized system as representative of the costs within a system size category and estimates the household costs for each of the technologies that can achieve compliance with the primary drinking water standard. In general, total costs for installation, operation, and maintenance of treatment units are greater for systems that serve large populations than for systems that serve small populations. However, on a per household basis, the opposite is true. Because of fixed costs and substantial economies of scale, the per household costs of treatment are higher for small water systems (especially very small systems serving less than 500 people) than for large regional systems. It was this concern that led Congress to include the affordability-based small system variance provisions in the 1996 SDWA amendments.

Table III–1 demonstrates the increasing per household cost for compliance as system size decreases by presenting the average household costs for compliance among system size categories for recently promulgated or proposed drinking water standards. In addition to economies of scale, average household costs presented in Table III–1 are also affected by larger systems being more likely to have multiple sources of water, not all of which will have source water concentrations of a contaminant that require treatment.

TABLE III–1.—COMPARISON OF AVERAGE COSTS [1] PER HOUSEHOLD BY SYSTEM SIZE FOR THREE RECENT RULEMAKINGS

System size	Arsenic [2]	Radon [3]	Stage 1 DBPR [4]
25–100	$327	$270	$177
101–500	163	99	123
501–1,000	71	27	84
1,001–3,300	58	27	55
3,301–10,000	38	17	27
10,001–50,000	32	12	14
50,001–100,000	25	12	8
100,001–1 million	21	10	7
>1 million	1	10	6

[1] Costs are an average of the treatment costs for all systems installing treatment in the size category. The majority of these systems do not need significant removal of the contaminant, since they are just above the MCL.

[2] Costs are based on Exhibit 6–17 in the *Arsenic in Drinking Water Rule Economic Analysis* (EPA 815–R–00–026) and can be found in the Docket.

[3] Costs are presented for compliance with the proposed Radon MCL of 300 pCi/L and are taken from Table XIII.11 of the Proposed Radon Rule preamble (64 FR 59246–59378) and can be found in the Docket. The costs presented do not reflect the proposed AMCL in combination with a multi-media mitigation plan.

[4] The Stage 1 DBPR economic analyses does not present an average of household costs across influent and treatment conditions as was done in arsenic and radon. The values listed are a weighted average from tables F–1 through F–4 in Appendix F of the November 1998 *Regulatory Impact Analysis of Final Disinfectant/Disinfection By-Products Regulations* (EPA 815–B–98–002) and can be found in the Docket.

As the table shows, there is significant variability in per household costs, even within the statutory system size categories, particularly within the smallest size category. For example, for the arsenic rule, the average per household cost for systems serving <101 persons was roughly double that for systems serving 101–500 persons, while for the proposed radon rule, it was roughly triple. For the Stage 1 DBP rule, the average per household cost for systems serving <101 persons was roughly 50 percent higher than that for systems serving 101–500 persons. These figures suggest that the per household costs for the median sized system within a statutory size category may not be the best proxy for per household costs within the category generally, particularly for the smallest size category.

b. *Source water quality.* The type of treatment a system must install and the treatment costs are also affected by the quality of the source water, including the concentration of the contaminant to be removed, the pH of the source water, and the presence of other dissolved or suspended solids. The concentration of the contaminants may affect the size of the treatment units, the amount of treatment chemicals that must be used,

or the amount of residual to be disposed of—all of which affect the cost to install, operate, and maintain the treatment units. Source water quality parameters such as pH or the presence of dissolved solids can make some treatment technologies ineffective, requiring a system to select a different technology or to install and operate a pretreatment system that removes or adjusts these parameters so that the treatment to remove the contaminant will be effective. Source water varies significantly among public water systems. It is affected by the source water type (ground water or surface water) and the conditions in the watershed or aquifer from which it is drawn.

Population served and source water quality are perhaps the most significant factors that affect the household cost of technologies. Therefore, it is appropriate that the SDWA requires the Agency to consider these factors in its evaluation of the affordability of new drinking water rules. The national affordability methodology should address the variability in these factors, such that a reasonable range of potential household costs are considered by the Agency in its national affordability determination.

2. Variability in the Ability of Small Systems To Pay for Treatment

Under the approaches EPA is currently considering for revising the national affordability methodology, EPA would continue to use an income threshold (i.e., a fixed percentage of household income) as a screen to make general findings of unaffordability. The affordability threshold has two components: the income percentile and the income percentage. The income percentile is the value selected from the distribution of household incomes. It can be based either on the distribution of individual incomes, or on the distribution of system-level median incomes. The income percentage is the percentage by which the selected income level is multiplied to determine the affordable level of per household treatment costs. For example, EPA's current threshold is 2.5 percent of the MHI for the median system in a given size category (currently $44,544 for the smallest size category). In this example, the income percentile is 50 percent and it is based on the distribution of system-level median incomes. The income percentage is 2.5 percent ($1,114, or $44,544 times 2.5 percent).

EPA views the affordability determination to be made under SDWA Section 1412(b)(4)(E) as a general screen to determine the likelihood that a significant number of systems may find a regulation unaffordable. Congress left to the primacy (primacy enforcement) agencies (usually the States) the task of determining which particular small systems cannot afford compliance technologies once EPA determines that affordability may be an issue for a particular regulation. The Agency established household income as the basic measure to determine affordability for the current methodology. If the households served by a system do not have income available to pay for increased water bills, then the modifications to the system are unaffordable. Because systems ultimately pass additional water treatment costs on to customers, EPA believes that household income remains the appropriate basis for determining affordability.

EPA believes that system-level MHI is the most appropriate income metric for determining water system affordability because it meets several reasonable criteria for a national-level affordability methodology. First, MHI data are available nation-wide. Second, the calculation of system-level MHI is simple (it is based on readily available Census data on household income), and finally, the metric can be easily understood. Consequently, it provides a consistent income-based metric for determining affordability or "ability to pay" for new drinking water regulations. Additionally, the NDWAC supported the use of system-level MHI as the metric for determining small water system affordability.

EPA used system-level MHI as the basis for its original affordability threshold for several reasons. EPA stated that the approach was based on the assumption that affordability to the median household served by a system can serve as an adequate measure of the affordability of technologies to the system as a whole. EPA does not believe that the economic circumstances of the poorest households within a system should drive its national level affordability methodology. Communities have other mechanisms (e.g., financial assistance, rate structures) for addressing inequalities within a community.

EPA chose the median system-level MHI for its original affordability methodology, based on income data from the 1995 CWSS. EPA reasoned that the median is a measure of central tendency and would thus be appropriate for a national level affordability screen because it reflects the characteristics of "typical" systems rather than those at the low end of the income distribution. However, one limitation of basing the national level affordability determination on the median system is that there may be a significant number of systems below the median that might find a regulation unaffordable even when it is affordable to the median system. As a practical matter, this concern can be addressed in two equivalent ways, basing the threshold on a lower MHI percentile (e.g., 25th or 10th percentile, as was suggested by the SAB), or basing it on a lower percentage of the median MHI. The revised approaches that EPA is considering would retain the median MHI and consider lower percentages (rather than using a lower percentile of MHI) because EPA believes this method is more transparent and better supported by existing data. However, EPA wishes to emphasize that looking at lower percentages is to some extent a proxy for looking at lower percentiles. In other words, if EPA were to ultimately select a threshold of, say, 0.5 percent of MHI (one of the options presented below), this is partially in recognition of the fact that that particular income level ($220 for the 25–500 system size category) represents a significantly higher percentage of income for systems at the low end of the income distribution, and it is exactly these systems that are most likely to find a new regulation unaffordable and may thus need a small system variance.

In examining the distribution of system-level income across a size category, another argument in favor of applying a lower income percentage to the median system, as opposed to applying a higher percentage to a significantly below-median system (as ranked by its MHI) is the shape of the distribution of system-level MHIs. Toward the lower end of the range, especially at around the 10th percentile system, the income figures tend to drop off sharply. This implies that relatively slight data inaccuracies could have relatively large impacts on estimated income levels. Given the inherent difficulties of measuring income, EPA believes the median system provides a more reliable basis for its national affordability methodology than a system at the low end of the income distribution (e.g., 10th percentile). This is not to suggest that EPA is not concerned about affordability for these systems. On the contrary, it is exactly these systems that are most likely to have affordability issues. But EPA believes that these can be better addressed by choosing a lower income percentage and applying it to the median system MHI.

As previously stated, EPA established the current threshold at 2.5 percent of median system MHI. However, that

income percentage was applied to a cumulative approach. As recommended by both the SAB and NDWAC, EPA is considering revisions that would drop the expenditure baseline and move to an incremental approach. This means that the total cost of water (including current costs) could be significantly higher than whatever affordability threshold EPA selects, because the threshold is compared only to the incremental cost of complying with the regulation. In addition, as water systems are subject to future regulations, they could potentially be required to undergo expenditures up to the affordability threshold multiple times. The current methodology has also never triggered a finding that a regulation was unaffordable, while the evidence suggests that there may in fact be significant numbers of systems that have struggled with compliance costs for some recent regulations. For all of these reasons, the options EPA is considering for revising its affordability methodology are based on a range of income percentages significantly below the current 2.5% threshold.

3. Need for Improved Implementation at the Federal Level of the Small System Variance Provisions of the SDWA

As previously stated, SDWA section 1415(e) authorizes a primacy (primacy enforcement) agency to grant small systems a variance from compliance with an MCL or treatment technique for a NPDWR *only* if EPA has determined that there are no affordable compliance technologies for small systems and EPA has identified affordable variance technologies that are protective of public health. To date, EPA has found no NPDWRs (either existing or new) unaffordable using the current methodology. However, the SAB and various stakeholders have suggested, and EPA recognizes, that some small systems have legitimate affordability concerns regarding compliance with some of these regulations.

EPA recognizes that its current approach has not allowed small system variances to be included among the options that States and systems consider as they struggle to address small system affordability issues. EPA is therefore considering revisions that would make a national level determination of unaffordability significantly more likely, thus triggering the listing of affordable variance technologies that are protective of public health. This will in turn give primacy states which choose to include small system variance provisions in their drinking water programs the option to evaluate small system variance applicants on a case-by-case basis and to authorize adoption of affordable alternatives to compliance technologies that provide some measure of regulatory relief while still protecting public health.

D. Affordability Methodology Options

Based on the SAB and NDWAC recommendations, the Agency is considering several options under which the incremental increase in household water costs that is expected to occur as a result of the system installing, operating, and maintaining a treatment technology required to comply with a NPDWR would be compared to an affordability threshold based on a percentage of household income. In evaluating different household cost and affordability threshold options, EPA considered the three key factors discussed in section III.C (i.e., variability in the household costs of water treatment, variability in the ability of small systems to pay for treatment, and the need for improved implementation at the Federal level of the small system variance provisions of the SDWA). This section discusses the household cost and affordability threshold options EPA is seeking comment on as a result of this process, and discusses EPA's interpretation of affordability for both compliance and variance technologies.

1. Calculating Household Costs

There are two issues concerning the calculation of household costs on which EPA is requesting comment: (1) Should only incremental costs (i.e., those of complying with the new regulation) be considered, or the total (i.e., cumulative) cost of water to consumers after the new treatment technology is installed, and (2) should costs be evaluated for the 10th percentile or the 50th percentile sized system within a given small system size category. The following discusses each of these issues in turn.

EPA is considering using incremental costs of compliance with the new regulation only, rather than the cumulative costs of providing water, as the basis for its affordability determination. This is a change from the Agency's current approach which adds incremental costs to an expenditure baseline to determine affordability. An incremental approach would not calculate or consider current household water bills, nor would it provide a ceiling on the total increase in household costs due to the cumulative effects of different NPDWRs.

The Agency believes the incremental approach is a better approach than the current cumulative approach for several reasons. First, the incremental approach focuses directly on the regulation for which affordability is being evaluated. The cumulative approach, in contrast, considers not just the cost of treatment to comply with the new standard but also takes into account costs for existing water system improvements, which may involve treatment for odor control, taste, or other items not regulated under NPDWRs, as well as costs for distributing and storing water. These costs may not be relevant for determining whether a system can afford to comply with NPDWRs. In addition, the cumulative approach could have the effect of making new rules with similar system costs affordable in the near-term, but not in the future, as cumulative costs increase. Additionally, an incremental approach is consistent with SAB and NDWAC recommendations. An incremental approach may also be more transparent than the cumulative approach because it deals with fewer variables and calculations in that it only considers the costs of the regulation in question. EPA requests comment on moving to an incremental approach for calculating household costs.

Under its current national affordability methodology, EPA estimates household costs for small systems by estimating each technology's per household cost for the 50th percentile (median) system size in each size category. This approach assumes that affordability to the median sized system within a small system size category can serve as an adequate measure for the affordability of technologies to systems within the size category as a whole. However, household costs for systems at the low end of a system size category are likely to be significantly higher than costs for the median-sized system. This is particularly true for the smallest system size category (serving 25 to 500 people). Thus, even if a NPDWR is affordable to the median sized system within this size category, there may be a significant number of systems at the low end of this category (i.e., serving less than 100 people) for which compliance with the standard would not be affordable.

To address this concern, EPA is considering basing its affordability determination on the incremental per household costs for the 10th percentile system size in each system size category rather than the median. This approach recognizes that smaller systems do not enjoy the same economies of scale and have a smaller customer base over which to spread fixed costs of providing water. In general, household costs would most likely be significantly greater for the 10th percentile than for

the 50th percentile sized system in a system size category due to this lack of economies of scale.

For the current methodology, the Agency determined the 50th percentile system size by compiling the population sizes for all systems in a given size category and finding the system where half of the systems serve fewer individuals. For today's notice, EPA used the same method to determine the 10th percentile system size (i.e., finding the system where 10 percent of the systems serve fewer individuals).

Table III–2 provides an example of household costs for the 10th and the 50th percentile size systems within each of the small system size categories. This example demonstrates that the greatest difference in household costs are typically found in the 25–500 size category, as the estimated household cost for the 10th percentile size system is more than double that for the 50th percentile (median) size system. It is this smallest system size category where there is most likely to be an affordability concern.

TABLE III.–2—COMPARISON OF ANNUAL PER HOUSEHOLD COSTS OF ION EXCHANGE TREATMENT

System size	10th Percentile sized system		50th Percentile sized system	
	Population size	Treatment costs	Population size	Treatment costs
25–500	40	$540	120	$200
501–3,300	600	72	1,195	54
3,301–10,000	3,609	40	5,325	35

Note: Costs are based on cost curve equations in the document *Technologies and Costs for Removal of Arsenic from Drinking Water* (EPA–815–R–00–028). System sizes are determined from SDWISFED January 2004.

EPA requests comment on whether it should continue to base affordability determinations on the median system within a size category, or should move to an approach based on costs to the 10th percentile size system.

Section 1412(b)(15)(A) of SDWA requires the Administrator to list affordable variance technologies "considering the size of the system and the quality of the source water." Under the current methodology, EPA estimates household costs for small systems within a size category under a range of scenarios that represent the range of expected source water conditions that these systems are likely to encounter. Thus, the Agency might find a new regulation affordable for systems with a particular source water quality, but not for systems in the same size category with a different source water quality. The Agency plans to continue to evaluate household costs in the same manner. This involves estimating the range of expected levels of a contaminant that may be present in the source water based on available data, as well as considering other source water parameters likely to affect the efficiency of identified treatment technologies, and estimating incremental per household costs separately for each relevant source water quality. If a new regulation is found unaffordable only for some subset of systems within a size category, based on poor source water quality, only those systems with comparably poor source water quality, and for which the regulation may thus be unaffordable, would be eligible to apply for small system variances. EPA requests comment on continuing to evaluate source water quality in this manner.

2. Affordability Determination Options

EPA is requesting comment on two distinct approaches for determining affordability. Both approaches would start by determining whether the incremental household cost of treatment to meet a new regulation exceeds an increment based threshold. Under the first approach, this would be the sole criterion for determining affordability. Under the second approach, if EPA were to find the compliance technology affordable at the national level, we would then take the additional step of identifying counties that are economically at-risk, and list affordable variance technologies for small systems in these counties. These systems could then apply to their primacy agency for a variance. In other words, EPA would determine that any regulation is potentially unaffordable for small systems in these economically at-risk counties, and leave it to the primacy agency to evaluate affordability individually for systems applying for a variance, as they are required to do under the SDWA for all small system variance requests if the State includes such variances in its drinking water program. EPA requests comment on which of these two approaches to adopt.

EPA further requests comment as to what the most appropriate national affordability threshold is and what system size should be used to calculate costs (i.e., 10th or 50th percentile) for each of the three population size categories defined in SDWA (i.e., 25–500, 501–3,300, and 3,301–10,000).

Specifically, EPA requests comment on three affordability thresholds: 0.25 percent, 0.50 percent, and 0.75 percent of the median MHI for small systems in a particular small system size category. The thresholds represent an approximate one third, two thirds, and 100 percent increase in a current median water bills though for any individual system these percent increases might be greater or smaller. EPA also requests comment on comparing the selected threshold with household treatment costs for either the 10th percentile or 50th percentile system size in each of the three population size categories.

Table III–3 presents the three thresholds as a percentage of the median incomes among small systems, the current dollar amount for each threshold for a given size category, and the current median, 10th percentile and 90th percentile water bills for each system size category. While the options under consideration are based on an incremental approach, commenters can see from the table what the 10th percentile, median, and 90th percentile projected total cost of water would need to be both before and after a regulation for compliance technologies to be considered unaffordable at a national level. For example, if the 0.5 percent threshold option were selected, compliance technologies would be considered unaffordable if they raised the median water bill for a system in the smallest size category from about $300 to about $520 per year. This would also have the effect of raising the 10th percentile water bill (i.e., a system with low baseline costs) from about $105 to about $325 per year, and of raising the 90th percentile water bill (i.e., a system with high baseline costs) from about $580 to about $800 per year. It should be noted that over time, the total baseline cost of water would rise as new

regulations are added, but under the incremental approach being considered today, the affordability threshold would not be adjusted to compensate for this rise, as it is under the current expenditure baseline approach.

TABLE III–3.—AFFORDABILITY THRESHOLD OPTIONS

Income threshold	Current dollar value (median system MHI [1])		
	25–500 ($44,544)	501–3,300 ($40,872)	3,301–10,000 ($42,459)
Threshold [2,3] = 0.25% MHI	$110	$100	$110
Threshold [2,3] = 0.50% MHI	$220	$200	$210
Threshold [2,3] = 0.75% MHI	$330	$310	$320
Current Median Water Bill	$299	$294	$285
Current 10th Percentile Water Bill	$106	$176	$151
Number of Systems <10th Percentile [4]	3,013	1,426	466
Current 90th Percentile Water Bill	$576	$492	$488
Number of Systems >90th Percentile [4]	3,013	1,426	466
Total Number of Systems [4]	30,1323	14,263	4,661

[1] Based on 2000 U.S. Census figures adjusted to 2004 using national trends and then to September 2005 using the Consumer Price Index.
[2] Percentage of the median value (50th percentile) of a distribution of system-level median household incomes.
[3] Threshold calculations are adjusted to two significant figures.
[4] Total number of systems in each size category based on January 2004 SDWIS/FED.

The second approach is based upon analysis presented in two papers prepared by Scott Rubin (Rubin, 2001 and Rubin, 2002). Under this approach, EPA would use a two-part test to screen at first the national level and then the county level for systems that cannot afford compliance.

The national-level screen would work the same way as under the first approach, except that because of the additional screen for at-risk counties, EPA might choose a higher percentage of median system MHI for the national screen than it would under the first approach.

Should the national-level screen find that the compliance treatment costs are affordable for some or all small systems, the Agency would proceed to a county level screen to identify economically at-risk counties, in which States could still grant variances.

For any small drinking water system in counties deemed to be at-risk in this second part of the affordability test, compliance technologies would be considered potentially unaffordable, regardless of EPA's national per household cost estimates, and it would be up to the primacy agency to grant variances where appropriate based on a system specific analysis of affordability. That is, States would be enabled to determine, based on the criteria in SDWA section 1415(e), whether to grant small system variances to small systems in those at-risk counties.

EPA is requesting comment on three socioeconomic triggers for the county-level screen: (1) MHI less than or equal to 65 percent of the national MHI, (2) U.S. Census Bureau-defined poverty rate at least twice the national average, or (3) two-year average unemployment rate at least twice the two-year national average.

Under this option, triggering any one of these measures would be sufficient to trigger a finding of unaffordability for small systems within the county. Therefore, this methodology allows for regional socioeconomic conditions to supplement the national-level affordability determination. Table III–4 shows how many counties and small systems would be eligible for variances under this county-level screen.

TABLE III–4.—THE NUMBER OF COUNTIES, SMALL DRINKING WATER SYSTEMS, AND THE POPULATION SERVED THAT WOULD BE ELIGIBLE FOR SMALL SYSTEM VARIANCES UNDER THE COUNTY-LEVEL SCREEN

Criterion	Number of counties [1]	Percent all counties	Number of small systems [2]	Percent all small systems	Population served	Percent of national population [3]
MHI ≤0.65 National MHI	356	11.3	3,485	7.3	4,372,677	1.5
Poverty Rate ≥Twice National Average	81	2.6	532	1.1	950,205	0.3
Two-year Unemployment Rate ≥Twice National Average	80	2.5	920	1.9	1,391,226	0.5
One or more of the Above	410	13.1	4,249	8.8	5,485,158	1.9

[1] Based on 3,140 total counties in the U.S.
[2] There are 48,025 small drinking water systems in SDWIS that could be linked to counties.
[3] Based on July 1, 2004 U.S. Census, the national population was 293,655,404.

EPA requests comment on this approach to a county-level affordability screen, and on the specific criteria listed above for identifying economically at-risk counties.

3. Identification of Affordable Variance Technologies

As previously stated, SDWA section 1415(e) authorizes a primacy (primacy enforcement) agency to grant small systems a variance from compliance with an MCL or treatment technique for a NPDWR only if EPA has determined that there are no affordable compliance technologies for small systems and EPA has identified affordable variance technologies that are protective of public health.

Under the current methodology, EPA uses the same threshold to determine affordability for both compliance and variance technologies. While this seems sensible on its face, it can lead to a situation where no compliance technologies are found to be affordable, but there are no variance technologies that are found to be affordable either. As a result, EPA would not list any variance technologies and primacy agencies (in most cases the States) would be unable to grant small system variances under section 1415(e). This could occur even if there were candidate variance technologies that were both cheaper than the compliance technologies and protective of public health, if these cheaper technologies still exceeded a predetermined affordability threshold. Not listing "affordable" variance technologies in this case would be inconsistent with Congressional intent that States be provided the authority to grant variances which allow small systems that cannot afford to comply fully with NPDWRs to instead adopt alternative protective but less expensive technologies where such technologies are available.

EPA is thus considering an alternate approach to determining affordability for variance technologies in situations where there is no candidate variance technology that falls below the affordability threshold. Under this approach, EPA would consider variance technologies "affordable" if they are cheaper than the least expensive compliance technology and still protective of public health. Of course, the Agency's first choice would still be to list variance technologies whose costs fall below the affordability threshold if such technologies are available and protective of public health. As an example, suppose the affordability threshold were set such that it equated to an incremental per household cost of $200 per household per year, and suppose further that the cheapest compliance technology for a particular size category cost $300 per household per year. If there were a candidate variance technology that cost less than $200 per household per year and were protective of public health, EPA would list this technology. But if there were no such technology, and EPA identified a candidate variance technology costing $250 per household per year (and it was protective of public health), EPA would list this as an affordable variance technology even though its costs exceed the affordability threshold of $200 per household per year (in this example). Under this approach, EPA would interpret "affordability" of variance technologies under section 1412(b)(15) as not being limited by the affordability threshold (i.e., 0.25 percent, 0.50 percent, or 0.75 percent of median system MHI) under section 1412(b)(4)(E). Rather, in cases where no variance technology had costs below the affordability threshold, EPA would interpret "affordable" for purposes of listing variance technologies as meaning any technology that is less costly than the corresponding compliance technologies and that is protective of public health.

EPA requests comment on this approach to determining affordability for variance technologies.

EPA reiterates that its national level affordability methodology is only a screen to make general findings of unaffordability, in accordance with SDWA section 1412(b)(4)(E), not a definitive finding of whether the application of a technology at a particular small system will be affordable. If EPA determines that compliance technologies are not affordable for small systems in one or more categories, then, under section 1412(b)(15), EPA must identify variance technologies that are affordable and protective of public health. Congress left to the primacy (primacy enforcement) agencies (usually the States) the task of granting small system variances on a case-by-case basis to those small systems included in any size/water quality category for which EPA has determined that compliance technologies are generally "unaffordable." States may utilize EPA's methodology or develop a different methodology for evaluating the affordability of compliance technologies for individual systems. Only if the primacy agency finds that compliance is unaffordable for a specific system, using its chosen affordability methodology, is it authorized under SDWA to grant a small system variance, and as a condition of that variance, the system must install, operate and maintain an alternative variance technology from among the list identified by EPA at the time the regulation was promulgated. Further, the system must operate the variance technology in a way that both EPA (at the national level) and the primacy agency (at the system specific level) determine to be protective of public health. EPA's methodology for determining protectiveness of public health is discussed in Section IV below.

EPA believes that interpreting "affordable" to mean something different for compliance and for variance technologies is a reasonable way to implement these provisions in a manner consistent with Congressional intent. First, while Congress provided the same phrase "affordable, as determined by the Administrator in consultation with the States" in both sections of the statute, Congress did not cross-reference the two provisions and expressly left the definition of "affordable" to EPA (in consultation with States). As a result, EPA believes there is flexibility to interpret the terms differently based on the different purposes of these provisions. As noted above, the purpose of the "affordable" finding in section 1412(b)(4)(E) is to serve as a general screen to determine when, as a class, compliance technologies may not be affordable for entire categories of small systems. In contrast, the purpose of the "affordable" finding in section 1412(b)(15) is to list for States those technologies that are generally protective of public health even though the technology would not achieve full compliance with NPDWRs and that would provide some relief for small systems for which compliance technology are not affordable. States must make a site-specific finding of protectiveness and affordability prior to granting a small system variance and it is appropriate for them to have protective technologies available to choose from in order to select the most appropriate for each system. Finally, to interpret the statute in a way that makes variances unavailable when there are no affordable compliance technologies defeats the Congressional purpose in setting up small system variances.

If this approach is adopted, and depending on the threshold selected, the actual cost of a variance technology could be greater than the affordability threshold. The lower the affordability threshold chosen, the more likely this result would be.

IV. Protective of Public Health Methodology

This section presents EPA's approach for determining if an affordable variance technology is protective of public health. As background, this section also discusses how EPA considers public health in establishing drinking water standards.

A. How Does EPA Consider Public Health in Establishing Drinking Water Standards?

The SDWA requires EPA to consider public health impacts of contaminants at several steps in the process for establishing NPDWRs. EPA considers peer-reviewed science and data collected in accordance with accepted methods to support an intensive evaluation of public health impacts of

the contaminant under consideration, which includes factors such as: Occurrence in the environment; human exposure and risks of adverse health effects in the general population and sensitive subpopulations; analytical methods of detection; technical feasibility; and impacts of regulation on water systems, the economy, and public health. However, while the general purpose of SDWA is to protect public health from unacceptable risks that may be posed by contaminants in tap (drinking) water, the criterion in section 1412(b)(15) that variance technologies be "protective of public health" is distinct from the requirements for setting drinking water standards.

1. Setting the Maximum Contaminant Level Goal

The Maximum Contaminant Level Goal (MCLG) is the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MCLGs are non-enforceable public health goals. Since MCLGs consider only public health and not the limits of detection and costs and capabilities of treatment technologies, sometimes they are set at levels which water systems cannot meet using available technologies, or that can not currently be reliably measured.

EPA has traditionally established MCLGs of zero for known or probable human carcinogens based on the default assumption that any exposure to carcinogens might represent some non-zero level of risk. If there is substantial scientific evidence, however, that indicates there is a threshold below which no adverse effect is expected to occur, then a non-zero MCLG can be established with an adequate margin of safety.

For non-carcinogens that can cause adverse noncancer health effects, the MCLG is based on the reference dose (RfD). A reference dose is an estimate (with uncertainty spanning perhaps an order of magnitude) that is likely to be without appreciable risk of deleterious effects during a lifetime. It can be derived from a no-observed adverse effect level, lowest-observed adverse effect level, benchmark dose level (the lowest confidence limit of the dose that will result in a level of "x" percent response), or other suitable point of departure. Uncertainty factors are generally applied to reflect limitations of the data used and ensure an appropriate margin of safety.

The RfD is multiplied by typical adult body weight and divided by daily water consumption. The result is then multiplied by a percentage of the total allowable daily exposure contributed by drinking water to determine the MCLG.

2. Setting the MCL or Treatment Technique

Once the MCLG is determined, EPA sets an enforceable standard. In most cases, the standard is an MCL. When it is not economically and technically feasible to ascertain the level of a contaminant in drinking water, EPA may set a treatment technique rather than an MCL. The MCL is set as close to the MCLG as feasible, which the SDWA defines as the level that may be achieved with the use of the best available technology, treatment techniques, and other means that EPA finds are available taking cost into consideration. The legislative history for this provision makes it clear that "feasibility" is to be defined relative to "what may reasonably be afforded by large metropolitan or regional public water systems." [2] Thus affordability may be considered in establishing the feasible level, but it is affordability to large water systems. As noted above, costs are generally significantly higher on a per household basis for customers of small systems than for customers of large ones. As a result, what is feasible (taking cost into consideration) for large systems may not be feasible (taking costs into consideration) for small ones. To address this situation, in addition to other tools, SDWA requires EPA to determine if affordable small system compliance technologies are available, and when there are none, SDWA requires EPA to identify small system variance technologies.

After determining a feasible level of treatment or treatment technique based on affordable technologies for large systems, EPA prepares a health risk reduction and cost analysis to determine whether the benefits of the feasible level justify the costs. If not, the Administrator may in some cases set the MCL at a less stringent level that "maximizes health risk reduction benefits at a cost that is justified by the benefits." In evaluating the quantified benefits and costs, EPA has found the ratio of benefits to costs is likely to be much greater among large systems than it is among small systems. This is because the per household costs are likely to be significantly higher for customers of small systems than for customers of large ones, while the per household benefits will be about the same for both groups. As a general matter, EPA considers the total cost and benefits for all systems (large and small) as the principal factor when determining whether or not benefits of a proposed NPDWR justify its costs.[3] Because this analysis will generally be dominated by the costs and benefits for large systems, it can mask a situation where benefits justify costs for large systems but would not justify the significantly higher costs for small systems.

This is not to suggest that the costs and benefits at small systems can never influence NPDWRs. In fact, small system impacts were a factor in the Agency's determination to utilize this SDWA authority to establish the MCLs for arsenic and uranium at levels less stringent than the feasible levels. However, use of this authority will not ensure that a drinking water standard is affordable to small systems; therefore Congress provided the small system variance provisions as a mechanism for EPA to recognize in the standard setting process the different economic situations of large and small systems.

3. Determining that Variance Technologies are Protective of Public Health

As discussed in the previous section, EPA sets drinking water standards based on what is affordable for large systems. In 1996, Congress amended the SDWA to address affordability issues for small systems. Rather than change the Congressional mandate by which EPA establishes drinking water standards (i.e., as close to the MCLG as is "feasible"), Congress established a new small system variance provision under which States would be able to grant special variances to small systems if (1) EPA makes a finding as part of a new drinking water standard that compliance with the MCL or treatment technique is "unaffordable" for specific groups of small systems and identifies variance technologies that are available, affordable, and "protective of public health," (section 1412(b)(15)), and (2) the State makes a subsequent finding that compliance with the new MCL or treatment technique would be unaffordable for a particular small system applying for a variance and that an alternative variance technology identified by EPA would provide adequate protection of human health when installed by that system (section 1415(e)). Thus, the 1996 amendments established a two-step process for

[2] a Legislative History of the Safe Drinking Water Act, Committee Print, 97th Cong., 2d Sess. (1982) at 550.

[3] The one exception is that, under the SDWA, EPA must exclude systems likely to be granted small system variances from this determination based on information provided by the States.

granting these variances under which EPA would make general findings of unaffordability and protectiveness at a national level, but where the determinative findings of actual unaffordability and protectiveness at a specific water system would be made by the State, after consultation with the affected consumers following the comprehensive public process for variances set out in section 1415(e) and EPA's regulations at 40 CFR part 142, subpart K.

When granted by the State, a small system variance allows a small system that cannot afford to comply with a new drinking standard to install a variance technology that provides treatment which is affordable and protective of human health. SDWA 1412(b)(15)(A) specifically recognizes that the variance technology "* * * may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation * * *," but does require that the variance technology "* * * achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water." Thus, by requiring EPA to establish affordable variance technologies that are protective of public health for systems unable to comply with a new drinking water standard, Congress was clearly intending that EPA consider contaminant levels above the MCL protective of public health for purposes of identifying small system variance technologies.

This interpretation is also consistent with the standard setting process itself, which is designed to identify a feasible MCL or treatment technique that provides an acceptable level of public health protection, consistent with the statutory factors considered, which include cost, but only the cost reasonably affordable to large systems.

As a result of the two-step statutory findings as well as the fact that Congress clearly intended that the "protective of public health" mandate would necessarily encompass situations in which the applicable federal drinking water standard is not met, EPA views the protectiveness finding to be made under SDWA section 1412(b)(15) as a national-level screen, not a definitive finding that a particular technology or contaminant level is adequately protective for a particular public water system and its customers. Instead, Congress left to the primacy agencies (usually States) the task of determining: (1) Which specific small systems, within a class for which EPA has determined that compliance is generally "unaffordable," are truly unable to afford to comply with the standard, and (2) the specific conditions under which the use of a listed variance technology would be protective of public health at a particular system. EPA expects that States would be partially guided by public input from within the affected communities in making these system-specific determinations, particularly the determination regarding the appropriate level of public health protection.

B. Methodology To Identify Affordable Variance Technologies That Are Protective of Public Health

The Agency requests comment on finding a variance technology to be sufficiently protective of public health for purposes of the national-level screen required by SDWA section 1412(b)(15) if the concentration of the target contaminant after treatment by the variance technology is no more than three times the MCL. When evaluating variance technologies for treatment technique standards, EPA similarly requests comment on finding a variance technology sufficiently protective of public health if the Agency determines that the expected concentration of the target contaminant in water treated by the variance technology would not be more than three times greater than the expected concentration of the contaminant if the same source water were treated in accordance with the requirements of the treatment technique. EPA would view this 3x level as a general guideline, which might be modified for a specific contaminant if unusual factors associated with the contaminant or EPA's risk assessment suggested that an alternate level, whether higher or lower, was appropriate. In such cases, EPA would clearly explain its reasons for departing from the 3x guideline in the proposed rule and request public comment on the alternate level.

EPA is required under the SDWA to establish MCLGs based on best available science. Even the best available science is limited and therefore has some degree of uncertainty. For contaminants with non-zero MCLGs, the uncertainty in the estimate of the level of exposure that is likely to represent an appreciable risk may span an order of magnitude (i.e., 10 fold or one log unit) or more. For carcinogens, EPA generally uses a default assumption that sets the MCLG at zero and uses the cancer slope factor (which contains some uncertainty) to inform its MCL decision. In addition, SDWA requires that MCLGs be set at a level at which no adverse effects occur and "which allows an adequate margin of safety." In many cases, the margin of safety may also span an order of magnitude or more in recognition of this uncertainty (as well as other factors). The margin of safety embodied in the MCLG may be explicit, or it may result from the parameter choices used in the risk assessment (e.g., use of 95th percentile upper confidence bound for a dose response function or point of departure). As described in Section IV.A.2 of this notice, SDWA generally requires EPA to set the MCL as close to the MCLG as is feasible. Determining what is feasible involves considerations of treatment technology effectiveness, measurement capabilities, and cost, all of which also involve uncertainty. In SDWA section 1412(b)(15), Congress assumed that some level less stringent than the MCL would still be sufficiently "protective" for small systems for which compliance with the MCL is unaffordable. Therefore, EPA believes that for purposes of determining what is "protective" under this section, it is reasonable to allow variance technologies to be considered by the primacy agency if such technologies achieve removal of a contaminant from drinking water within a span of one log unit (10x) centered on the MCL, which is established through a SDWA mandated procedure designed to identify an acceptable level of risk for drinking water, taking all of the statutory factors into account. Therefore, EPA requests comment upon considering concentrations up to three times the MCL "protective of public health" under SDWA section 1412(b)(15)(B).

EPA believes that for the majority of contaminants, restricting the contaminant level for a variance technology to not more than three times the level that would be produced by a compliance technology would be adequately protective for purposes of enabling States to make a variance decision. While EPA recognizes that consuming water with as much as three times the concentration of a particular contaminant results in greater exposure and may translate to a greater risk of adverse health effects, EPA believes that the small system variance provisions, as directed by Congress, are intended to permit State primacy agencies, small water systems, and their consumers to decide, within a range of levels close to the drinking water standard, the specific conditions upon which they can best assure the safety of their water supply when they are unable to afford compliance.

EPA believes that this methodology for determining if a variance technology is protective of public health is transparent and reproducible. State

officials, water system operators, and water system consumers will be able to readily understand the basis for the national determination and evaluate its applicability to their system specific conditions.

V. State Consultation

SDWA section 1412(b)(15)(A) requires "consultation with the States" by EPA in its determination that variance technologies are available and affordable. EPA has consulted with administrators of State drinking water programs in developing the options for revising the affordability methodology presented in today's notice. The NDWAC Work Group whose recommendations on the affordability methodology are described earlier in this notice included administrators of the drinking water programs from two States. Additionally, on December 5, 2005 EPA consulted with drinking water administrators from seven States regarding the options under consideration for revisions to the methodology for evaluating the affordability of new drinking water standard and determining if variance technologies are protective of public health. State administrators expressed concern that implementation of the revisions described in today's notice would result in a two level standard: one standard for small systems that cannot afford compliance, and another more stringent standard for all other systems. A State administrator noted the risk communication challenge that such a situation would pose.

States expressed concern that reviewing and issuing small system variances for future regulations will place additional demands upon their already limited, and in many cases decreasing, State drinking water program resources. If a State chooses to include small system variances in its drinking water program, SDWA section 1415(e)(3) requires the State to determine that a system on a case by case basis, cannot afford to comply and that the terms of a variance will ensure adequate protection of public health before it may grant a variance. SDWA section 1415(e)(7) requires notification of customers, and a public hearing before granting a variance. States agreed with the conclusion of the NDWAC that alternatives to the variance process, including cooperative strategies (e.g., State leadership to promote cooperation among small systems), and targeted use of funding to disadvantaged water systems (e.g., supporting individual households with a LIWAP funded through Congressional appropriation) are more appropriate means to address affordability issues associated with small public water systems that cannot afford to comply with a NPDWR.

States also believe that EPA should consider NDWAC's recommendation of an incremental affordability threshold of one percent of median household incomes among small systems (approximately $400 per year).

EPA appreciates and has carefully considered the State administrators' concerns. EPA is sensitive to the risk communication challenge posed by different systems effectively having different standards, based on affordability. However, Congress in amending SDWA determined that cost differences between large and small systems may make it appropriate for a small system to operate above the MCL as long as it achieves the maximum reduction that is affordable. Small systems have the greatest treatment costs per household served due to economies of scale. Households that receive water from these systems face the greatest challenge of affording to comply with a drinking water standard. Congress established the small system variances as an answer to this problem; however, the current methodology has never triggered a finding that a regulation was unaffordable. The options being considered by EPA are more likely to trigger such a finding and thus make small system variances available as one option that States and small systems customers may consider. States that choose to implement a small system variance program would make the system-specific determinations on affordability and protectiveness for regulations EPA determines are unaffordable. It is the choice of an individual small system and the community it serves whether to apply for a variance following a comprehensive public process (set out in SDWA section 1415(e)). This process ensures that customers of a small system will be fully informed and have opportunity for input into the decision before a system receives a variance. EPA would not expect a variance application to be successful without significant community support.

EPA is also mindful of the potential strain on State resources of evaluating small system variance applications. EPA notes that States are not required to include small system variances in their drinking water programs. EPA's affordability methodology is merely a screen. If a regulation is found unaffordable and EPA is able to identify more affordable variance technologies which are protective of public health, States that wish to grant small system variances and communities that wish to apply for them may do so.

EPA also appreciates the State recommendations for alternatives to small system variances. EPA believes that such variances should be a last resort. Where a State is able to make financial assistance available to small systems for compliance through its SRF, or aggressively encourage cooperation among small systems, EPA strongly encourages States to do so. As for the recommendation that assistance be targeted directly to low income consumers through some kind of LIWAP program, only Congress can authorize such an approach. In the meantime, EPA has a responsibility to utilize the existing tools under the Safe Drinking Water Act, which include small system variances, as mechanisms to address the legitimate affordability concerns of small systems and their customers.

Finally, EPA has not included the NDWAC recommendation among the options it is considering because, in EPA's judgment, it would not allow for appropriate implementation at the Federal level of the small system variance provisions that Congress included in the SDWA. As Table III–1 shows, an incremental threshold of $400 would not likely have triggered an unaffordability finding or the listing of alternative, protective variance technologies for any size category of small systems for any recent drinking water standard. For all of the reasons discussed previously in this notice, EPA believes that some small systems have genuinely struggled with compliance costs for some recent NPDWRs, and that EPA needs an affordability methodology that will allow States that wish to do so an opportunity to address these concerns through, among other strategies, the granting of protective small system variances where appropriate.

VI. Request for Comment

The EPA seeks comments on the range of issues addressed in this notice. The information and comments submitted in response to this notice will be considered in determining the affordability methodology for small drinking water systems and the methodology for determining when variance technologies are protective of public health.

Specifically, EPA seeks comments on the following issues:

1. EPA requests comment on basing its determination of affordability on the incremental cost of new treatment required rather than the total (i.e., cumulative) cost of water to consumers

after the new treatment technology is installed.

2. EPA requests comment on whether it is more appropriate to base its affordability determination on the incremental costs of treatment for the system at the 10th percentile or the 50th percentile of system size in each small system category.

3. EPA requests comment on what the most appropriate national-level percentage threshold is (i.e., 0.25 percent, 0.50 percent, or 0.75 percent of the median MHI among small systems within a size category).

4. EPA requests comment on the key factors considered in developing affordability methodology options as described in section III.C of this notice. Do commenters believe these are the appropriate factors to consider? Are there other factors commenters would suggest the Agency consider?

5. EPA requests comment on whether the Agency should use a two-part test to screen at the national and county levels for systems that cannot afford compliance. Additionally, EPA seeks comment on whether the county or a different level is the appropriate unit of analysis for the second part of this test. The approach would first compare the incremental household cost of compliance to a national income-based threshold. If EPA were to find compliance affordable at the national level, we would then identify counties that are economically at-risk based on three socioeconomic triggers (MHI less than or equal to 65 percent of the national MHI, a U.S. Census Bureau-defined poverty rate at least twice the national average, or a two-year average unemployment rate at least twice the two-year national average). EPA also requests comment on the specific triggers that should be used to identify economically at-risk counties.

6. EPA requests comment upon its interpretation of affordability in section III.D.3 of today's notice. That is, should EPA consider variance technologies affordable even when they do not fall below the affordability threshold in cases where there would otherwise be no affordable variance technologies to list.

7. EPA requests comment on implementation challenges to States in reviewing and issuing small system variances.

8. EPA requests comment on finding a variance technology to be protective of public health if the concentration of the target contaminant after treatment by the variance technology is no more than three times the MCL unless unusual factors associated with the contaminant or EPA's risk assessment suggest that an alternate level is appropriate, in which case EPA would explain its basis for the alternate level and request public comment in the proposed rule. EPA requests comment on whether a finding that variance technologies are protective of public health if they achieve a contaminant level within three times the MCL should be "capped" at a particular risk level (i.e., 10^{-3}) in order to provide further assurance that variance technologies are in fact protective.

The Agency also requests comment on any other issue raised by this notice on options for revising its national-level affordability methodology or its methodology for determining if a variance technology is protective of public health.

VII. References

National Drinking Water Advisory Council (NDWAC). 2003. Recommendations of the National Drinking Water Advisory Council to U.S. EPA on Its National Small Systems Affordability Criteria. Available at *http://www.epa.gov/safewater/ndwac/council.html.*

Rubin, Scott, J. 2001. White Paper for National Rural Water Association, Criteria to Assess the Affordability of Water Service. Available at *http://www.nrwa.org.*

Rubin, Scott, J. 2002. White Paper for National Rural Water Association, Criteria to Assess Affordability Concerns in Conference Report for H.R. 2620. Available at *http://www.nrwa.org.*

U.S. EPA. 1998. Announcement of Small System Compliance Technology Lists for Existing National Primary Drinking Water Regulations and Findings Concerning Variance Technologies. Notice. **Federal Register** Vol 63, No. 151, p. 42032. August 6, 1998. Available at *http://www.epa.gov/safewater/standard/clistfrn.pdf.*

U.S. EPA Science Advisory Board (SAB). 2002. Affordability Criteria for Small Drinking Water Systems: An EPA Science Advisory Report. EPA–SAB–EEAC–03–004, U.S. EPA Science Advisory Board, Washington, DC, December 2002. Available at *http://www.epa.gov/sab.*

Dated: February 14, 2006.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

[FR Doc. 06–1917 Filed 3–1–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Notice of Meetings; Sunshine Act

AGENCY: Federal Election Commission.

PREVIOUSLY SCHEDULED DATE AND TIME: Thursday, February 23, 2006, meeting open to the public. The following item was withdrawn from the agenda: Final audit report on CWA COPE political contributions committee.

PREVIOUSLY SCHEDULED DATE AND TIME: Tuesday, February 28, 2006. Meeting open to the public. This meeting was cancelled.

DATE AND TIME: Tuesday, March 7, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, March 9, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 2006–01: Pac for a Change by Douglas Boxer, Committee Director.
Advisory Opinion 2006–02: Robert Titley by counsel, Robert F. Bauer and Judith L. Corley.
Advisory Opinion 2006–06: Francine Busby for Congress by Brandon Hall, Campaign Manager.
Final Rules and Explanation and Justification for the Definitions of "To Solicit" and "To Direct" (11 CFR 300.2(m) and (n)).
Explanation and Justification for the Final Rules on Municipal Elections (11 CFR 100.24(a)).
Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–2027 Filed 2–28–06; 2:56 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Canyon Bancorp, Palm Springs, California; to become a bank holding company by acquiring 100 percent of the voting shares of Canyon National Bank, Palm Springs, California.

Board of Governors of the Federal Reserve System, February 27, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–2941 Filed 3–1–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 052 3148]

CardSystems Solutions, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 27, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "CardSystems Solutions, File No. 052 3148," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Jessica Rich or Alain Sheer, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 23, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/02/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from CardSystems Solutions Inc. ("CardSystems") and its successor, Solidus Networks, Inc., doing business as Pay By Touch Solutions ("Pay By Touch").

The consent agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

According to the Commission's proposed complaint, CardSystems provides merchants with products and services used in "authorization processing"—obtaining approval for credit and debit card purchases from banks that issued the cards. Last year, it processed about 210 million card purchases, totaling more than $15

billion, for more than 119,000 small and mid-size merchants. In the course of processing these credit and debit card purchases, CardSystems collected and stored personal information about consumers, including card number and expiration date and other information, from magnetic stripes on the cards. Pay By Touch acquired CardSystems' assets on December 9, 2005, at which time CardSystems ceased doing business. Pay By Touch uses CardSystems' former employees, equipment, and technology to process transactions for the same merchants CardSystems served.

The Commission's proposed complaint alleges that CardSystems stored personal information on computers on its computer network and failed to employ reasonable and appropriate security measures to protect the information. The complaint alleges that this failure was an unfair practice because it caused or was likely to cause substantial consumer injury that was not reasonably avoidable and was not outweighed by countervailing benefits to consumers or competition. In particular, CardSystems engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for personal information stored on its computer network. Among other things, it: (1) Created unnecessary risks to the information by storing it; (2) did not adequately assess the vulnerability of its computer network to commonly known or reasonably foreseeable attacks, including but not limited to "Structured Query Language" injection attacks; (3) did not implement simple, low-cost, and readily available defenses to such attacks; (4) failed to use strong passwords to prevent a hacker from gaining control over computers on its computer network and access to personal information stored on the network; (5) did not use readily available security measures to limit access between computers on its network and between such computers and the Internet; and (6) failed to employ sufficient measures to detect unauthorized access to personal information or to conduct security investigations.

The complaint further alleges that several million dollars in fraudulent purchases were made using counterfeit copies of credit and debit cards that contained the same personal information CardSystems had collected from the magnetic stripes of credit and debit cards and then stored on its computer network. After discovering the fraudulent purchases, banks cancelled and re-issued thousands of these credit and debit cards, and consumers holding these cards were unable to use them to access credit and their own bank accounts.

The proposed order applies to personal information from or about consumers that CardSystems and Pay By Touch (as CardSystems' successor) collect in connection with authorization processing. The proposed order contains provisions designed to prevent them from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order requires CardSystems and Pay By Touch to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information they collect from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to their size and complexity, the nature and scope of their activities, and the sensitivity of the personal information collected. Specifically, the order requires CardSystems and Pay By Touch to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of consumer information that could result in unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.
- Evaluate and adjust their information security program in light of the results of testing and monitoring, any material changes to their operations or business arrangements, or any other circumstances that they know or have to reason to know may have a material impact on the effectiveness of their information security program.

Part II of the proposed order requires that CardSystems and Pay By Touch obtain within 180 days, and on a biennial basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) They have in place a security program that provides protections that meet or exceed the protections required by Part I of the proposed order, and (2) their security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires CardSystems and Pay By Touch to retain documents relating to their compliance with the order. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V requires them to notify the Commission of changes in their corporate status. Part VI mandates that CardSystems and Pay By Touch submit compliance reports to the FTC. Part VII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

This case is similar to the recent FTC cases against BJ's Wholesale Club and DSW Inc., which also involved alleged failures to secure credit and debit card information. As in those cases, CardSystems faces potential liability in the millions of dollars under bank procedures and in private litigation for losses related to the breach.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission, with Commissioner Harbour recused.

Donald S. Clark,

Secretary.

[FR Doc. E6–2934 Filed 3–1–06; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0228]

Office of Civil Rights; Information Collection; Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Civil Rights, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding nondiscrimination in Federal financial assistance programs. The

clearance currently expires on June 30, 2006. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Evelyn Britton, Compliance Officer, Office of Civil Rights, at telephone (202) 501–4347 or via e-mail to *evelyn.britton@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal Financial Assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA. These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there has been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there has been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.
Total Responses: 500.
Hours Per Response: 2.
Total Burden Hours: 1000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

Dated: February 23, 2006.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. E6–2932 Filed 3–1–06; 8:45 am]

BILLING CODE 6820–34–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0274]

Public Buildings Service; Information Collection; Art-in-Architecture Program National Artist Registry

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the Art-in-Architecture Program National Artist Registry form. The clearance currently expires on July 31, 2006.

The Art-in-Architecture Program is the result of a policy decision made in January 1963 by GSA Administrator Bernard L. Boudin who had served on the Ad Hoc Committee on Federal Office Space in 1961–1962.

The program has been modified over the years, most recently in 1996 when a renewed focus on commissioning works of art that are an integral part of the building's architecture and adjacent landscape was instituted. The program continues to commission works of art from living American artists. One-half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Susan Harrison, Public Buildings Service, Office of the Chief Architect, Art-in-Architecture Program, Room 3341, 1800 F Street, NW., Washington, DC 20405, at telephone (202) 501–1812 or via e-mail to *susan.harrison@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art-in-Architecture Program actively seeks to commission works from the full spectrum of American artists and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art-in-Architecture Program National Artist Registry, will be used to collect information from artists across the country to participate and to be considered for commissions.

B. Annual Reporting Burden

Respondents: 360.
Responses Per Respondent: 1.
Hours Per Response: .25.
Total Burden Hours: 90.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312.

Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry, in all correspondence.

Dated: February 2, 2006.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. E6–2933 Filed 3–1–06; 8:45 am]

BILLING CODE 6820–23–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Fleet Alternative Fuel Vehicle Acquisition and Compliance Report

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: Pursuant to 42 United States Code 13218(b), the Department of Health and Human Services gives notice that the Department's FY 2005 Fleet Alternative Fuel Vehicle Acquisition and Compliance Report is available online at *http://www.knownet.hhs.gov/log/AgencyPolicy/HHSLogPolicy/afvcompliance.htm.*

FOR FURTHER INFORMATION CONTACT: Jim Kerr at (202) 720–1904, or via e-mail at *jim.kerr@hhs.gov.*

Dated: February 2, 2006.

Joe W. Ellis,

Assistant Secretary for Administration and Management.

[FR Doc. E6–2976 Filed 3–1–06; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions

Program Office: Administration on Children, Youth, and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS–2006–ACF–ACYF–FVPS–0122.

Announcement Title: Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions.

CFDA Number: 93.591.

Dates: Due Date for Applications: April 3, 2006.

Executive Summary: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act (FVPSA) to private, non-profit State Domestic Violence Coalitions (Coalitions). The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This notice for family violence prevention and services grants to Coalitions serves two purposes. The first is to confirm a Federal commitment to reducing family and intimate partner violence; and the second purpose is to urge States, localities, cities, and the private sector to become involved in State and local planning towards an integrated service delivery approach.

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984 (Public Law (Pub. L.) 98–457, 42 U.S.C. 10401 et seq.) is entitled the "Family Violence Prevention and Services Act" (FVPSA). FVPSA was first implemented in Fiscal Year (FY) 1986. The statute was subsequently amended by Public Law 100–294, the "Child Abuse Prevention, Adoptions, and Family Services Act of 1988;" further amended in 1992 by Public Law 102–295; and then amended in 1994 by Public Law 103–322, the "Violent Crime Control and Law Enforcement Act." FVPSA was amended again in 1996 by Public Law 104–235, the "Child Abuse Prevention and Treatment Act (CAPTA) of 1996;" in 2000 by Public Law 106–386, the "Victims of Trafficking and Violence Protection Act," and amended further by Public Law 108–36, the "Keeping Children and Families Safe Act of 2003." FVPSA was most recently amended by Public Law 109–162, the "Violence Against Women and Department of Justice Reauthorization Act of 2005."

Background

Section 311 of FVPSA authorizes the Department of Health and Human Services (HHS) Secretary to award grants to statewide, private, non-profit Coalitions to conduct activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

Annual State Domestic Violence Coalition Grantee Conference

Coalitions should plan to send one or more representatives to the annual grantee conference. A subsequent Program Instruction and/or Information Memorandum will advise Coalition administrators of the date, time, and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the victims of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of adult victims and their children receiving FVPSA services be protected. Consequently, when providing statistical data on program activities, individual identifiers of client records will not be used (see section 303(a)(2)(E)).

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the "Stamp Out Domestic Violence Act of 2001" (the Act), Public Law 107–62, to make available a "semipostal" stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, have been transferred to HHS in accordance with the Act for support of services to children and youth affected by domestic violence.

As a result of the transfer of $1.3 million in 2005, a grant offering was made for the development of "Demonstration Programs for The Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence." Sixty-five applications were received and reviewed. Nine grant applications of approximately $130,000 each have been approved and funded. Detailed information on the successful applicants and their programs will be shared with State FVPSA Administrators and the Coalitions.

Documenting Our Work (DOW) Initiative

The need to accurately communicate reliable and appropriate data that captures the impact of domestic violence prevention work and to provide shelters, States, and Coalitions with tools for self-assessment continues as the DOW Initiative. In conjunction with representatives for State FVPSA programs, Coalitions, and experts on both data collection and domestic violence prevention issues, the effort to develop informative, succinct, and non-burdensome reporting formats will continue with the hope of concluding in this fiscal year. Any changes in informational needs and reporting formats will be accompanied by specifically designated workshops or adjuncts to regularly occurring meetings.

II. Funds Available

HHS will make 10 percent of the amount appropriated under section

310(a)(1) of the FVPSA, which is not reserved under section 310(a)(2), available for grants to the State-designated, statewide, domestic violence Coalitions. One grant each will be available for each of the Coalitions in the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. The Coalitions of the U.S. Territories (Guam, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands) are also eligible for grant awards under this announcement.

Expenditure Period

The FVPSA funds may be used for expenditures on or after October 1 of each fiscal year for which they are granted and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 2006 funds may be used for expenditures from October 1, 2005, through September 30, 2007. Funds are available for obligation only through September 30, 2006, and must be liquidated by September 30, 2007.

III. Eligibility

To be eligible for grants under this program announcement, an organization shall be designated as a statewide, private, non-profit domestic violence coalition meeting the following criteria:

(1) The membership of the Coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a Coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act);

(2) The Board membership of the Coalition is representative of such programs;

(3) The purpose of the Coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services for victims of domestic violence and their children; and

(4) In the application submitted by the Coalition for the grant, the Coalition provides assurances satisfactory to the Secretary that the Coalition:

(a) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(b) Will actively seek and encourage the participation of such entities in the activities carried out with the grant (section 311(5)(A)).

Additional Information on Eligibility

D–U–N–S Requirement

All applicants must have a D&B Data Universal Numbering System (D–U–N–S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D–U–N–S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D–U–N–S number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal, Grants.gov. A D–U–N–S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a D–U–N–S number. You may acquire a D–U–N–S number at no cost by calling the dedicated toll-free D–U–N–S number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Survey for Private Non-Profit Grant Applicants

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms", "Survey for Private, Non-Profit Grant Applicants", titled, "Survey on Ensuring Equal Opportunity for Applicants", at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

IV. Application Requirements for State Domestic Violence Coalition (Coalitions) Applications

This section includes application requirements for family violence prevention and services grants for Coalitions, as follows:

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under the Office of Management and Budget (OMB) control number 0970–0280, which expires October 31, 2008. 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.

Form and Content of Application Submission

The Coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information:

(We have cited each requirement to the specific section of the law.)

(1) A description of the process and anticipated outcomes of utilizing these Federal funds to work with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

Training and technical assistance for local programs and managers working in the field:

(a) Planning and conducting State needs assessments and planning for comprehensive services;

(b) Serving as an information clearinghouse and resource center for the State; and

(c) Collaborating with other governmental systems that affect battered women (section 311(a)(1)).

(2) A description of the public education campaign regarding domestic violence to be conducted by the Coalition through the use of public service announcements and informative materials that are designed for print media; billboards; public transit advertising; electronic broadcast media; and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (section 311(a)(4)).

(3) The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of related issues as set forth in section 311(a)(2) of the FVPSA.

(4) The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with Family Law Judges, Criminal Court Judges, Child Protective Services agencies, Child Welfare agencies, Family Preservation and Support Service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present. The anticipated outcomes and a description of other activities in

support of the general purpose of furthering domestic violence intervention and prevention (section 311(a)(3)).

(5) The following documentation will certify the status of the Coalition and must be included in the grant application:

(a) A description of the procedures developed between the State domestic violence agency and the statewide Coalition that allow for implementation of the following cooperative activities:

(i) The participation of the Coalition in the planning and monitoring of the distribution of grants and grant funds provided in the State (section 311(a)(5)); and

(ii) The participation of the Coalition in compliance activities regarding the State's family violence prevention and services program grantees (sections 303 (a)(2)(C) and (a)(3)).

(b) Unless already on file at HHS, a copy of a currently valid 501(c)(3) certification letter from the IRS stating private, non-profit status; or a copy of the applicant's listing in the IRS' most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code (See *Section III,* Additional Information on Eligibility); or

(c) A copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled (See *Section III,* Additional Information on Eligibility);

(d) A current list of the organizations operating programs for victims of domestic violence programs in the State and the applicant Coalition's current membership list by organization;

(e) A list of the applicant Coalition's current Board of Directors, with each individual's organizational affiliation and the Chairperson identified;

(f) A copy of the resume of any Coalition or contractual staff to be supported by funds from this grant and/or a statement of requirements for staff or consultants to be hired under this grant; and

(g) A budget narrative that clearly describes the planned expenditure of funds under this grant.

(6) Required Documentation and Assurances (included in the application as an appendix):

(a) The applicant Coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the Coalition:

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application (section 311(b)(4)(A)); and

(ii) Will actively seek and encourage the participation of such organizations in grant funded activities (section 311(b)(4)(B)).

(b) The applicant Coalition must provide a signed statement that the Coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive Order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State, or local legislative body, or State proposals by initiative petition, except where representatives of the Coalition are testifying, or making other appropriate communications, or when formally requested to do so by a legislative body, a committee, or a member of such organization (section 311(d)(1)); or in connection with legislation or appropriations directly affecting the activities of the Coalition or any member of the Coalition (section 311(d)(2)).

(c) The applicant Coalition must provide a signed statement that the Coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(d) The applicant will comply with Departmental requirements for the administration of grants under 45 CFR part 74—Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-profit Organizations and Commercial Organizations.

Certifications

All applicants must submit or comply with the required certifications found in the Appendices, as follows:

Anti-Lobbying Certification and Disclosure Form must be signed and submitted with the application (See *Appendix A*): Applicants must furnish prior to award an executed copy of the Standard Form (SF) LLL, *Certification Regarding Lobbying,* when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348–0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (See *Appendix B*): Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–Children Act of 1994). A copy of the **Federal Register** notice that implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Certification Regarding Drug-Free Workplace Requirements (See *Appendix C*): The signature on the application by the program official attests to the applicants' intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application.

These certifications also may be found at *www.acf.hhs.gov/programs/ofs/forms.htm.*

Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

Applications should be sent to:

Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: William D. Riley, 1250 Maryland Avenue, SW., Room 8239, Washington, DC 20024.

V. Reporting Requirements

Performance Reports

The Coalition grantee must submit an annual report of activities describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out. Additionally, the Coalition must report on the public information and education services provided; the activities conducted in conjunction with judicial and law enforcement agencies; the actions conducted in conjunction with other agencies such as the State child welfare agency; and any other activities undertaken under this grant award. The annual report also must provide an assessment of the effectiveness of the grant-supported activities.

The annual report is due 90 days after the end of the fiscal year in which the grant is awarded, *i.e.*, December 29. Annual reports should be sent to:

Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: William D. Riley, 1250 Maryland Avenue, SW., Room 8238, Washington, DC 20024.

Please note that HHS may suspend funding for an approved application if any applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this announcement.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF–269A is due December 29, 2006. The final SF–269A is due December 29, 2007. SF–269A can be found at the following URL: *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

Completed reports should be sent to: Michael Bratt, Division of Mandatory Grants, Office of Grants Management, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

Grantees have the option to submit their reports online through the Online Data Collection (OLDC) system at the following address: *http://extranet.acf.hhs.gov/ssi.*

Failure to submit reports on time may be a basis for withholding grant funds, suspension or termination of the grant. In addition, all funds reported after the obligation period will be recouped.

VI. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR part 74.

Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

Faith-based and community organizations may reference the "Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government" at *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

VII. Other Information

FOR FURTHER INFORMATION CONTACT: William D. Riley at (202) 401–5529 or e-mail at *WRiley@acf.hhs.gov.*

Dated: February 21, 2006.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

Appendices: Required Certifications

A. Anti-Lobbying and Disclosure
B. Environmental Tobacco Smoke
C. Drug-Free Workplace Requirements

Appendix A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Appendix B—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix C—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR part 76, subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted —

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. E6–2938 Filed 3–1–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0033]

Guidance for Industry on Internal Radioactive Contamination—Development of Decorporation Agents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Internal Radioactive Contamination—Development of Decorporation Agents." This document provides guidance to industry on the development of decorporation agents for the treatment of internal radioactive contamination when evidence is needed to demonstrate the effectiveness of the agents, but human efficacy studies are unethical or infeasible. In such instances, the animal efficacy rule may be invoked to approve new decorporation agents not previously

marketed or new indications for previously marketed drug products. Specifically, this guidance addresses chemistry, manufacturing, and controls (CMC) information; animal efficacy, safety pharmacology, and toxicology studies; clinical pharmacology, biopharmaceutics, and human safety studies; and postapproval commitments.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Patricia A. Stewart, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Internal Radioactive Contamination—Development of Decorporation Agents." This guidance is being issued to facilitate the development of new decorporation agents or new uses of previously marketed drug products for the treatment of internal radioactive contamination.

In the **Federal Register** of February 15, 2005 (70 FR 7747), FDA announced the availability of a draft version of the guidance document entitled "Internal Radioactive Contamination—Development of Decorporation Agents." No comments were received and, with one exception, only minor editorial changes have been made. The references to biological products have been removed from the guidance because FDA does not expect many products developed for use as decorporation agents to be biologics.

Internal radioactive contamination can arise from accidents involving nuclear reactors, industrial sources, or medical sources. The potential for these accidents has been present for many years. Recent events also have highlighted the potential for nonaccidental radioactive contamination as a result of criminal or terrorist actions. Internal contamination occurs when radioactive material is ingested, inhaled, or absorbed from a contaminated wound. As long as these radioactive contaminants remain in the body, they may pose significant health risks. Long-term health concerns include the potential for the development of cancers of the lung, liver, thyroid, stomach, and bone and, when a radioactive contaminant is inhaled, for the development of fibrotic changes in the lung that may lead to restrictive lung disease. The only effective method of reducing these risks is removal of the radioactive contaminants from the body.

"Decorporation agents" refer to medical products that increase the rate of elimination or excretion of inhaled, ingested, or absorbed radioactive contaminants. The effectiveness of most decorporation agents for the treatment of internal radioactive contamination cannot be tested in humans because the occurrence of accidental or nonaccidental radioactive contamination is rare, and it would be unethical to deliberately contaminate human volunteers with potentially harmful amounts of radioactive materials for investigational purposes.

FDA is issuing this guidance to industry to facilitate the development of new decorporation agents or new indications for previously marketed drug products that may be eligible for approval under the animal efficacy rule (21 CFR 314.600–314.650). As set forth in this rule, under certain circumstances animal studies can be relied on to provide substantial evidence of effectiveness of a product. Evaluation of the product for safety in humans is still required, and cannot be addressed by animal studies alone. The adequacy of human safety data will need to be assessed based on clinical pharmacology and safety studies conducted in humans. This guidance addresses the design and conduct of the requisite CMC, animal efficacy, safety pharmacology, toxicology, clinical pharmacology, biopharmaceutics, and human safety studies needed to support approval of new decorporation agents or new uses of previously marketed drug products for the treatment of internal radioactive contamination.

In addition, approval under the animal efficacy rule is subject to certain postapproval commitments, including submission of a plan for conducting postmarketing studies that would be feasible should an accidental or intentional release of radiation occur; postmarketing restrictions to ensure safe use, if deemed necessary; and product labeling information intended for the patient advising that, among other things, the product's approval was based on effectiveness studies conducted in animals alone. This guidance addresses the postapproval commitments that would be needed for approval of a new decorporation agent or for a new indication for a previously approved drug product under the animal efficacy rule.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the development of decorporation agents for the treatment of internal radioactive contamination. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 23, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–2942 Filed 3–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Health Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessment of the State Maternal and Child Health Comprehensive Systems Grant (SECCS) Program (NEW)

HRSA's Maternal and Child Health Bureau (MCHB) is conducting an assessment of MCHB's State Maternal and Child Health Comprehensive Systems Grant (SECCS) Program. The purpose of the SECCS Program is to support state and local communities in their efforts to build comprehensive and coordinated early childhood service systems and to increase the leadership and participation of State MCH Title V programs in multi-agency early childhood systems development initiatives.

The SECCS funding is offered to states, jurisdictions, or Territory Title V agencies in two stages: *Planning and Implementation*. This assessment will only focus on *Implementation Grantees* awarded in 2005 (approximately 18 grantees) and 2006 (approximately 42 grantees). The purpose of the assessment is to determine: (1) Progress of implementation grantees in meeting the goals and objectives set forth in their plans developed during the planning phase and in building program infrastructure and capacity to improve early childhood services in their states/jurisdictions/territories, (2) programmatic, policy, and systemic barriers and facilitators that affect program implementation, and (3) quality and effectiveness of the technical assistance (TA) provided to the grantees. The results of the assessment will provide MCHB with timely feedback on the achievements of the SECCS Program and identify potential areas for improvement, which will inform program planning and operational decisions.

As part of the study, all implementation grantees will be asked to complete a Minimum Data Set (MDS) survey, which will primarily include closed-ended questions addressing grantees' progress in achieving the requirements outlined in the implementation grant guidance. The MDS will primarily capture *quantitative* data on implementation grantees' progress in increasing the State MCH Program's role and leadership in multi-agency early childhood systems development initiatives and building partnerships and system capacity to improve early childhood services in their States.

This survey will supplement and enhance the MCHB's current data collection efforts by providing a quantifiable, standardized, systematic mechanism for collecting information across the funded implementation grantees. For the 2005 cohort of implementation grantees, the MDS will be administered once in 2006 to gather baseline data, and again in the second year of implementation (2007) to gather follow-up data on progress made. For the 2006 cohort of grantees, the MDS will be administered once in 2007.

Respondents: The SECCS implementation grantees (Title V agencies) funded in 2005 and 2006 will be the primary respondents of the instrument. Approximately 60 implementation grantees will respond to the MDS survey. The estimated response burden is as follows:

Cohort	Number of respondents	Responses per respondent	Hours per response	Total hour burden
2005 Cohort	18	2	2	72
2006 Cohort	42	1	2	84
Total	60	3		156

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 23, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–2943 Filed 3–1–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program; Forms (OMB No. 0915–0034 Extension)

The HEAL program provided federally insured loans to assure the availability of funds for loans to eligible students to pay for their education costs. In order to administer and monitor the HEAL program the following forms are utilized: The Lenders Application for Contract of Federal Loan Insurance form (used by lenders to make application to the HEAL insurance program); the Borrower's Deferment Request form (used by borrowers to request deferments on HEAL loans and used by lenders to determine borrower's eligibility for deferment); the Borrower Loan Status update electronic submission (submitted monthly by lenders to the Secretary on the status of each loan; and the Loan Purchase/Consolidation electronic submission (submitted by lenders to the Secretary to report sales, and purchases of HEAL loans).

The estimates of burden for the forms are as follows:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Lender's Application for Contract of Federal Loan Insurance	17	1	17	8 min.	3
Borrower's Deferment Request					
Borrowers	436		436	10 min.	73
Employers	261	1.669	436	5 min.	36
Borrower Loan Status Update	8	18	144	10 min.	24
Loan Purchase/Consolidation	17	248	4,216	4 min.	281
Total	739		5,249		417

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 23, 2006.

Tina Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–2944 Filed 3–1–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–18]

Notice of Availability of a Final Environmental Impact Statement for the Ashburton Avenue Urban Renewal Plan and Master Plan, Yonkers, Westchester County, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes of the availability of the Final Environmental Impact Statement (EIS) for review and comment for: The Ashburton Avenue Urban Renewal Plan and Ashburton Avenue Master Plan and the Mulford Gardens HOPE VI Revitalization Plan in the City of Yonkers, Westchester County, NY. The Final EIS was prepared by the City of Yonkers, NY, acting under its authority as the Responsible Entity for compliance with the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR 58.4. The Final EIS has been prepared to satisfy the requirements of both NEPA and the New York State Environmental Quality Review Act of 1978 (SEQR), as amended (6 NYCRR part 617). The EIS and NEPA process also address historic preservation and cultural resource issues under section 106 of the National Historic Preservation Act (16 U.S.C. 470f). This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

The Final EIS assesses the potential environmental impacts associated with the implementation of the following alternatives: (1) The Master Plan, Urban Renewal Plan and Mulford Gardens HOPE VI Revitalization Plan, (2) the Ashburton Avenue Master Plan improvements without a continuous street widening, (3) a reduced/modified scale of the Mulford Gardens HOPE VI Revitalization Plan, and (4) a no action alternative.

DATES: Written comments on the Final EIS will be accepted for a period of 30 days after publication of the notice of availability in the **Federal Register**. A Record of Decision will be made at the end of the 30-day period. Written comments may be sent by mail or facsimile to Lee Ellman, Planning Director, City of Yonkers, 87 Nepperhan Avenue, Suite 311, Yonkers NY 10701–3874, telephone (914) 377–6558, Web site: *lee.ellman@cityofyonkers.com.*

FOR FURTHER INFORMATION CONTACT: To obtain copies of the Final EIS or for more information, contact Lee Ellman, Department of Planning and Development, 87 Nepperhan Avenue, Suite 311, Yonkers, NY 10701–3874, telephone (914) 377–6558; e-mail *lee.ellman@cityofyonkers.com.* Copies of the Final EIS are available for review at the Yonkers Riverfront Library, 1 Larkin Center, Yonkers, NY 10701 or online at *http://www.cityofyonkers.com.*

SUPPLEMENTARY INFORMATION: The City of Yonkers has determined that the Proposed Action constitutes an action which has the potential to affect the quality of the human environment in terms of socioeconomics, housing, and improvements to the existing transportation system. Therefore the City, as Lead Agency, has prepared an EIS to examine the potential impacts of implementing the components of the Master Plan and Urban Renewal Plan. Since it is anticipated that transportation improvements and new residential construction will be at least in part funded with federal monies, the City has prepared the EIS in accordance with NEPA. The Notice of the Availability of the Draft EIS was published in the **Federal Register** on September 28, 2005 (70 FR 56734).

The analysis of the Ashburton Avenue Master Plan and Urban Renewal Plan consists of a generic discussion of the

potential impacts resulting from the adoption of the two plans. The analysis of the Mulford Gardens HOPE VI Revitalization Plan, which is geographically contained within the Master Plan and Urban Renewal Area, is a site-specific analysis. Due to the interrelatedness and timing of these two actions, both the generic and site-specific analyses are contained in the same Final EIS.

The Urban Renewal Area (URA) is located on the west side of Yonkers, north of the downtown and west of the Saw Mill River Parkway. The 114-acre area encompasses approximately 600 parcels along and near Ashburton Avenue, between Warburton Avenue and Yonkers Avenue. The area was selected by the City as a potential URA to tie into the redevelopment of Mulford Gardens, the City's oldest public housing complex, which is located on 12 acres within the boundaries of the proposed URA. Due to its age and substandard housing condition, Mulford Gardens is slated for demolition. The City's Municipal Housing Authority was awarded a HOPE VI grant to demolish and reconstruct housing on and around the existing Mulford Gardens site. Proposed HOPE VI residential development will occur on the existing 12-acre Mulford Gardens site, with additional residential, community facility, and retail development to occur on eight surrounding sites within the Ashburton Avenue URA.

The Urban Renewal Plan will be used as a revitalization strategy to improve the residential character of the area, expand business opportunities and improve the transportation network. The Master Plan for the URA will include: The provision of a range of housing opportunities; mixed use development along Ashburton Avenue; and transportation improvements, including street widenings along Ashburton Avenue to improve east-west access between the Saw Mill River Parkway and the Downtown Waterfront District, allow on-street parking, reduce traffic congestion, and allow for an upgraded sidewalk and streetscape plan.

Discussion of Mitigation Measures

Environmental effects analyzed in the Draft EIS include socioeconomics; vehicular traffic, roadways and parking; cultural resources; soils and topography; water resources and wetlands; community services; terrestrial ecology; air quality and noise; hazardous materials; environmental justice; growth inducement; and cumulative impacts. Public comments received on the Draft EIS primarily focused on issues relating to socioeconomics and environmental justice and clarification of the proposed action.

None of the analyzed categories are expected to have significant adverse long-term environmental impacts. The following categories would have impacts that can be fully mitigated by the implementation of mitigation measures: Socioeconomics, traffic, air quality, noise, hazardous materials, and environmental justice. Specific mitigation measures in addition to the overall physical and economic revitalization of the area will include: A Relocation Plan for 9 businesses and 580–591 residences in accordance with the 1970 Uniform Relocation Assistance and Real Property Acquisition Policies Act; signal timing adjustments and the widening of Ashburton Avenue to improve vehicular circulation, streetscape and parking; construction management plan to minimize short-term air and noise impacts; Phase 1 and Phase 2 Assessments as necessary in accordance with American Society for Testing and Materials (ASTM E–1527–00 and ASTM E–1903–97).

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: February 22, 2006.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E6–2904 Filed 3–1–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee; Request for Nominations

AGENCY: Office of the Secretary, National Invasive Species Council, Interior.

ACTION: Request for nominations for the Invasive Species Advisory Committee.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be postmarked by April 17, 2006.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/SIO/NISC), 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Analyst, at (202) 513–7243, fax: (202) 371–1751, or by e-mail at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce. The Council's duty is to provide national leadership regarding invasive species issues. Pursuant to the Executive Order, the Council developed a National Invasive Species Management Plan, which is available on the web at *http://www.invasivespecies.gov.* The Council is responsible for effective implementation of the Plan including any revisions of the Plan. The Council also coordinates Federal agency activities concerning invasive species; encourages planning and action at local, tribal, State, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC meets up to four (4) times per year.

Terms for most of the current members of the ISAC will expire in October 2006. After consultation with the other members of NISC, the Secretary of the Interior will actively solicit new nominees and appoint members to ISAC. Prospective members of ISAC should be knowledgeable in and represent one or more of the following communities of interests: Weed science, fisheries science, rangeland management, forest science,

entomology, nematology, plant pathology, veterinary medicine, the broad range of farming or agricultural practices, biodiversity issues, applicable laws and regulations relevant to invasive species policy, risk assessment, biological control of invasive species, public health/epidemiology, industry activities, international affairs or trade, tribal or state government interests, environmental education, ecosystem monitoring, natural resource database design and integration, and internet-based management of conservation issues.

Prospective nominees should also have practical experience in one or more of the following areas: Representing sectors of the national economy that are significantly threatened by biological invasions (*e.g.*, agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (*e.g.*, shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in order to create effective solutions to complex conservation issues including education, outreach, and public relations experts; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with NEPA and other Federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, so to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than two (2) consecutive terms. All terms will be limited to three (3) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Submitting Nominations

Nominations should be typed and should include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.
2. A resume or curriculum vitae.
3. At least two (2) letters of reference.

Nominations should be postmarked no later than April 17, 2006, to Lori Williams, National Invasive Species Council (OS/SIO/NISC), 1849 C Street, NW., Washington, DC 20240.

The Secretary of the Interior, on behalf of the other members of NISC, is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations to ensure that recommendations of the ISAC take into account the needs of the diverse groups served.

Dated: February 24, 2006.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. E6–3002 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on April 27–28, 2006 is to convene the full Advisory Committee and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: Thursday, April 27, 2006, through Friday, April 28, 2006; beginning at approximately 8 a.m., and ending at approximately 5 p.m. each day.

ADDRESSES: Radisson Old Town Alexandria Hotel, 901 North Fairfax Street, Alexandria, VA 22314. Meeting will be held all three days in the Presidential Ballroom.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: February 24, 2006.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. E6–3004 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0075; Federal Subsistence Regulations and Associated Forms, 50 CFR Part 100

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) plan to request that OMB renew approval for our information collection associated with the Federal subsistence regulations. The current OMB control number for this information collection is 1018–0075, which expires August 31, 2006. We will request that OMB renew approval of this information collection for a 3-year term.

DATES: You must submit comments on or before May 1, 2006.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirement, explanatory information, or related forms, contact Hope Grey at the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members

of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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 Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations at 50 CFR 100 require that persons engaged in taking fish and wildlife on public lands in Alaska report their take to the Federal Subsistence Board (Board) and that rural residents who want to participate in special hunts or fisheries must apply for and obtain a special permit to do so. We use forms 7FS–1, 7FS–2, and 7FS–3 to collect information for the permitting process. When we ask OMB to renew this information collection, we will assign Fish and Wildlife Service form numbers to these forms. We will ask OMB to approve FWS Form 3–2326 (Federal Subsistence Hunt Application, Permit, and Report), FWS Form 3–2327 (Designated Hunter Permit Application, Permit, and Report), and FWS Form 3–2328 (Federal Subsistence Fishing Application, Permit, and Report). The information that we will collect on these proposed forms is identical to that collected on the current OMB-approved forms.

Title: Federal Subsistence Hunt Application, Permit, and Report.

OMB Control Number: 1018–0075.

Form Number: FWS Form 3–2326 (supersedes form 7FS–1).

Frequency of Collection: On Occasion.

Description of Respondents: Federally defined rural residents.

This form allows Federal subsistence users to participate in special hunts that are not available to the general public, but are provided for by Title VIII of ANILCA. The application requires information necessary to identify the applicant (name, date of birth, address, telephone number, and Alaska hunting license number). The Board uses the harvest information that the permitee provides in the hunt report (number of days hunted, method of getting to hunt area, drainages hunted and locations, date animals were taken, and sex of animals taken) to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. The Board uses this information to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations.

Title: Designated Hunter Permit Application, Permit, and Report.

OMB Control Number: 1018–0075.

Form Number: FWS Form 3–2327 (supersedes form 7FS–2).

Frequency of Collection: On Occasion.

Description of Respondents: Federally defined rural residents.

The Designated Hunter Application, Permit, and Report form allows qualified subsistence users to harvest wildlife for other qualified subsistence users who have a Federal Subsistence Hunt permit and report the harvest of multiple animals by a single hunter who is acting for others. We collect information on the application to identify the applicant (name, date of birth, address, telephone number, and Alaska hunting license number). The permit and hunt report include the names of persons for whom the permittee hunted, harvest ticket/permit number, unit, specific location, and number of male and female animals harvested.

Title: Federal Subsistence Fishing Application, Permit, and Report.

OMB Control Number: 1018–0075.

Form Number: FWS Form 3–2328 (supersedes form 7FS–3).

Frequency of Collection: On Occasion.

Description of Respondents: Federally defined rural residents.

This form allows qualified subsistence users to harvest fish for themselves or for others. This form also allows Federal subsistence users to participate in special fishing opportunities that are not available to the general public, but are provided for by Title VIII of ANILCA. The Board needs information on both the fisherman (name, address, telephone number, date of birth, and Alaska driver's license number or other identification) and the qualified subsistence users fished for (name and date of birth) to identify the individuals and ensure they are qualified subsistence users. The report includes information on dates fished, water body, gear used, and the fish harvested. Once the Board evaluates harvest information, it uses that data, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set to meet the needs of subsistence fishermen without adversely impacting the health of existing fish populations.

Form No./activity	No. of respondents	Annual No. of responses	Avg burden hour per response (minutes)	Total annual burden hrs
3–2326—Application	5,000	5,000	10	833.3
3–2326—Report	5,000	5,000	5	416.6
3–2327—Application	450	450	10	75.0
3–2327—Permit	450	450	5	37.5
3–2327—Report	450	450	5	37.5
3–2328—Application	250	250	10	41.6
3–2328—Report	250	250	20	83.3
Total	11,850	11,850		1,524.8

We invite comments concerning this proposed information collection on: (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Dated: February 3, 2006.

Hope G. Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–2939 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 3, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203: fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: San Diego Zoo, San Diego, CA, PRT–117195

The applicant requests a permit to export blood samples taken from live captive born addax antelope (*Addax nasomaculatus*) to the Fiedrich Loeffler Institut in Germany for the purpose of enhancement of the survival of the species/scientific research.

Applicant: Exotic Feline Breeding Compound, Inc., Rosamond, CA, PRT–116625

The applicant requests a permit to export one male and one female captive-born Amur leopards (*Panthera pardus orientalis*) to Jardin Zoologique de Quebex, Quebec, Canada, for the purpose of enhancement of the species through captive propagation.

Applicant: Mountain Gorilla Veterinary Project, Inc., Baltimore, MD, PRT–117181

The applicant requests a permit to import biological samples from both wild and captive gorillas (*Gorilla gorilla*), chimpanzee (*Pan troglodytes*), bonobo (*Pan paniscus*), L'Hoest's monkey (*Ceropithecus l'hoesti*) and agile mangabey (*Cercocebus galeritus*) from central Africa for the purpose of enhancement of the survival of the species through health screening and treatment for a variety of potential disease and nutrition problems. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Brian D. Dailey, Arlington, VA, PRT–114025

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George T. Markou, Landing, NJ, PRT–118984

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Luis A. Rivera, Guaynabo, PR, PRT–107151

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: February 17, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–2916 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 3, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–114630

Applicant: Atlanta-Fulton County Zoo, Inc., Atlanta, GA.

The applicant requests a permit to import viable frozen semen samples from male giant pandas from the Chengdu Zoo for the purpose of enhancement of the survival of the species through scientific research and propagation. This notification covers

activities to be conducted by the applicant over a five-year period.

PRT–110973

Applicant: Rosamond Gifford Zoo at Burnet Park, Syracuse, NY.

The applicant requests a permit to export two captive-born Asian elephants (*Elephas maximus*) to African Lion Safari, Canada, for the purpose of enhancement of the survival of the species.

PRT–118399

Applicant: Carey W. Mock, Pfafftown, NC.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enchancement of the survival of the species.

PRT–MA116788–0

Applicant: Tom E. Weickum, Cheyenne, WY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enchancement of the survival of the species.

PRT–MA116565–0

Applicant: Thomas Patrick Burns, Austin, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enchancement of the survival of the species.

PRT–MA116785–0

Applicant: Craig B. Boheler, Cheyenne, WY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enchancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–117072

Applicant: Philip P. Ripepi, Bethel Park, PA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

PRT–117934

Applicant: Foster V. Yancey, Kennesaw, GA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

PRT–118143

Applicant: William R. Muns, Chico, TX.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: January 27, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–2919 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by April 3, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–108865

Applicant: Kimberly A. Vinette Herrin, D.V.M., Canton, GA.

The applicant requests a permit to import biological samples from wild hawksbill sea turtle (*Eretmochelys imbricata*) and leatherback sea turtle (*Dermochelys coriacea*) for the purpose of scientific research. Samples will be collected opportunistically from live sea turtles and will be used for analyses of the immune function of oviductal secretions. A notification was already published for the hawksbill sea turtle; however, the applicant requested the addition of the leatherback sea turtle to the same permit. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–117186

Applicant: Paul E. Hostetler, Nokomis, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–114454

Applicant: Hantig, Anton & Fercos. Ferdinand, Las Vegas, NV.

The applicant requests permits to export a captive-born live tiger (*Panthera tigris*) "Dora" to worldwide locations for the purpose of

enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

PRT–761887

Applicant: American Museum of Natural History, New York, NY.

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened animals and plants species that was previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–113725

Applicant: Mark T. Clementz, University of Wyoming, Laramie, WY.

The applicant requests a permit to take and import biological samples from wild and captive populations of the following species: dugong (*Dugong dugon*), West Indian manatee (*Trichechus manatus*), Amazonian manatee (*T. inunguis*), and African manatee (*T. senegalensis*) for the purpose of scientific research on sirenian dietary isotope fractionation. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–118770

Applicant: Kenneth B. Crary, Verona, WI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Wallace T. Schafer, Queen Creek, AZ.

PRT–112563

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: February 10, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–2921 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for endangered species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
108887	Darlene R. Ketten, Ph.D	70 FR 51839, August 31, 2005	January 25, 2006.

Dated: February 17, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–2917 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
008519	Zoo Atlanta	70 FR 15117; March 24, 2005	December 15, 2005.
013008	777 Ranch, Inc.	70 FR 41783; July 20, 2005	December 12, 2005.
062075 and 064075	The Hawthorn Corporation	70 FR 75213; December 19, 2005	January 27, 2006.
103443	Chembio Diagnostic Systems, Inc.	70 FR 38190; July 1, 2005	November 14, 2005.
107782	High Delta LLC	70 FR 51838; August 31, 2005	December 12, 2005.
811776	Wildlife Conservation Society	70 FR 75213; December 19, 2005	January 24, 2006.

Dated: February 10, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–2920 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Carson Wandering Skipper (*Pseudocopaeodes eunus obscurus*)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces the availability of the Draft Recovery Plan for the Carson Wandering Skipper for public review and comment.

DATES: Comments on the draft recovery plan must be received on or before May 31, 2006.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502 (telephone: 775–861–6300). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Robert Williams, Field Supervisor, at the above Reno address. An electronic copy of the draft recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Marcy Haworth, Fish and Wildlife Biologist, at the above Reno address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. The Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery.

Section 4(f) of the ESA requires that public notice and an opportunity for public review and comment be provided during recovery plan development in fulfillment of this requirement. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The Carson wandering skipper *(Pseudocopaeodes eunus obscurus)* is a small butterfly in the subfamily Hesperiinae (grass skippers). This subspecies is federally listed as endangered. Only three extant populations are known from Washoe County and Douglas County, Nevada, and Lassen County, California. A fourth known population of the subspecies, from Carson City, Nevada, is considered extirpated as of 1998.

The goal for this subspecies is to recover it to point where downlisting and eventually delisting would be appropriate. Recovery criteria include protection and management in perpetuity of the existing populations without downward population trends, development and implementation of adaptive management plans, and discovery or establishment of one or more additional populations.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 8, 2005.

Steve Thompson,

Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–2964 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
107189	Clarence M. Bielat	70 FR 59458; September 19, 2005	December 16, 2005.
108787	James R. Bullis	70 FR 58234; October 5, 2005	December 12, 2005.

Dated: January 27, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–2918 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–936–1310–06–0076; WAOR60871]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WAOR60871; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition of reinstatement from Mr. Steven J. Buchanan of competitive oil and gas lease WAOR60871 for lands in Yakima County, Washington. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, Land Law Examiner, Minerals Section, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208, (503) 808–6162.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Therefore, the Bureau of Land Management is proposing to reinstate lease WAOR60871, effective October 1, 2005, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. No other valid lease has been issued affecting the lands.

Dated: February 22, 2006.

Eric G. Hoffman,

Acting Chief, Minerals Section.

[FR Doc. 06–1924 Filed 3–1–06; 8:45 am]

BILLING CODE 4310–33–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 February 18, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 17, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

Alabama

Baldwin County

Fairhope Downtown Historic District, Parts of 10 blks in downtown Fairhope, Fairhope, 06000186

Barbour County

Woodlane Plantation, AL 431 S, Eufaula, 06000183

De Kalb County

Collinsville Historic District, Valley Ave., Main St. and Grand Ave., Collinsville, 06000181

Jefferson County

Cahaba Homestead Village Historic District, Approx. bet I–59 and AL 11, Trussville, 06000187

Madison County

Madison Station Historic District, Roughly bounded by Wall Triana Hwy., Mill Rd., Church St., Maple St., Martin St., and Bradley St., Madison, 06000185

Shelby County

Calera Downtown Historic District, Jct. of US 31 and AL 25, Calera, 06000188

Rock House, Old, 1 mi. SE of Harpersville at the end of farm lane on N side of US 280, Harpersville, 06000182

California

Santa Clara County

Hutton, Warner, House, 13777a Fruitvale Ave., Saratoga, 06000189

District of Columbia

District of Columbia

Mount Vernon Triangle Historic District, (Mount Vernon Triangle MPS) Approx. 5th St., NW., K St., NW., 4th St., NW., and Massachusetts Ave., Washington, 06000191

Wiley, Emily, House, (Mount Vernon Triangle MPS) 902 3rd St., NW., Washington, 06000192

Florida

Hillsborough County

Guida, George, Sr., House, 1516 N. Renfrew Ave., Tampa, 06000193

Michigan

Alpena County

Alpena Light, (Light Stations of the United States MPS) End of N breakwater at Thunder Bay River mouth, 150 ft. from shore, Alpena, 06000197

Mississippi

Kemper County

Porterville General Store, Old MS 45, Porterville, 06000195

Lee County

Highland Circle Historic District, Highland Circle neighborhood inc. parts of N. Madison St., Highland Circle, Oak Grove Rd. and W. Jackson St., Tupelo, 06000196

Tunica County

Tunica Historic District, Roughly bounded by Kestevan Alley, Mockingbird St., Cummins Ave., and the Tunica School, Tunica, 06000194

Ohio

Cuyahoga County

Clinton Apartments, 3607 Clinton Ave., Cleveland, 06000199

Hancock County

Bigelow, Charles H., House, 2816 N. Main St., Findlay, 06000200

Huron County

Tremont House, 101–103 E. Main St., Bellevue, 06000201

Lucas County

Ohio Theatre, 3114 Lagrange St., Toledo, 06000198

Stark County

Upper Downtown Canton Historic District, Market Ave., bet. Sixth St. N and 2nd St. S., E to W variable Boundary, Canton, 06000202

Tennessee

Lewis County

Lewis County Courthouse, 110 N. Park St., Hohenwald, 06000203

Wisconsin

Ashland County

Glidden State Bank, 216 First St., Jacobs, 06000206

La Crosse County

Maria Angelorum Chapel, 901 Franciscan Way, La Crosse, 06000204

Milwaukee County

Greenfield School, 8405 W. National Ave., West Allis, 06000207

Oconto County

Arndt's Pensaukee Sawmill Complex, Address Restricted, Oconto, 06000205

[FR Doc. E6–2998 Filed 3–1–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification to Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Modification to Consent Decree in *United States* v. *Robert R. Krilich,* et al., Civ. No. 92 C 5354, was lodged with the United States District Court for the Northern District of Illinois on February 16, 2006. This Modification to Consent Decree concerns a complaint filed by the United States against Defendants, pursuant to Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1344 to obtain injunctive relief from the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States.

The Modification to Consent Decree resolves Defendants' inability to meet the success criteria of the Consent Decree for a portion of the mitigation site.

The Department of Justice will accept written comments relating to this Modification to Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to David A. Carson, Senior Counsel, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, 999 18th Street, Suite 945, North Tower, Denver, CO 80202 and refer to *United States* v. *Robert R. Krilich,* DJ 90–5–1–1–3405.

The Modification to Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Ill. In addition, the Modification to Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Dated: February 23, 2006.

Scott Schachter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 06–1923 Filed 3–1–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Thompson,* No. 4:06–cv–549 was lodged with the United States District Court for the District of South Carolina on February 22, 2006.

This proposed Consent Decree concerns a complaint filed by the United States against Jerry Thompson and Virginia Thompson, pursuant to Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, to obtain injunctive relief from the defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the restoration of the impacted wetlands to their previous condition, the purchase of off-site mitigation credits and the payment of a civil penalty. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to R. Emery Clark, Office of the United States Attorney for the District of South Carolina, Wachovia Building, Suite 500, 1441 Main Street, Columbia, South Carolina 29201 and refer to *United States* v. *Thompson,* No. 4:06–cv–549.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, United States Courthouse, 901 Richland Lane, Columbia, South Carolina. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/fxsp0;enrd/open.html.*

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 06–1922 Filed 3–1–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 19, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland

Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Harbison-Walker Refractories Company, Moon Township, PA; and Gebr. Pfeiffer USA, Inc., Norcross, GA have become Associate Members. Also, RMC–CEMEX, Houston, TX has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on September 7, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 28, 2005 (70 FR 56736).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–1938 Filed 3–1–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 24, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Cadmium in Construction Standard (29 CFR 1926.1127).

OMB Number: 1218–0186.

Frequency: On occasion; Quarterly; Biennially; Semi-annually; and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 10,000.

Number of Annual Responses: 331,889.

Estimated Time Per Response: Varies from 2 minutes for a secretary to compile and maintain training records to 1.5 hours to administer employee medical examinations.

Total Burden Hours: 39,331.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,657,460.

Description: The standard requires employers to monitor employee exposure to cadmium, to provide medical surveillance to employees, to train employees about the hazards of cadmium in the workplace, and to establish and maintain accurate employee and exposure records. These records are used by employers, employees, physicians, and the Government to ensure that employees are not being harmed by exposure to Cadmium.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Cadmium in General Industry (29 CFR 1910.1027).

OMB Number: 1218–0185.

Frequency: On occasion; Quarterly; Biennially; Semi-annually; and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 53,161.

Number of Annual Responses: 342,451.

Estimated Time Per Response: Varies from five minutes for several provisions (*e.g.*, maintaining an employee's exposure-monitoring or medical-surveillance record, providing information about an employee to the physician) to 1.5 hours to review and update a compliance program or administer an employee medical examination.

Total Burden Hours: 121,177.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $6,190,817.

Description: The standard requires employers to monitor employee exposure to cadmium, to provide medical surveillance, to train employees about the hazards of cadmium in the workplace, and to establish and maintain accurate records of employee exposure to cadmium. These records are used by employers, employees, physicians and the Government to ensure that employees are not being harmed by exposure to cadmium.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–2980 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

[OMB Number 1230–0002]

Office of Disability Employment Policy; Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award

The Secretary of Labor's New Freedom Initiative Award presented by Secretary Elaine L. Chao, United States

Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210:

1. *Subject:* The Secretary of Labor's New Freedom Initiative Award.

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the New Freedom Initiative Award, and to solicit the Secretary of Labor's New Freedom Initiative Award nominations.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Background:* To encourage the use of public-private partnerships, the Secretary of Labor will present the Secretary of Labor's New Freedom Initiative Award. Initiated in 2002, this award is made annually to individual(s), non-profit organization(s), or business(es), that have, through programs or activities, demonstrated exemplary and innovative efforts in furthering the employment objectives of President George W. Bush's New Freedom Initiative. See *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

By increasing access to assistive technologies, and by utilizing innovative training, hiring, and retention strategies, the recipient(s) will have established and instituted comprehensive strategies to enhance the ability of Americans with disabilities to enter and advance within the 21st Century workforce and to participate in daily community life.

5. *Eligibility Criteria:* The following criteria apply to the New Freedom Initiative Award Nominees:

A. The nominees must be individuals, businesses, or non-profit organizations whose activities exemplify the goals of President George W. Bush's New Freedom Initiative, which include the Office of Disability Employment Policy's mission of increasing employment opportunities for youth and adults with disabilities. Nominations may be submitted by other persons and entities with the knowledge and permission of the nominee. Self-nomination is also encouraged.

B. Nominees must have developed and implemented a multi-faceted program directed toward increasing employment opportunities for people with disabilities through increased access to assistive technologies, and use of innovative training, hiring, and retention techniques.

C. Federal, State and local government organizations are not eligible for this award.

6. *Nomination Submission Requirements:*

A. The single program or multiple programs for which the individual or company is being nominated must demonstrate a commitment to people with disabilities, and clearly show measurable results in terms of significantly enhancing employment opportunities for people with disabilities. The programs or activities may also address such issues as the widening skills gap among persons with disabilities, a diversified 21st Century workforce, and discrimination based on disability.

B. The nomination packages should be limited to only that information relevant to the nominee's program(s). Nomination packages should be no longer than twenty (20) typed pages double-spaced. A page is 8.5 x 11 (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. An executive summary prepared by or on behalf of the nominee, which clearly identifies the specific activities, program(s), or establishment under nomination and fully describes the results achieved.

2. A full description of the specific activities, program(s), or establishment for which the nomination is being submitted.

3. Specific data on training, placements, resources expended and other relevant information that will facilitate evaluation of the nominee's submission.

4. A description of how the program(s) and/or activities that are the subject of the nomination have had a positive and measurable impact on the employment of people with disabilities.

5. A data summary on the nominee. See section 6(D).

6. A report detailing any unresolved violations of State or Federal law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must report any pending Federal or State enforcement actions, and any corrective actions or consent decrees that have resulted from litigation under the Americans with Disabilities Act (ADA) or the laws enforced by the Department of Labor (DOL).

D. A data summary on the Nominee will include the following:

1. Name(s) of the individual, organization or business being nominated.

2. Full street address, telephone number and e-mail address where applicable.

3. Name of highest ranking official(s) (where appropriate).

4. Name of executive(s) responsible for human resources, equal employment opportunity, and/or disability awareness at nominee's establishment and/or corporate office (where appropriate).

5. Name of parent company (where appropriate).

6. Name, street address, telephone number and e-mail address of CEO or President of parent company (where appropriate).

7. Name, title, street address, telephone number and e-mail address of a contact person.

8. Number of employees at the establishment or business being nominated (where appropriate).

9. Name and description of principal program(s) or service(s).

E. Timing and Acceptable Methods of Submission of Nominations:

Nomination packages must be submitted to Secretary of Labor's New Freedom Initiative Award, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210 by May 31, 2006. Any application received after 4:45 p.m. EDT on May 31, 2006, will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than May 26, 2006.

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. EDT at the place of mailing, May 30, 2006.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability

Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, e-mail, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

Confirmation of receipt of your application can be made by contacting Margaret Roffee of the Office of Disability Employment Policy, *nfinomination@dol.gov*, telephone (202) 693–7880, (866) ODEP–DOL, TTY (202) 693–7881; prior to the closing deadline.

7. *The Administrative Review Process:*

A. The ODEP Steering Committee will perform preliminary administrative review to determine the sufficiency of all submitted application packages.

B. An Executive Evaluation Committee made up of representatives appointed by the Assistant Secretary of Labor, Office of Disability Employment Policy, from Department of Labor employees will perform secondary review.

C. The Secretary of Labor will conduct the final review and selections.

8. *Other Factors to be Considered During the Administrative Review Process:*

A. If a nominee merges with another company during the evaluation process, only that information relative to the nominated company will be evaluated, and the award, if any, will be limited to the nominated company.

B. Prior receipt of this award will not preclude a nominee from being considered for the New Freedom Initiative Award in subsequent years. Programs and activities serving as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

9. *Procedures Following Selection:*

A. Awardees will be notified of their selection via the contact person identified in the application package at least six weeks prior to the awards ceremony. Non-selected nominees will also be notified within 45 days of the selection of the awardees.

B. As a precondition to acceptance of the award, the nominee agrees to:

1. Submit to ODEP for review a two-minute video of the program(s) or activity(ies) for which it is being recognized within 30 days of notification of award selection;

2. Participate in any New Freedom Initiative workshops hosted by ODEP in conjunction with or within 12 months following the awards ceremony.

C. The awardee may also display an exhibit or showcase of the program(s)/activity(ies) for which it is being recognized at the awards ceremony, with contents of the display submitted to ODEP for review within 30 days of notification of award selection.

D. Materials developed by the awardees in conjunction with section 11(B) and (C) will be subject to legal review at the Department of Labor to ensure compliance with applicable ethics standards.

10. *Location:* The awards ceremony will generally be held during the month of October at a location to be determined by the Secretary of Labor.

Paperwork Reduction Act Notice (Pub. L. 104–13): Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB Number 1230–0002 (Expiration Date: December 31, 2008). The obligation to respond to this information collection is voluntary; however, only nominations that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information of collection is estimated to be 10 hours per response; including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Department of Labor, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210. Please reference OMB Number 1230–0002.

We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Secretary of Labor's New Freedom Initiative Award. Your comments will be very useful to the Office of Disability Employment Policy in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example, whether you thought the instructions were sufficiently clear; what you liked or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you.

Please send any comments you have to Margaret Roffee at *nfinomination@dol.gov* or via mail to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of February, 2006.

Roy Grizzard,

Assistant Secretary.

[FR Doc. E6–2979 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,794]

Cognis Corporation, Cincinnati, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated October 28, 2005, the United Steelworkers of America, Local 14340, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was signed on September 29, 2005. The Department's Notice of negative determination was published in the **Federal Register** on October 31, 2005 (70 FR 62345).

The negative determination was based on the findings that there was no shift of specialty chemical production abroad by the subject firm and no increased imports of specialty chemicals during the relevant period. Workers produce specialty chemicals, including fatty acids, glycerin, and ozone acids, and are not separately identifiable by product line.

The Department carefully reviewed the Union's request for reconsideration and, based on new information provided by the Union representative, has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 29th day of November 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2971 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,896]

Cranford Woodcarving, Inc. Including Workers Whose Wages Were Paid by Tri-State Employment Services, Inc., a Subsidiary of The McCrorie Group Plants 1, 4, and 7, Including On-Site Leased Workers of Express Personnel, Hickory, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 22, 2005, applicable to workers of Cranford Woodcarving, Inc., a subsidiary of The McCrorie Group, Plants 1, 4, and 7, including on-site leased workers of Express Personnel, Hickory, NC. The notice was published in the **Federal Register** on December 15, 2005 (70 FR 74367).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood components (e.g., carvings and turnings); they are not separately identifiable by articles produced.

Information provided by the company shows that Tri-State Employment Service, Inc., was contracted by Cranford Woodcarving, Inc., to provide payroll function and benefit services to workers on-site at the Hickory, NC location of Cranford Woodcarving, Inc.

Information also shows that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Tri-State Employment Service, Inc.

Based on these findings, the Department is amending this certification to include workers whose wages were reported by Tri-State Employment Service, Inc., at Cranford Woodcarving, Inc., a subsidiary of The McCrorie Group, Plants 1, 4, and 7, Hickory, NC.

The intent of the Department's certification is to include all workers of Cranford Woodcarving, Inc., were adversely affected by increased customer imports.

The amended notice applicable to TA–W–57,896 is hereby issued as follows:

All workers of Cranford Woodcarving, Inc. including workers whose wages were reported by Tri-State Employment Service, Inc., a subsidiary of the McCrorie Group, Plants 1, 4, and 7, including on-site leased workers of Express Personnel, Hickory, North Carolina, who became totally or partially separated from employment on or after September 2, 2004, through November 22, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of February 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2974 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,607; TA–W–55,607a; and TA–W–55,607b]

Creo Americas, Inc., U.S. Headquarters, a Subsidiary of Creo, Inc., Billerica, MA, Including Employees of Creo Americas, Inc. Located in New York, NY, and Highland Lakes, NJ; Amended Notice of Revised Determination on Remand

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Revised Determination on Remand on April 5, 2005, applicable to workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts. The notice was published in the **Federal Register** on April 25, 2005 (70 FR 21247).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Billerica, Massachusetts facility of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., located in Highland Lakes, New Jersey. Mr. Jeffrey Blank provided customer service support for the production of professional imaging and software production at the West Virginia and Washington states facilities of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Billerica, Massachusetts facility of Creo Americas, Inc., U.S. Headquarters, a subsidiary if Creo, Inc. located in Highland Lakes, New Jersey. The intent of the Department's certification is to include all workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts Atlas Textile Company, Inc., Commerce, California who were adversely affected by a shift in production to Canada.

The amended notice applicable to TA–W–55,607 is hereby issued as follows:

All workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts (TA–W–55,607), including employees of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts, located in New York, New York (TA–W–55,607A) and located in Highland Lakes, New Jersey (TA–W–55,607B), who became totally or partially separated from employment on or after September 7, 2003, through April 5, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of February 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2973 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,648]

International Business Machines Corporation Tulsa, OK; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor (Department or DOL) for further investigation *Former Employees of International Business Machines Corporation* v. *Elaine Chao, U.S. Secretary of Labor*, No. 04–00079. In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor herein presents the results of the remand investigation regarding certification of eligibility to apply for worker adjustment assistance.

The group eligibility requirements for directly-impacted (primary) workers under Section 222(a) the Trade Act of 1974, as amended, can be satisfied in either of two ways:

I. Section (a)(2)(A) All of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) Both of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

The initial investigation to determine the eligibility of workers of the subject firm to apply for Trade Adjustment Assistance (TAA) was initiated on November 26, 2003 in response to a petition filed by a group of three workers. In an attachment to the original petition, petitioner Brenda Betts stated that International Business Machines Corporation (IBM) was transferring the accounting services performed at the subject facility to India and that "Indians had been training at the [Tulsa] center all summer." (AR at 3). In addition, she included two news articles indicating IBM was exploring transferring more white collar jobs overseas (AR at 8–12), as well as her layoff notice from IBM, which indicates that the "resource action" (layoffs) were "due to the need to rebalance skills, eliminate redundancies and deliver greater efficiencies." (AR at 7; *see also* AR at 16 and SAR at 361). The Department's initial negative determination regarding the former IBM employees was issued on December 2, 2003 and published in the **Federal Register** on January 16, 2004. 69 FR 2622. The Department based that determination on finding that the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974. Rather, the workers had provided accounting services. AR at 31.

On February 6, 2004, the petitioners requested administrative reconsideration of the negative determination of their eligibility to apply for TAA. In that request, the petitioners stated that "these are jobs performing work for British Petroleum [BP] and have been covered under the NAFTA/TRA act since 1999;" that BP was shifting production of oil to foreign sources; and that BP "has approved moving this accounting work to Bangalore, India and that "about 250 [IBM accounting] jobs have already been moved to India." AR at 32.

By letter dated February 11, 2004, the petitioners also appealed the original negative determination with the USCIT. By the time DOL learned of the CIT appeal, the reconsideration investigation was well underway. Concerned with the procedural complexity of a situation in which petitioners had appealed while administrative review had not been completed, the Department requested a voluntary remand so that the Department could issue its decision on the request for reconsideration. On March 30, 2004, the CIT granted the Department's request. DOL promptly issued its negative determination on the request for reconsideration, on March 31, 2004. The notice of negative determination was published in the **Federal Register** on April 16, 2003 (67 FR 20644). The negative determination was based on DOL's findings that the workers' firm did not produce an article within the meaning of Section 222 of the Trade Act and that the workers did not provide services in direct support of an affiliated TAA certified firm.

On May 14, 2004, the Department filed its second consent motion for voluntary remand, so that DOL could re-assess the eligibility of the petitioning worker group in light of the Department's revised service worker policy. Prior to April 2004, DOL certified petitioning service workers only where they had supported production at an affiliated TAA *certified* facility. Under the revised policy, workers who supported production at a TAA *certifiable* [1] facility would be eligible for TAA benefits.

Therefore, the second voluntary remand investigation focused on establishing whether the subject worker group supported production at an affiliated *certifiable* production facility. The Department issued a negative determination on remand, on August 2, 2004. The notice was published in the **Federal Register** on August 10, 2004 (69 FR 48527) (SAR 263–269). The determination was based on findings that the workers at the subject facility did not produce or support the production of an article by IBM and were not under the control of BP. Therefore, the Department concluded that the work performed by the former IBM employees could not be considered as in support of production at a BP facility.

On December 2, 2005, the CIT remanded this proceeding with instructions for additional investigation and analysis and directed that the Department complete the remand process within 60 days, by February 6, 2006. This remand determination is submitted in compliance with those directives.

The CIT concluded that the then-existing record supported the conclusion that the separated workers were controlled by BP. Opinion at 29–31. Accordingly, the Court directed the Department to reevaluate the existing record and to conduct such additional investigation "as is necessary to fully develop the evidentiary record * * *."

[1] The use of the term "certifiable" broadens the set of circumstances under which petitions from workers whose work supports the production of a trade-impacted article would be granted. In particular, the production workers whose activity is supported by affiliated support workers do not, themselves, have to be certifiable. Rather, the Department determines the support workers' eligibility using the sales, production, and import numbers for the *article* in question and the employment numbers for the support workers. Thus, the article produced could be trade-impacted, yet the production workers not certifiable, where the production workers did not experience an employment decline, while workers who supported production could be certified if it was established that increased imports of the article in question contributed importantly to their separation from employment.

Opinion at 42. In particular, the Court instructed DOL to "consider whether—in light BP's continued presence there—the Accounting Facility may constitute an 'appropriate subdivision' of BP * * *." Opinion at 54, n. 53.

Further, the Court directed DOL to "explain, *inter alia*, both its policy and its practice concerning "control" as a criterion for certification of leased workers" (Opinion at 28 n.18) and to "clearly articulate and apply a standard for 'control' that is consistent with this opinion (clarifying and updating that set forth in its new Leased Worker Policy)." Opinion at 43. Further, the Court directed DOL to "explain the origins of and legal bases for" the criteria used to determine the former employees' eligibility for benefits. Opinion at 62. The Court's instructions have been addressed, as set forth below.[2]

In order to determine who exercised operational control over the workers of IBM's Tulsa Accounting Center, the Department reviewed the existing record and requested additional information from IBM, BP, and the petitioners regarding the day to day business activities of the workers of the IBM Tulsa facility. Opinion at 42, 58. To that end, DOL promptly sent out a series of questionnaires, following up as necessary through e-mail and by telephone. For example, the Department issued its first set of questions to BP and IBM on December 12, 2005 and received the first responses on December 19 and December 20, respectively. As documented in the SAR, DOL obtained cooperation from multiple IBM and BP officials, whose responsibilities and access to pertinent information made them sufficiently informed to be proper sources for the investigation. SAR 742, 761–764, 846.

Further, DOL obtained a copy of the contract (SAR at 396–439) between BP and Pricewaterhouse Coopers (PwC) (which IBM replaced when it acquired PwC in 2002), which included the Service Level Agreement/Operating Level Agreement (SLA) as "Schedule 1". Opinion at 58, SAR at 440–719.[3] In order to determine who exercised actual, operational control over the separated IBM workers, DOL used the text of these documents as a starting point, not the endpoint, for its inquiries.

The Court has referred to record evidence that "casts some doubt on IBM's motivation [AR 8–11 and 32]." Opinion at 36. In light of the Court's concern, the Department took steps to verify all input received from any one of the information sources by forwarding it to the other sources for review and comment. AR at 32. Consistent with the spirit of the CIT Opinion (at 63), the former IBM employees were kept fully informed and accorded every possible opportunity to participate in the remand investigation. SAR at 851–1000. Through these means, the Department sought to develop a true understanding of the "real-world" relationship between the former IBM employees, IBM management, and BP employees/management. DOL's efforts have been exhaustively documented in the SAR. Fully mindful of the remedial purposes of the Trade Act, the Department has carefully reviewed all record evidence in preparing its remand determination. Based on IBM's and BP's consistent cooperation and responsiveness to the Department's inquiries and careful review of the materials provided, DOL has determined that the information received from BP and IBM is credible and worthy of reliance.

As a preliminary matter, DOL recognizes that the petitioners, but not necessarily all former IBM employees at the Tulsa facility, had been BP employees prior to being outsourced to PwC in 2000 and that the outsourcing did not result in changes to their work assignments. DOL further understands that IBM's acquisition of PwC had no impact on the petitioners' work assignments. In addition, DOL recognizes that, in 1999, the Department certified accountants formerly employed by BP in Tulsa as eligible for TAA because their work had been performed in support of trade-impacted production activity at BP facilities.

The Department can understand the former IBM employees' frustration and concerns about the fact that workers doing similar work for BP were certified in 1999. However, there are two critical differences between the situation in 1999 and that in 2003. First, the passage of time can change the basis for the employer's personnel decisions. The reasons that led to the layoffs in 1999 are simply different from those present in 2003. Thus, even if plaintiffs were deemed to be under BP's control, they could not be certified. Second, there is the simple fact of the outsourcing. These IBM workers, unlike their colleagues from 1999, are not employees of BP. They are employees of IBM. While that fact does not irrevocably exclude them from coverage (the "control" analysis below will address that issue) the reality of the change in employer cannot be ignored. Outsourcing changes the nature of the relationship between a worker and his former employer. Benefits that workers would have been entitled to receive from their old employer are often lost. For example, the plaintiffs would not be entitled to claim benefits under BP's health insurance program. By the same measure, it would be reasonable to conclude that entitlement to TAA benefits would not follow the outsourced PwC/IBM workers if their new employer controlled their work and if their new employer was not producing an article.

In any case, DOL has made every effort to explore whether the plaintiffs were under the operational control of BP as the first step if determining if they are entitled to certification. As documented through the contract (SAR at 396–439) and other record evidence, the outsourcing that occurred in 2000 did result in the shift of operational control from BP to PwC/IBM. For example, contract Article XII, section 12.1, *General Responsibilities for PwC Employees,* states, in pertinent part: [Business Confidential] SAR at 425. Further, [Business Confidential] SAR at 426. Further, the SLA consistently provides [Business Confidential] SAR at 442,453,521–525. [Business Confidential] SAR at 442,453,521–525. [Business Confidential] SAR at 526.

Such conditions are consistent with a client (BP)-service provider (PwC/IBM) relationship. The uncontested fact that the petitioners provided services for BP after they were outsourced (SAR at 956, 998) does not necessarily mean that those workers were still, in effect, BP employees or under BP's control. In any service provider-client relationship, some degree of oversight and direction is exercised by the client. Thus, the client's exercise of *some* control does not establish that a "client" shares or has exclusive *operational* control over workers employed by an unaffiliated service provider, for the purposes of TAA certification. The following answer in IBM's response to the fifth set of questions submitted by the Department captures IBM's understanding of the relationship between BP and the IBM employees:

[Business Confidential] SAR at 790.

In addition, as a practical matter, the BP accountants certified for TAA benefits in 1999 and the IBM accountants who were denied benefits

[2] The Department has revised its leased worker policy so that DOL no longer maintains that the former IBM employees can be certified only if they are employed at a BP production facility. Accordingly, the CIT's direction for the Department to explain or justify its former position is moot. Opinion at 51–52, 54.

[3] DOL also obtained a copy of IBM's Annual Report for 2003 (SAR at 270–395), which documented the manner in which IBM "rebalanced" its staffing after acquiring PwC. SAR at 360–361 and 377. That information corroborates the other record evidence which indicates that the staffing reductions at IBM's Tulsa Accounting Center had nothing to do with BP.

in 2003 were in fundamentally different situations. As direct employees of BP, the BP accountants were indisputably eligible because their work supported their employer's production of trade-impacted articles during the relevant period. Determining the eligibility of the IBM accountants, on the other hand, is a far more complicated matter.[4] For the former IBM employees to be found eligible, the Department must be able to establish that "client" BP, not "employer" IBM, exercised effective operational control over the workers' performance of their duties. In essence, DOL must determine whether the outsourcing of BP workers effectively transferred control over those workers to PwC/IBM.

The Department will therefore focus on articulating and applying objective criteria for determining whether BP has exercised operational control over the former IBM workers. Opinion at 28. In the process of developing the criteria for review, the Department has reviewed the leased worker policy articulated in DOL's January 24, 2004 memorandum. Based on that review, the Department has determined that it is appropriate to revise that policy, as an interim response to the issues raised in this proceeding, so that DOL policy more fully reflects potential real-world situations. The Department retains the discretion to further revise this policy, so that the subject of "operational control" can continue to receive close scrutiny as DOL undertakes rulemaking to update the regulations implementing the eligibility requirements of the Trade Act. Given the time constraints imposed by the mandated remand period, this remand determination constitutes the "public document" (Opinion at 43) through which the Department announces its updated "leased worker policy."

Further, in response to the CIT's remand instructions (Opinion at 28, n. 18); the Department has re-evaluated the significance of "the existence of a standard contract between the contractor firm and the subject firm which should be considered sufficient evidence to prove the existence of a joint employer relationship." *Id.* (citing the January 24, 2004 memorandum at SAR 261). Given the Department's focus on ascertaining *operational,* rather than formal, control, DOL has determined that the existence of a contract between the employer (such as a staffing agency, leasing agency or contractor) of a worker group and a producing firm is not an essential prerequisite for the Department to determine that the workers in question are, in effect, joint employees or leased workers of the producing firm. The presence or absence of a contract would simply be one element, albeit an important one, in the Department's analysis. While a contract, where one exists, may provide strong evidence about the intended nature of the employment relationship between two firms, the Department will also review the operational conditions in which workers of an independent firm perform their functions for a producing firm. In all situations, however, for certification, workers must still have been engaged in activities related to production of an article produced by a firm.

In developing the criteria for determining whether a worker is an employee or an independent contractor, DOL referred to pertinent case law; to the Internal Revenue Code (26 U.S.C. § 3121(d)); to Revenue Ruling 87–41; and to Restatement (Second) of Agency § 2, *Master; Servant; Independent Contractor* and § 220, *Definition of Servant* (1958). The Department found the case law related to the "economic realities" test particularly useful. For example, the Supreme Court, held in *Nationwide Mutual Insurance Co.* v. *Darden,* 503 U.S. 318, 323–324 (1992) (a case arising under the Employee Retirement Income Security Act):

> In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Id. (additional citations omitted).

Based on its review of relevant law, the Department has developed seven criteria that will be applied to determine the extent to which a worker group engaged in activities related to the production of an article by a producing firm is under the operational control of the producing firm. The body of law involving joint employment or independent contractor status is complex and difficult to apply. The Department has sought to distill that body of law into some basic principles, thus creating a test that is useable within the short statutory timeframes that govern TAA investigations. Applying the criteria to the record evidence, DOL has sought to determine what constitute the "practical realities" (Opinion at 40, n. 33) of the relationship between the former IBM workers and BP.

The Seven Criteria Are as Follows

1. Whether the subject workers were on-site or off-site of a facility of a production firm.
2. Whether the subject workers performed tasks that were part of the producing firm's core business functions, as opposed to independent, discrete projects that were not part of the producing firm's core business functions.
3. Whether the production firm has the discretion to hire, fire and discipline subject workers.
4. Whether the production firm exercises the authority to supervise the subject workers' daily work activities, including assigning and managing work, and determining how, where, and when the work of individual workers takes place. Factors such as the hours of work, the selection of work, and the manner in which the work is to be performed by each individual are relevant.
5. Whether the services of the worker group have been offered on the open market (*e.g.,* do workers of the subject group perform work that supports other clients?).
6. Whether the production firm has been responsible for establishing wage rates and the payment of salaries to individual workers of the subject worker group.
7. Whether the production firm has provided skills training to subject workers.

None of these factors is dispositive. The Department will look at such evidence as there is that goes to all these factors and will determine whether, on balance, the evidence supports a level of control by the producing firm that demonstrates that the workers of the contractor or secondary firm are, in fact, leased workers or joint employees of both firms. The Department recognizes that there may be cases in which evidence of every one of the criteria is not available.

1. *The former IBM workers were off-site of any facility of the producing firm.*

While the leased worker policy articulated in the January 24, 2004 memorandum addressed only on-site leased workers, DOL has determined that there may be circumstances where off-site leased workers, as well as on-site leased workers, who provide support for production at a trade-impacted facility can satisfy the "operational control"

[4] [Business Confidential] SAR at 761.

criteria to be eligible for TAA benefits. The Department recognizes that co-location, while an important consideration when determining whether subject workers are controlled by a producing firm (Opinion at 45, 48–49), is not the conclusive factor.

DOL considers co-location to create a strong presumption of control, so long as the workers are not engaged in activities completely unrelated to the work of the facility, such as selling extraneous items (*e.g.*, food) on-site and so long as other evidence does not demonstrate that the workers worked independently of the producing firm.

In the present case, the former IBM employees were not located at a BP facility of any kind. The fact that IBM employees worked in the same location as they had when employed by BP and that BP maintained staff (*e.g.*, the BP Treasury unit) at the same street address where the former IBM employees had worked did not constitute co-location, because the IBM and BP facilities were completely separate, both physically (they were in different parts of the building) and functionally (for example, they had different telephone, computer and e-mail service). The information received from BP and IBM was consistent in that respect. SAR at 722, 742, 780, 791, 812, 834, 843). For example, [Business Confidential] SAR at 734. *See* also BP response. SAR at 843.

2. *The former IBM workers performed tasks that were not part of BP's core business functions.*

While undeniably important, the accounting services performed by the workers in question are not part of BP's core business activities of oil and gas exploration and production, petroleum refining and marketing, and petrochemicals production, and are exactly the kind of non-core activities that many production firms have successfully outsourced or have performed by independent firms. SAR at 1003, 1009. [Business Confidential] (SAR at 1005)[5]

3. *BP had no discretion to hire, fire or discipline the IBM workers.*

The discretion to hire, fire and discipline workers is a strong indicator of the level of control exercised by a producing firm on the employees of another firm. This finding, which does not appear to be a matter of contention, is extensively documented. For example, [Business Confidential] SAR at 723.

4. *BP did not exercise the authority to supervise IBM workers' daily activities during the relevant period.*

BP did not manage the individual IBM employees' work, nor did BP determine how, where, and when the work of individual workers took place. Moreover, the investigation confirmed that while IBM personnel did interact with BP personnel to some degree, that interaction was limited and not managerial in nature. As is normal in a service provider-client relationship, BP outlined the work requirements, and IBM decided, when, where, and who would do the work.

For example, [Business Confidential] SAR at 735.

[Business Confidential] SAR at 844. (emphasis added).

The Department followed up on every asserted instance of BP having exercised operational control over the former IBM employees. For example, [Business Confidential] SAR at 923. DOL communicated Ms. McAdoo's statement to IBM and BP. SAR at 789, 843. [Business Confidential] SAR at 789. [Business Confidential] SAR at 843. Once again, in any service provider-client relationship there must be some degree of interaction and oversight on the part of the client, but this does not necessarily constitute "operational control."

The former IBM employers were, in turn, informed of the IBM and BP responses to Ms. McAdoo's statement. SAR at 979, 985. Further, DOL relayed a follow-up question, requesting, for example, more specific information about the "type of directions Twyla McAdoo received from Steve Funk?" The employees responded:

[Business Confidential] SAR at 998.

In addition, DOL did consider the other examples of "control" provided by the former IBM workers. SAR at 998. Those examples were, as follows:

[Business Confidential] SAR at 998–999. [Business Confidential] SAR at 442, 453, 521–525.

See also SAR at 843.

Further, the apparent fact that [Business Confidential]

A client would naturally wish to inform a service provider of the information needed for the service provider's personnel to do their jobs. The client would also, understandably, want to be kept informed of the activities of the service personnel. Thus, [Business Confidential] Those factors could just as easily be present where the relationship was that of client and independent service-provider.

Further, the following question/response illustrates the extent to which BP's perception of the relationship differs from that presented by the former IBM employees:

[Business Confidential] SAR at 844.

Taken as a whole, the record evidence substantiates that, while there was interaction between BP personnel and the IBM personnel under the contract in question, the BP role was not supervisory or managerial in nature. Rather, the dealings between BP and IBM personnel were typical of what one might expect in a service provider-client relationship.

The former IBM employees have stated that they were expressly required by BP to affirmatively hold themselves out as "doing business for BP" as evidence of an agency relationship between BP and IBM and, accordingly, evidence that BP controlled the IBM workers in question. SAR at 140. In fact, in response to a DOL question, BP stated: [Business Confidential] SAR at 844.

[Business Confidential] SAR at 852.

Thus, the fact that the workers in question were specifically required to clarify to the parties they did business with that they were IBM employees is further evidence of a distinct service provider-client relationship. Moreover, the fact that IBM management had to address the problem of IBM employees describing themselves as BP employees by instituting this requirement is evidence that, while the workers (specifically the ones outsourced from BP) may have felt close ties to BP, both BP and IBM sought to make it clear that they worked for IBM and not BP.

Also cited as evidence of BP control of the workers is the petitioner's assertion that the subject facility was "a 'shared' facility, with BP maintaining a physical presence there even after the 'outsourcing,'" including a treasury and main frame computer (Order at 30). According to both IBM and BP officials, however, the Tulsa facility was not shared. While there were some BP employees and a BP Treasury office (as well as offices for other un-affiliated firms) in the same building as the IBM workers, the BP office was located on a separate floor, had separate phone and e-mail systems from the IBM offices, and was not there for the purpose of controlling the IBM workers. SAR at 843.

For example, BP has stated:

[Business Confidential] SAR at 843.[6]

[Business Confidential] SAR at 734. IBM further clarified this point where it stated: [Business Confidential] SAR at 789.

5. *The services performed by IBM workers were performed for clients other than BP.*

This fact does not appear to be in contention, and is another strong

[5] [Business Confidential] (SAR at 1017).

[6] [Business Confidential].

indicator that IBM, and not BP, controlled the workers in question. While the petitioners themselves may have worked only for BP, this is not the case for the entire worker group.

IBM has stated [Business Confidential] SAR at 761. *See* also SAR at 723, 790.

6. *BP was not responsible for establishing wage rates or paying salaries to individual IBM workers.*

This issue does not appear to be a matter of contention. The petitioners have indicated that PwC/IBM, not BP, set their wage rates and paid their salaries, once they were outsourced. SAR at 913. Therefore, the evidence generated for evaluation of this criterion indicates that BP did not exercise operational control over the former IBM employees.

7. *BP did not provide skills training to the workers of IBM.*

This finding, which has been corroborated by both IBM and BP officials, is another strong indicator that IBM controlled the workers in question. [Business Confidential]

Moreover, there is evidence that PwC/IBM provided training to the outsourced Tulsa employees, both to ensure both that they maintained the ability to perform the duties they had previously handled for BP and to help them acquire new skills for career development within their new firm. The "Pricewaterhouse Coopers Questions and Answers for Outsourcing" (SAR at 69) states:

[Business Confidential] (*Id.*) (emphasis in original).

Further, as instructed by the Court, DOL did consider the fact that the former IBM employees had been employed by BP, performing the same tasks as they subsequently performed for PwC/IBM after being outsourced. Opinion at 43, n. 38. While the situation presented is superficially similar to that presented in *Former Employees of Pittsburgh Logistics Systems, Inc.* v. *USDOL*, 27 ITRD 2125, 2003 WL 716272 *10 (February 28, 2003) (*See* SAR at 945), the IBM petitioners were not part of a subdivision that was "integrated into the [BP] corporate structure" (*Id.*) and did not report "directly to [BP] employees on all operational matters." (*Id.*) Further, BP personnel did not manage "all job tasks, direct[] which employees could work at specific locations and specifically relocate[] the [IBM] subdivision along with certain [BP] facilities * * * to [BP's] facilities, evaluate[] [IBM] employee job performance, and advise[] which [IBM] employees should receive merit salary increases." *Id.*[7]

Further, the situation of the petitioners in *Former Employees of Wackenhut Corp.* v. *USDOL*, Ct. No. 02–00758, is not precedent as it was decided under the former leased worker policy, which looked only at whether there was a contract and whether the workers were on-site.

Conclusion

After careful consideration of the record evidence, particularly that developed through the remand investigation, and the applicable Department policy, I affirm the original notice of negative determination of eligibility for trade adjustment assistance on the part of workers and former workers of International Business Machines Corporation, Tulsa, Oklahoma. Signed at Washington, DC this 6th day of February, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2989 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,838]

Isabel Bloom LLC, Davenport, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2006 in response to a petition filed by a company official on behalf of workers at Isabel Bloom LLC, Davenport, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of February, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2969 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

[7] The Department has considered the issue of whether to characterize employee leasing firms as appropriate subdivisions of the producing firm. The Department believes that this mode of analysis does violence to the separate nature of independent corporations. This case is an excellent example. No one can reasonably suggest that IBM and BP are legally related. The Department believes its new leased worker policy, using an operational control analysis, arrives at the same result without doing violence to corporate legal formalities.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,045]

Lexel Company Including On-Site Leased Workers of Westaff, Inc., Hutsonville, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 6, 2005, applicable to workers of Lexel Company, including on-site leased workers of Westaff, Inc., Hutsonville, Illinois. The notice was published in the **Federal Register** on December 21, 2005 (70 FR 75845).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of small electric motors (fractional H.P. electrical motors).

A previous certification, TA–W–52,202, was issued on August 7, 2003, for workers of Lexel Company, Hutsonville, Illinois which did not include on-site leased workers of Westaff, Inc. That certification expired August 7, 2005. This certification is being amended to change the impact date for workers of Westaff, Inc., from August 8, 2005 to September 28, 2004 (one year prior to the September 28, 2005 petition date). The impact date for workers of Lexel Company remains August 8, 2005.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to clarify the period of eligibility to apply for all workers of Lexel Company, including on-site leased workers of Westaff, Inc., Hutsonville, Illinois, who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–58,045 is hereby issued as follows:

All workers of Lexel Company, Hutsonville, Illinois who became totally or partially separated from employment on or after August 8, 2005 through December 6, 2007, and including on-site leased workers of Westaff, Inc. at the Hutsonville site who

became totally or partially separated from employment on or after September 28, 2004 through December 6, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of February, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2975 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,816]

Outokumpu Advanced Superconductors, Waterbury, CT

Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2006 in response to a worker petition filed by a company official on behalf of workers at Outokumpu Advanced Superconductors, Waterbury, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of February, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2968 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of February 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. one of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either–

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–58,571; Parlex Corporation, Multi Layer Business Unit, Methuen, MA, January 4, 2005

TA–W–58,597; Cooper Standard Automotive, North American Sealing Systems Division, Gaylord, MI, December 27, 2004

TA–W–58,630; Swagelok Biopharm Services Company, North Tonawanda, NY, January 5, 2005

TA–W–58,705; Daisy Outdoor Products, BB Production Div., Salem, MO, January 20, 2005

TA–W–58,750; Robert Bosch Tool Corp., A Subsidiary of Robert Bosch Corp., Leased Production Workers From ESA/Resource, Heber Springs, AR, January 30, 2005

TA–W–58,757; Swarovski North America Limited, Crystal Goods Div., Cranston, RI, January 30, 2005

TA–W–58,757A; Swarovski North America Limited, Crystal Components Div., Cranston, RI, January 30, 2005

TA–W–58,658; CMOR Manufacturing, Inc., Rocklin, CA, January 18, 2005

TA–W–58,431; Clarion Sintered Metals, Ridgway, PA, November 30, 2004

TA–W–58,491; Hanes Dye and Finishing Co., Winston-Salem, NC, October 9, 2005

TA–W–58,570; Sierra Manufacturing Group, LLC, Including on-Site Lease

Workers of Skill Span Staffing, Pocola, OK, January 3, 2005

TA–W–58,628; Five Rivers Electronic Innovations LLC, Color Television Product Line, Greeneville, TN, October 2, 2005

TA–W–58,628A; Five Rivers Electronic Innovations LLC, Plastic Parts Product Line, Greeneville, TN, October 2, 2005

TA–W–58,628B; Five Rivers Electronic Innovations LLC, Distribution Warehouse, Greeneville, TN, October 2, 2005

TA–W–58,776; Flynn Enterprises, LLC, Elkton Laundry Division, Elkton, KY, January 27, 2005

TA–W–58,564; Lizette Creations, Inc., Long Beach, CA, December 30, 2004

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–58,550; Baxter Healthcare Corporation, Financial Center of Excellence, Deerfield, IL, December 28, 2004

TA–W–58,700; Deutsch Engineered Connecting Devices, Defense/ Aerospace Div., Hemet, CA, January 5, 2005

TA–W–58,437; Medsep Corporation, dba Pall Medical, A Subsidiary of Pall Corp., Leased Workers of Kelly Services, Covina, CA, November 30, 2004

TA–W–58,594; Donaldson Company, Grinnell, IA, January 6, 2005

TA–W–58,648; Fisher Hamilton L.L.C., Subsidiary of Fisher Scientific International, Inc., Two Rivers, WI, January 13, 2005

TA–W–58,661; KEMET Electronics Corporation, Including Leased Workers of BPS, Staffmark and Phillips Staffing, Simpsonville, SC, February 24, 2006

TA–W–58,661A; KEMET Electronics Corporation, Including Leased Workers of BPS, Staffmark and Phillips Staffing, Simpsonville, SC, February 24, 2006

TA–W–58,679; Falcon Foam, a Division of Atlas Roofing Corp., Los Angeles, CA, January 19, 2005

TA–W–58,696; Entrecap Corporation, dba Fing'rs, A Subsidiary of Pacific World Corporation, Camarillo, CA, January 3, 2005

TA–W–58,704; Brunswick Bowling and Billiards Corp., A Subsidiary of Brunswick Corp., Leased Workers of Staffing Alliance, Muskegon, MI, January 23, 2005

TA–W–58,752; Claireson Manufacturing Co., Division of Blauer Mfg. Co., Inc., Forrest City, AR, January 30, 2005

TA–W–58,578; Bekaert Corporation, SSW–Muskegon Division, Muskegon, MI, January 4, 2005

TA–W–58,581; Bernhardt Furniture Company, Design Division Plant #3, Lenoir, NC, January 4, 2005

The following certification has been issued.

The requirement of supplier to a trade certified firm has been met.

TA–W–58,542; River City Plastic, Vicksburg, MI, December 9, 2004

TA–W–58,633; Southern Hardwoods, Inc., Laurinburg, NC, January 10, 2005

The following certification has been issued.

The requirement of downstream producer to a trade certified firm has been met.

None

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,566; Pentair Pool Products, Inc., Pool and Spa Division, Moorpark, CA.

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

TA–W–58,733; Ranco North America, Division: Com-Trol, A Subsidiary of Invensys, Mansfield, OH.

TA–W–58,653; AK Steel, Butler Works, Butler, PA.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a) (2) (B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,036; Liberty Carton, New England Division, Peabody, MA.

TA–W–58,236; Natick Paperboard Corp., Paperboard Mill Div., Natick, MA.

TA–W–58,585; Goodyear Tire and Rubber Company, Engineered Products Division, St. Marys, OH.

The investigation revealed that criteria (a)(2)(A)(I.C.)(Increased imports and (a) (2) (B) (II.C) (has shifted production to a foreign country) have not been met.

None

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–58,569; OBG Distribution Company, LLC, Celina, TN.

TA–W–58,632; Leyold Vacuum, USA, Tempe, AZ.

TA–W–58,675; Outsource Partners International, Houston, TX.

TA–W–58,743; Getronics, Call Center, Tampa, FL.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–58,718; Schoeller Arca Systems, Tacoma, WA.

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W–58,571; Parlex Corporation, Multi Layer Business Unit, Methuen, MA, January 4, 2005

TA–W–58,597; Cooper Standard Automotive, North American Sealing systems Division, Gaylord, MI, December 27, 2004

TA–W–58,630; Swagelok Biopharm Services Company, North Tonawanda, NY, January 5, 2005

TA–W–58,705; Daisy Outdoor Products, BB Production Div., Salem, MO, January 20, 2005

TA–W–58,750; Robert Bosch Tool Corp., A Subsidiary of Robert Bosch Corp., Leased Production Workers From ESA/Resource, Heber Springs, AR, January 30, 2005

TA–W–58,757; Swarovski North America Limited, Crystal Goods Div., Cranston, RI, January 30, 2005

TA–W–58,757A; Swarovski North America Limited, Crystal

Components Div., Cranston, RI, January 30, 2005
TA–W–58,431; Clarion Sintered Metals, Ridgway, PA, November 30, 2004
TA–W–58,491; Hanes Dye and Finishing Co., Winston-Salem, NC, October 9, 2005
TA–W–58,570; Sierra Manufacturing Group, LLC, Including on-Site Leased Workers of Skill Span Staffing, Pocola, OK, January 3, 2005
TA–W–58,628; Five Rivers Electronic Innovations LLC, Color Television Product Line, Greeneville, TN, October 2, 2005
TA–W–58,628A; Five Rivers Electronic Innovations LLC, Plastic Parts Product Line, Greeneville, TN, October 2, 2005
TA–W–58,628B; Five Rivers Electronic Innovations LLC, Distribution Warehouse, Greeneville, TN, October 2, 2005
TA–W–58,776; Flynn Enterprises, LLC, Elkton Laundry Division, Elkton, KY, January 27, 2005
TA–W–58,564; Lizette Creations, Inc., Long Beach, CA, December 30, 2004
TA–W–58,437; Medsep Corporation, dba Pall Medical, A Subisdiary of Pall Corp., Leased Workers of Kelly Services, Covina, CA, November 30, 2004
TA–W–58,594; Donaldson Company, Grinnell, IA, January 6, 2005
TA–W–58,648; Fisher Hamilton LLC, Subsidiary of Fisher Scientific International, Inc., Two Rivers, WI, January 13, 2005
TA–W–58,661; KEMET Electronics Corporation, Including Leased Workers of BPS, Staffmark and Phillips Staffing, Simpsonville, SC, February 24, 2006
TA–W–58,661A; KEMET Electronics Corporation, Including Leased Workers of BPS, Staffmark and Phillips Staffing, Simpsonville, SC, February 24, 2006
TA–W–58,679; Falcon Foam, a Division of Atlas Roofing Corp., Los Angeles, CA, January 19, 2005
TA–W–58,696; Entrecap Corporation, dba Fing'rs, A Subsidiary of Pacific World Corporation, Camarillo, CA, January 3, 2005
TA–W–58,704; Brunswick Bowling and Billiards Corp., A Subsidiary of Brunswick Corp., Leased Workers of Staffing Alliance, Muskegon, MI, January 23, 2005
TA–W–58,752; Claireson Manufacturing Co., Division of Blauer Mfg. Co., Inc., Forrest City, AR, January 30, 2005
TA–W–58,578; Bekaert Corporation, SSW-Muskegon Division, Muskegon, MI, January 4, 2005
TA–W–58,581; Bernhardt Furniture Company, Design Division Plant #3, Lenoir, NC, January 4, 2005
TA–W–58,542; River City Plastic, Vicksburg, MI, December 9, 2004
TA–W–58,633; Southern Hardwoods, Inc., Laurinburg, NC, January 10, 2005

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,733; Ranco North America, Division: Com-Trol, A Subsidiary of Invensys, Mansfield, OH.
TA–W–58,653; AK Steel, Butler Works, Butler, PA.
TA–W–58,036; Liberty Carton, New England Division, Peabody, MA.
TA–W–58,236; Natick Paperboard Corp., Paperboard Mill Div., Natick, MA.
TA–W–58,585; Goodyear Tire and Rubber Company, Engineered Products Division, St. Marys, OH.
TA–W–58,569; OBG Distribution Company, LLC, Celina, TN.
TA–W–58,632; Leyold Vacuum, USA, Tempe, AZ.
TA–W–58,675; Outsource Partners International, Houston, TX.
TA–W–58,743; Getronics, Call Center, Tampa, FL.
TA–W–58,718; Schoeller Arca Systems, Tacoma, WA.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–58,658; CMOR Manufacturing, Inc., Rocklin, CA.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,550; Baxter Healthcare Corporation, Financial Center of Excellence, Deerfield, IL,
TA–W–58,700; Deutsch Engineered Connecting Devices, Defense/ Aerospace Div., Hemet, CA.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

I hereby certify that the aforementioned determinations were issued during the month of February 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 24, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–2978 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,785]

Saint Gobain Calmar, City of Industry, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 3, 2006 in response to a worker petition filed by a company official on behalf of workers at Saint-Gobain Calmar, City of Industry, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 15th day of February 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2970 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,113]

Unimatrix Americas, Greensboro, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated January 4, 2006, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on November 16, 2005, and

published in the **Federal Register** on December 6, 2005 (70 FR 72655).

The investigation revealed that the petitioning workers of this firm or subdivision do not produce an article within the meaning of Section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd of February, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2972 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Notification of Methane Detected in Mine Atmosphere

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 57.22004(c), 57.22229, 5722230, 5722231, and 57.22239; Methane Detected in Mine Atmosphere.

DATES: Submit comments on or before May 1, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 103(c), (I), and (j) of the Federal Mine Safety and Health Act of 1977 authorizes the inspection, recordkeeping and reporting requirements implemented in 30 CFR 57, Subpart T-Safety Standards for Methane in Metal and Nonmetal mines. Methane is a flammable gas found in underground mining. Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is lighter than air. Although methane itself is nontoxic, its presence reduces oxygen content by dilution when mixed with air, and consequently can act as an asphyxiant when present in large quantities. Methane mixed with air is explosive in the range of 5 to 15 percent, provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in the mine atmosphere may further enhance the explosion potential of methane in a mine.

Metal and Nonmetal mine operators are required to notify MSHA as soon as possible if any of the following events occur: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere; (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere; (c) there is an ignition of methane; (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B, or Category VI mine. If methane reaches 2.0 percent in a Category IV mine; or methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, and VI mines, MSHA shall be notified immediately. MSHA investigates these occurrences to determine that the mine is placed in the proper category.

II. Desired Focus of Comments

MSHA 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page *(http://www.msha.gov)* and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

MSHA is seeking an extension of the information collection related to certification and notification of methane detected in mine atmosphere.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Methane Detected in Mine Atmosphere.

OMB Number: 1219–0103.

Recordkeeping: Certification of examinations shall be kept for at least one year.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 8.

Responses: 416.

Total Burden Hours: 36 hours.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 24th day of February, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–2981 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 56.3203(a), 57.3203(a), and 75.204(a); Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

DATES: Submit comments on or before May 1, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov,* along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

30 CFR 56/57.3203 and 75.204 address the quality of rock fixtures and their installation. Roof and rock bolts and accessories are an integral part of ground control systems and are used to prevent the fall of roof, face, and ribs. These standards require that metal and nonmetal and coal mine operators obtain a certification from the manufacturer that rock bolts and accessories are manufactured and tested in accordance with the 1995 American Society for Testing and Materials (ASTM) publication "Standard Specification for Roof and Rock Bolts and Accessories" (ASTM F432–95).

II. Desired Focus of Comments

MSHA 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the Internet by accessing the MSHA home page *(http://www.msha.gov)* and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

MSHA is seeking to continue the requirement for mine operators to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable American Society for testing and Materials (ASTM) specifications and make that certification available to an authorized representative of the Secretary.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

OMB Number: 1219–0121.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 854.

Estimated Time Per Respondent: .05 hours.

Responses: 3,376.

Total Burden Hours: 169 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 24th day of February, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–2982 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–43–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Mississippi River Commission.

TIME AND DATE: 9 a.m., April 3, 2006.

PLACE: On board MISSISSIPPI V at River Park, Tiptonville, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and project on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or project of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 4, 2006.

PLACE: On board MISSISSIPPI V at Mud Island, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current

project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 1 p.m., April 5, 2006.

PLACE: On board MISSISSIPPI V at City Front, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 7, 2006.

PLACE: On board MISSISSIPPI V at New Orleans District Dock, Foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–1990 Filed 2–28–06; 11:54 am]

BILLING CODE 3710–GX–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–011)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–6580; fax (256) 544–0258.

NASA Case No. MFS–31738–1: Multiple Tool For Friction Stir Welding And Friction Plug Welding;

NASA Case No. MFS–32208–1: Nonvolatile Analog Memory;

NASA Case No. MFS–32254–1: Method Of Fabricating A Shaped Structure In A Temperate Environment And Material Therefor;

NASA Case No. MFS–32125–1: Method And Apparatus For Predicting Unsteady Pressure And Flow Rate Distribution In A Fluid Network.

Dated: February 24, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–2992 Filed 3–1–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–012)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855; fax (216) 433–6790.

NASA Case No. LEW–17671–1: Very Large Area/Volume Microwave ECR Plasma And Ion Source.

Dated: February 24, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–2994 Filed 3–1–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–013)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, is the subject of a patent application that has been filed in the United States Patent and Trademark office, and is available for licensing.

DATES: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. DRC–005–031: Sound Shield;

NASA Case No. NPO–40752: Improved Solar Cell Circuit and Method for Manufacturing Solar Cells.

Dated: February 24, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–2996 Filed 3–1–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–014)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark office, and is available for licensing.

DATES: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel,

Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–9260; fax (757) 864–9190.

NASA Case No. LAR–17280–1: Magnetic Field Response Measurement Acquisition System.

Dated: February 24, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–2997 Filed 3–1–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–010)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–15606–1: Re-Entry Vehicle Shape For Enhanced Performance;

NASA Case No. ARC–14586–3: Design Of Optimal Supersonic Airfoil Shapes.

Dated: February 24, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–3003 Filed 3–1–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–008)]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces an open meeting of the NASA International Space Station Advisory Committee.

DATES: Thursday, March 16, 2006, 1 p.m.–2 p.m. eastern standard time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7U22, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Todd F. McIntyre, Office of External Relations, (202) 358–4621, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support a new crew.

—To assess the Russian flight team's preparedness to accomplish the Expedition Thirteen mission.

—To assess the health and flight readiness of the Expedition Thirteen crew.

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: 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 should provide identifying information in advance by contacting Todd F. McIntyre via e-mail at *Todd.McIntyre-1@nasa.gov* or by telephone at (202) 358–4621 by March 15, 2006. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Rationale for this notice being posted less than 15 days prior to the meeting is due to scheduling difficulties associated with Expedition 13.

Dated: February 24, 2006.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E6–3000 Filed 3–1–06; 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 April 17, 2006. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *requestschedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle

Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note the New Address for Requesting Schedules Using E-Mail)

1. Department of Agriculture, Agricultural Marketing Service (N1–136–05–6, 8 items, 8 temporary items). Inputs, outputs, master files, system documentation, and electronic mail and word processing copies associated with an electronic system used to collect, analyze, and report on pesticide residues and food-borne pathogens found in agricultural commodities and the water supply. Test results were previously approved as permanent as part of other electronic systems.

2. Department of Agriculture, Agricultural Marketing Service (N1–136–06–10, 7 items, 6 temporary items). Inputs, master files, routine or ad hoc reports, system documentation, and electronic mail and word processing copies associated with an electronic system used to track federal recordkeeping compliance by certified private applicators of restricted use pesticides. Proposed for permanent retention are recordkeeping copies of annual summary reports.

3. Department of the Air Force, Agency-wide (N1-AFU–05–2, 6 items, 6 temporary items). Directives, instructions, correspondence, and other records, including electronic data that supplements these records, relating to a structured program to improve performance of mission essential tasks. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of the Army, Army Review Boards Agency (N1-AU–06–1, 2 items, 2 temporary items). Case files relating to reviews of personnel actions such as the correction of military records, discharge, grade determination, disability, clemency and parole. Also included are electronic copies of records created using electronic mail and word processing. Records relating to changes of status are retained in the individual's official personnel file and approved as permanent. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Defense, National Geospatial-Intelligence Agency (N1–537–05–1, 27 items, 12 temporary items). Poor quality and duplicate overhead, airborne, experimental, and commercial imagery, and spectral data not used in support of agency intelligence and analysis production. Proposed for permanent retention are recordkeeping copies of good quality overhead, airborne, ground, experimental, and commercial imagery, and spectral data used in support of agency intelligence and analysis production.

6. Department of Health and Human Services, Centers for Disease Control and Prevention, (N1–442–05–2, 4 items, 4 temporary items). Recorded telephone messages and associated tracking systems in paper and electronic format relating to calls received at the emergency operations center regarding public health concerns. Also included are electronic copies of records created using electronic mail and word processing.

7. Department of Homeland Security, Transportation Security Administration (N1–560–04–13, 20 items, 8 temporary items). Records relating to the development of transportation security policy, including information systems security files, emergency planning files, routine case files, Inspector General local office audit files, and policy development files for special events. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of general transportation security policy, and policy development files for mass transit, aviation, rail, postal, shipping, maritime, pipeline, highway, motor carrier, and cross modal security programs. Also proposed for permanent retention are case files of historical significance, research and development precedent-setting case files, case files concerning specific threats, and the records of security and intelligence boards.

8. Department of Homeland Security, Transportation Security Administration (N1–560–06–1, 14 items, 12 temporary items). Records commonly created across the agency relating to program planning, policy and guidance, marketing and customer outreach, customer service, and special event security. Included are such records as work plans, standard operating procedures, correspondence, chronological and reading files, reports and statistics, and intra-agency agreement files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of mission-related committee records and records created in compliance with the provisions of the Sunshine Act.

9. Department of Homeland Security, U.S. Coast Guard (N1–26–05–9, 12 items, 6 temporary items). Records of the International Ice Patrol, including iceberg sightings reports, air reconnaissance logs, radar film, reference requests, and electronic copies

of records created using electronic mail and word processing. Proposed for permanent retention are master files, system documentation, ice charts, and annual reports associated with an electronic system used to estimate iceberg drift and deterioration. Also proposed for permanent retention are recordkeeping copies of agency-directed research and development records relating to icebergs.

10. Department of Homeland Security, U.S. Coast Guard (N1–26–06–2, 4 items, 4 temporary items). Records relating to consultations on the environmental impact of deploying underwater defensive equipment. Included are such records as correspondence, justifications, expert opinions, recommendations, environmental assessments, and remediation plans. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of the Interior, U.S. Geological Survey (N1–57–05–1, 106 items, 106 temporary items). Records of the Water Resources Division, including research and investigative project case files, technical reviews, equipment plans and specifications, records relating to research and data collection activities along international border areas of the United States, and records relating to the collection and analysis of observational data on surface water, ground water, water quality, sediment, biology, stream-channel and geomorphology, water use, and hydrology, exclusive of data entered into the National Water Information System and the Laboratory Information Management System. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of Justice, Federal Bureau of Investigation (N1–65–06–3, 3 items, 3 temporary items). Records relating to requests for arrest and conviction records by the subjects of those records. Also included are electronic copies of records created using electronic mail and word processing.

13. Department of State, Executive Secretariat (N1–59–06–5, 6 items, 2 temporary items). Daily and weekly reports generated by the Secretariat Tracking and Retrieval System. Proposed for permanent retention are the system inputs, master files, and documentation.

14. Department of the Treasury, Bureau of Engraving and Printing (N1–318–06–1, 3 items, 3 temporary items). Records relating to tests of laboratory equipment and materials. Included are such records as calibration and verification log books, quality of production materials log books, and reports on test results.

15. Veterans Health Administration, Office of Research Oversight (N1–15–06–1, 3 items, 3 temporary items). Investigative case files, including electronic copies of records created using electronic mail and word processing.

Dated: February 24, 2006.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E6–2937 Filed 3–1–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board

AGENCY: National Institute for Literacy.

ACTION: Notice of a meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Liz Hollis at telephone number (202) 233–2072 no later than March 6, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Date and Time: Open sessions—March 16, 2006, from 8:30 a.m. to 6 p.m.; and March 17, 2006, from 8 a.m. to 2 p.m.

ADDRESSES: The National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; e-mail: *ehollis@nifl.gov*.

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Public Law 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

Due to administrative issues associated with scheduling, this announcement will be published in the **Federal Register** less than 15 days prior to the date of the meeting.

The National Institute for Literacy Advisory Board will meet March 16–17, 2006. On March 16, 2006 from 8:30 a.m. to 6 p.m. and March 17, 2006 from 8 a.m. to 2 p.m., the Board will meet in open session to discuss the Institute's program priorities; status of on-going Institute work; and other Board business as necessary.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: February 27, 2006.

Sandra L. Baxter,

Director.

[FR Doc. 06–1979 Filed 3–1–06; 8:45 am]

BILLING CODE 6055–01–P

NATIONAL PRISON RAPE ELIMINATION COMMISSION

Public Hearing

Public Announcement

Pursuant to the Prison Rape Elimination Act of 2003 (Public Law 108–79) [42 U.S.C. Section 15601, *et seq.*

Agency Holding Meeting: National Prison Rape Elimination Commission.

Date and Time: 9 a.m. on Thursday, March 23, 2006.

Place: 33 Northeast Fourth Street in Miami, Florida.

Status: Open—Public Hearing.

Matters Considered: Federal, State, and local corrections and detention professionals' experience with and management of sexual assaults.

Agency Contact: Richard B. Hoffman, Executive Director, National Prison Rape Elimination Commission, (202) 514–7922.

Dated: February 24, 2006.

Richard B. Hoffman,

Executive Director, National Prison Rape Elimination Commission.

[FR Doc. 06–1926 Filed 3–1–06; 8:45am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–09022]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of Amendment No. 4 to Materials License No. Suc-1565, the S.C. Holdings, Inc., Bay City, Mi Site (Tac #L60510)

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: David Nelson, Project Manager, Materials Decommissioning Section, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), Mail Stop T7E18, Washington, DC 20555.

Telephone: 301–415–6626; fax number: 301–415–5397; e-mail: *dwn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

NRC is considering the issuance of a license amendment to the S.C. Holdings, Inc. Material License, No. SUC–1565. The amendment would incorporate the Decommissioning Plan (DP), the Quality Assurance Project Plan for Decommissioning Activities, and the Health and Safety Plan for Site Decommissioning Activities into Materials License SUC–1565.

NRC has prepared an Environmental Assessment (EA) in support of this amendment request in accordance with the requirements of 10 CFR Part 51. Based on the EA, NRC concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. Environmental Assessment

Background

The S.C. Holdings site is a part of the former (now closed) industrial waste disposal area locally known as the Hartley & Hartley Landfill. The landfill is a former waste disposal facility that accepted municipal and industrial waste from the 1950s until 1978. The facility is estimated to have received 18,000 barrels of spent solvents, oils, and other liquid and solid wastes for disposal during the 1960's and early 1970's. During the period from 1970 to 1972, foundry slag containing radioactive thorium (Th) and progeny was disposed of in the Northwest Landfill, and in two small slag piles outside of the Northwest Landfill (Slag Piles A and B). There are no records of Th-bearing slag outside the Northwest Landfill and the two slag piles. In 1995, the NRC issued Source Materials License No. SUC–1565 to SCA Services, Inc., for storage of radioactive Th and uranium (U) in slag/waste at the Hartley & Hartley Landfill site. The current owner of the property is S.C. Holdings, Inc., successor by merger to SCA Services, Inc.

The Hartley & Hartley Landfill industrial disposal site has been subdivided into two separate sites: the Michigan Department of Natural Resources (MDNR) site and the S.C. Holdings, Inc. site. In a formal land exchange concluded in 1973, the Hartleys conveyed land to the State of Michigan that included approximately three acres where waste disposal had previously occurred in return for lands bordering their industrial waste disposal area. The 3-acre portion, now known as the MDNR site, is part of the State of Michigan's Tobico Marsh State Game Area. The remaining property comprises what is known as the S.C. Holdings, Inc. site.

Post-closure activities at the site included construction of slurry walls, subsurface clay dikes, and compacted clay covers over the Northwest and East Landfills to contain the chemical wastes and preclude the potential migration of chemical (non-radioactive) contaminants beyond those areas already impacted by the disposal.

Wells and piping for a leachate collection and treatment system (LCTS) will be installed within the Northwest Landfill. Wells and piping have already been installed in the East Landfill and in the adjacent MDNR waste cell. After piping is installed in the Northwest Landfill, the LCTS will collect liquid (leachate) from the MDNR cell, and the Northwest and East Landfills and pump the leachate to a single collection tank located adjacent to the East Landfill. The LCTS was designed to withdraw liquid contaminants (leachate) from the waste cell and landfills to prevent hydrostatic pressure in the cell from building to a point that chemical contaminants would leak out.

On November 26, 2003, S.C. Holdings, Inc. submitted a Decommissioning Plan (DP) for the site. The DP outlined decommissioning activities including excavating and relocating of Slag Piles A and B to the Northwest Landfill, installing LCTS wells and piping in the Northwest Landfill, and upgrading the existing cover over the Northwest Landfill. Following these activities, the site would be released for unrestricted use, as specified in 10 CFR 20.1402, and the radioactive materials license would be terminated. On October 14, 2004, and October 28, 2005, the NRC staff transmitted letters to S.C. Holdings, Inc. requesting additional information (RAI) related to the DP. In letters dated May 9, 2005, and December 8, 2005, S.C. Holdings, Inc. responded to the RAIs.

The Proposed Action

The proposed action is to amend Source Materials License No. SUC–1565 to incorporate the DP, the Quality Assurance Plan, and the Health and Safety Plan into the license. The DP proposes excavating and relocating Slag Piles A and B to the Northwest Landfill, installing LCTS wells and piping in the Northwest Landfill, and upgrading the existing cover over Northwest Landfill. With regard to the radiological materials, the site will be released for unrestricted use in accordance with 10 CFR 20.1402.

Need for the Proposed Action

The proposed action is to amend Source Materials License No. SUC–1565 to authorize activities on-site that would lead to the release of the S.C. Holdings, Inc. site located at 2370 South Two Mile Road, Bay City, Michigan, for unrestricted use. The licensee's proposed action of relocating the Th-bearing slag from Slag Piles A and B into the Northwest Landfill and leaving all of the radioactive material in place within the Landfill is one option that would conform with the NRC regulation that the dose to the average member of the critical group is below the requirements in 10 CFR Part 20 Subpart E for license termination and unrestricted release. The licensee needs the license amendment incorporating the DP, the Quality Assurance Project Plan, and the Health and Safety Plan into the license, to be able to decommission the site. The NRC is fulfilling its responsibilities under the Atomic Energy Act, as amended, to make a decision on a proposed license amendment for incorporation of a DP into the license and to ensure adequate

protection of public health and safety and the environment.

Alternatives to the Proposed Action

S.C. Holdings, Inc. considered four alternatives to the proposed decommissioning plan: (1) Completely removing Slag Piles A and B and the contents of the East and Northwest Landfills (both radiological and chemical materials); (2) removing only the radiological material from the Piles and the Northwest Landfill; (3) relocating Slag Piles A and B into the Northwest Landfill, installing a LCTS in the Northwest and East Landfills, and enhancing the Northwest Landfill Cap; and (4) taking no remedial action and retaining the site license ("No Action Alternative"). The licensee's preferred alternative is Alternative No. 3, which is described, in detail, in the DP.

The S.C. Holdings, Inc. site contains both radiological and chemical materials. The chemical materials are regulated by the State of Michigan Department of Environmental Quality (MDEQ) under Part 201 of Michigan regulations. The chemical materials are contained within the East and Northwest Landfills both of which have slurry walls and caps. The radiological materials are confined to the Northwest Landfill and Slag Piles A and B. The Slag Piles are covered with clay fill.

Alternatives 1 and 2 would cause the contents of the waste cell to be open to the environment and disturbed, potentially leading to release of those contents into the surrounding environment. Specifically, excavation of the landfills would expose workers and visitors to hazardous materials within the cell. Hazardous materials could be released into the surrounding environment via effluents, airborne particles and/or gases. Shipping the materials off-site for disposal could also expose workers and others to the materials before, during, and after shipment to a waste disposal site. The environmental impact presented by these two alternatives could potentially put workers and the surrounding environment at risk, and therefore, are not environmentally sound options.

Alternative 3 is the preferred alternative, because the alternative has little, if any, impact on the environment. Once Piles A and B have been relocated, all radiological materials will be confined to the Northwest Landfill. Based on an independent dose assessment, the NRC staff concluded that, if the radiological material is consolidated into the Northwest Landfill and the LCTS is left in place, as described in the DP, then no additional actions would be needed at the S.C. Holdings site for it to be released for unrestricted use per 10 CFR 20.1402.

The impacts from the "No Action Alternative" (Alternative 4) are similar to the preferred alternative, in that, they would present little if any risk to workers and/or the surrounding environment. However, Alternative 4 is not acceptable, because retaining a license would impose an unnecessary regulatory burden on S.C. Holding, Inc. Since no additional actions would be needed at the site following the proposed actions, described in the DP (Alternative 3), for it to be released for unrestricted use per 10 CFR 20.1402, there would no longer be any need for requiring that the licensee maintain site security and/or maintain the site's materials license.

Environmental Impacts of the Proposed Action

The affected environment at the Site includes the Northwest Landfill bounded by a slurry wall covered with a cap, and two piles of slag (Slag Piles A and B) located adjacent to the Northwest Landfill. The slag in Slag Piles A and B will be excavated and relocated into the Northwest Landfill through a small hole that will be cut into the cap. The volume of material in Piles A and B is small in comparison to the volume of the Landfill, therefore the physical placement of the material into the Landfill will have no significant adverse effect on the materials already located in the Northwest Landfill.

The residual radioactivity at the site consists of foundry waste containing U/Th slag in the Northwest Landfill and two small areas of U/Th slag (Slag Piles A and B) located just outside the slurry wall surrounding the Northwest Landfill.

Additional radiological contamination could result from the primary source term at the site through the operation of the existing Leachate Collection and Treatment System (LCTS). The LCTS could result in the leakage of thorium and its daughter products on the cap surface. Also, the storage of thorium and its daughter products in an above ground leachate tank associated with the LCTS could result in gamma radiation exposure to site workers. Radioactivity associated with the LCTS and the leachate tank would originate from groundwater in contact with the thorium-bearing slag in the waste cell.

The non-radiological contamination at this site is contained within both the Northwest and East Landfills. The non-radiological contamination includes organic chemicals which are regulated by the MDEQ, not by the NRC. The non-radiological contamination will be present after NRC terminates the license. Approval of the proposed action does not absolve the licensee of any other responsibilities it may have under Federal, State, or local statutes or regulations regarding the non-radiological contamination.

Much of the immediate area, except for the adjacent Bangor Township Landfill, is marsh land of the Tobico Marsh State Game Area. Also adjacent to the site is a separate facility known as MDNR Tobico Marsh State Game Area Site, previously licensed by the NRC. There are several ponds located on the site that had been excavated for sand as part of a quarry operation prior to landfilling or had been excavated during site activities for cell construction or cover material. The shallow groundwater on-site is non-potable.

The environmental impacts of the licensee's requested action were evaluated by reviewing the results of S.C. Holdings, Inc. dose assessments for the Northwest Landfill and the slag piles. The licensee's assessments assume that the radiological contaminants remain within the Northwest Landfill, and surface soil of the excavated slag piles does not exceed the derived concentration guideline levels (DCGLs) of the DP. The licensee used the computer code, RESRAD Version 6.2, to demonstrate that doses from residual radioactivity do not exceed the regulatory limit (25 millirem (mrem)/yr). The licensee used the model to calculate the radiation dose expected to be received by a hypothetical industrial worker beginning at the time of site closure and extending into the future (*i.e.*, 1000 years). The NRC staff performed independent analyses of the licensee's dose assessments and NRC's results were in agreement with S.C. Holdings, Inc. methods and procedures.

For the residual radioactivity in the Northwest Landfill, the licensee assumed U and Th concentrations as measured by Oak Ridge Associated University (ORAU) in 1985. ORAU determined that the concentrations of the individual radionuclides present in the Northwest Landfill were: (1) Lead-210—0.61pCi/g, (2) Radium (Ra)-226—0.61pCi/g, (3) Ra-228—18.67pCi/g, (4) Th-228—17.96pCi/g, (5) Th-230—2.54pCi/g, (6) Th-232—18.67pCi/g, and (7) U–234—2.54pCi/g. The licensee's expected dose from to the material in the Northwest Landfill was 5 mrem/yr and no DCGLs were reported for the Landfill.

For the residual soil surface radioactivity of the excavated slag piles, the licensee derived DCGLs. The licensee did not take into account

exposure from material in the Northwest Landfill in deriving the DCGLs for the remediated slag piles, because the dose contribution from the Northwest Landfill at the slag piles locations would not be distinquishable from background. These DCGLs reflect the concentration of radionuclides that may be present outside of the Northwest Landfill and result in a maximum dose of less than 25 mrem per year over background. The presence of these isotopes will be verified after the remediation is completed and the final status survey is implemented.

Micro Shield, Version 5.01, was used to determine the dose from exposure to the leachate tank. S.C. Holdings assumed that the 15,000-gallon leachate storage tank that is located on the site is used to collect leachate for the Northwest Landfill. The modeled scenario assumed that tank is always completely full and the presence of thorium radioactivity in slag at the specific activity limit. The exposure scenario involves a worker who hypothetically stands 1 meter from the leachate storage tank. For leachate leakage from the LCTS, the licensee used an analysis performed by MDNR. The annual dose for the potential leaking of the LCTS determined by MDNR was less than 1 mrem/yr. S.C. Holding's analysis for the gamma radiation exposure for a worker within close proximity to the leachate tank was less than 2 mrem/yr.

The NRC staff evaluated the potential radiological exposure to offsite receptors resulting from groundwater seepage through the slurry walls. This potential radiological exposure is very low due to the following reasons:

1. Any seepage of radiological contaminated groundwater through the slurry walls will be dispersed and diluted as the groundwater slowly travels to Saginaw Bay of Lake Huron.

2. The travel time for groundwater to reach Saginaw Bay from the site is long (several thousand years) because of the distance (2.24 kilometers) between the two locations and because of the low hydraulic gradient (0.0002 ft/ft) of the water table.

3. The solubility of Th in groundwater is very low.

4. The concentration of the radiological contaminated groundwater will become highly diluted if it is discharged into the much larger surface water volume of Saginaw Bay.

5. There are no receptors along the groundwater pathway between the site and Saginaw Bay, and none are anticipated, in the future.

The NRC staff reviewed the potential Environmental Impacts of the licensee's requested action to relocate the Slag Piles into the Northwest Landfill and leave the Northwest Landfill "as is" and release it for unrestricted use. Based on the staff's review of the DP, the staff determined that the radiological environmental impacts associated with the licensee's proposed action are bounded by the impacts evaluated in NUREG–1496, "Generic Environmental Impact Statement of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

Agencies and Persons Consulted

This EA was prepared entirely by the NRC staff. The Michigan State Historic Preservation Office and the U.S. Fish and Wildlife Service were contacted regarding this action and neither organization had concerns regarding this licensing action. No remedial actions are planned for the site. Therefore, the release of the S.C. Holdings, Inc. site for unrestricted use would not affect historical or cultural resources, nor will it affect threatened or endangered species. No other sources of information were used beyond those referenced in this EA.

The NRC provided a draft of this EA to the MDEQ for its review on October 27, 2005. The MDEQ agreed with the conclusions in the EA.

Conclusions and Finding of No Significant Impact

Based on its review, the NRC staff concludes that the proposed action complies with 10 CFR 20, Subpart E. NRC has prepared this EA in support of the proposed license amendment to approve the DP. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined that preparation of an Environmental Impact Statement (EIS) is not needed for the proposed action.

Sources Used

1. NRC License No. SUC–1565.

2. S.C. Holdings, Inc., Letter dated November 26, 2003, "Submittal of the Decommissioning Plan SCA Hartley & Hartley Landfill Site, Kawkawlin Township, Michigan NRC Materials License No. SUC–1565, Docket No. 40–9022." [ADAMS Accession No. ML033450337]

3. NRC, Letter dated October 14, 2004, "The Nuclear Regulatory Commission's Request for Additional Information (RAI) with Regard to the Decommissioning Plan 1, for the S.C. Holdings, Inc. Hartley and Hartley Landfill Site, Kawkawlin, Michigan." [ADAMS Accession No. ML042670354]

4. S.C. Holdings, Inc., Letter dated May 9, 2005, "Response to RAI SCA Hartley & Hartley Landfill Site, Kawkawlin Township, Michigan NRC Source License SUC–1565." [ADAMS Accession No. ML051380221]

5. S.C. Holdings, Inc., Letter dated December 8, 2005, "Response to Second Request for Additional Information SCA Hartley & Hartley Landfill Site, Kawkawlin Township, Michigan NRC Source License SUC–1565." [ADAMS Accession No. ML053480161]

6. S.C. Holdings, Inc., Letter dated September 15, 2005, "Submittal of the Quality Assurance Project Plan and the Health and Safety Plan for Site Decommissioning SCA Hartley & Hartley Landfill Site, Kawkawlin Township, Michigan NRC Source License SUC–1565." [ADAMS Accession No. ML052640183]

7. NUREG–1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, August 2003.

8. NUREG–1757, Volume 1, Rev 1, Consolidated NMSS Decommissioning Guidance, Decommissioning Process for Materials Licensees, Final Report, September 2003.

9. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination."

10. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

11. NUREG–1496, Generic Environmental Impact Statement of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities, July 1997.

12. MDNR, Response to RAI—Tobico Marsh State Game Area Site and Submission of Additional Information Relative to the Decommissioning Plan, August 27, 2004.

III. Finding of No Significant Impact

Based upon the analysis in this EA, NRC staff has concluded that there will be no significant environmental impacts from the proposed action and has determined not to prepare an Environmental Impact Statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at NRC's Electronic Reading Room at *http://www.nrc.gov/*

reading-rm/adams.html. From this site, you can access NRC's ADAMS, which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: ML033450337 for the November 26, 2003, letter submitting the Decommissioning Project Plan; ML052640183 for the September 15, 2005, letter submitting the Quality Assurance Plan and the Health and Safety Plan, and ML051380221 and ML053480161 for the May 9, 2005, and December 8, 2005, letters responding to NRC requests for additional information. If you do not have access to ADAMS or if there are problems accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at NRC's PDR, O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 20th day of February 2006.

For The Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–2947 Filed 3–1–06; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Facility Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission tour.

SUMMARY: Postal Rate Commissioners and advisory staff members will tour several newspaper, courier and postal facilities in Florida on March 5–7, 2006. Sites include the Miami Herald (in Miami); the Sun-Sentinel (in Fort Lauderdale), both on March 5; DHL Global Mail (in Fort Lauderdale) on March 6; and the Postal Service's International mail facility (in Miami) on March 7. The purpose is to view and discuss the newspapers' mailing-related operations; to observe DHL's operations and discuss how it interfaces with the Postal Service; and to examine Postal Service international mail operations.

DATES: March 5, 6 and 7, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, Postal Rate Commission, 202–789–6820.

Steven W. Williams,

Secretary.

[FR Doc. 06–1950 Filed 3–1–06; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03480]

Issuer Delisting; Notice of Application of MDU Resources Group, Inc. To Withdraw Its Common Stock, $1.00 Tar Value, and the Preference Share Purchase Rights Appurtenant Thereto, From Listing and Registration on the Pacific Exchange, Inc.

February 24, 2006.

On February 14, 2006, MDU Resources Group, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $1.00 par value, and the preference share purchase rights appurtenant thereto (collectively "Securities"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors ("Board") of the Issuer adopted resolutions on November 17, 2005 to withdraw the Securities from listing and registration on PCX. The Issuer stated that it believes the benefits of having the Securities listed and registered on PCX are outweighed by the added administrative burdens and expenses, and that specifically: (1) The Issuer needs to reduce costs, as well as administrative time and expense associated with having the Securities listed on multiple exchanges; (2) the principal listing for the Securities is the New York Stock Exchange, Inc. ("NYSE") and the Securities will continue to list on NYSE; (3) management has been required to focus on the listing and maintenance rules, as well as ongoing amendments to the rules and regulations of both exchanges; and (4) by withdrawing the Securities from PCX, the Issuer will be able to lessen the administrative burden and reduce the related expenses.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Securities from listing on PCX and shall not affect their continued listing on NYSE or their obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before March 22, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–03480 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 1–03480. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Nancy M. Morris,

Secretary.

[FR Doc. 06–1954 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11394]

Issuer Delisting; Notice of Application of MEDTOX Scientific, Inc. To Withdraw Its Common Stock, $.15 Par Value, From Listing and Registration on the American Stock Exchange LLC

February 24, 2006.

On February 9, 2006, MEDTOX Scientific, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.15 per value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex")

On February 7, 2006, the Board of Directors ("Board") of the Issuer unanimously approved a resolution with the Security from Amex and to list the Security on the Nasdaq National Market ("Nasdaq"). The Issuer stated it believes Nasdaq will not only provide more recognition for the Issuer in the investment community, but increase liquidity and enhance value for shareholders. The Issuer stated that it anticipates the Security to trade on Nasdaq on February 16, 2006.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before March 22, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment from (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–11394 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 1–11394. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. 06–1952 Filed 3–1–06; 8:45am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13640]

Issuer Delisting; Notice of Application of SouthFirst Bancshares, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

February 24, 2006.

On February 21, 2006, SouthFirst Bancshares, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On January 18, 2006, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated that the following reasons factored into the Board's decision to withdraw the Security from Amex: (a) The Issuer has a limited number of stockholders of record; (b) the costs associated with maintaining the Issuer's status as an Amex listed company are outweighed by the benefits to the Issuer and its stockholders; (c) the limited volume of trading of the Security has resulted in the Security not providing a practical source of capital for the Issuer or liquidity for its stockholders; and (d) few analysts currently cover the Issuer and the Security on Amex. The Issuer stated that it has obtained a market maker for trading the Security in the OTC Bulletin Board ("OTCBB"). The Issuer expects trading on OTCBB to be available on the first business day following the cessation of trading of the Security on Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in Delaware, the State in which it is incorporated, and providing written notice of withdrawal to Amex.

The application relates solely to the withdrawal of the Security from listing on Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before March 22, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist,shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 1–13640 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 1–13640. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. 06–1953 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27229]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 24, 2006.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February, 2006. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 21, 2006, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–0504.

COMMAND Government Fund [File No. 811–3251]; COMMAND Tax-Free Fund [File No. 811–3252]; COMMAND Money Fund [File No. 811–3253]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 27, 2004, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $9,395, $14,129 and $71,456, respectively, incurred in connection with the liquidations were paid by each applicant.

Filing Date: The applications were filed on February 9, 2006.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

Gartmore Mutual Funds II, Inc. [File No. 811–9275]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $82,500 incurred in connection with the liquidation were paid by Gartmore Separate Accounts LLC, applicant's subadviser, and Gartmore Mutual Fund Capital Trust, applicant's investment adviser.

Filing Date: The application was filed on February 15, 2006.

Applicant's Address: 94 North Broadway, Irvington, NY 10533.

World Trust [File No. 811–7399]

Summary: Applicant, a master fund in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. By December 6, 2005, each of applicant's feeder funds had redeemed their shares at net asset value. Expenses of $18,960 incurred in connection with the liquidation were paid by Ameriprise Financial, Inc., applicant's investment adviser.

Filing Date: The application was filed on February 13, 2006.

Applicant's Address: 901 Marquette Ave. South, Suite 2810, Minneapolis, MN 55402–3268.

The Crowley Portfolio Group, Inc. [File No. 811–5875]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 28, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $9,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on January 27, 2006.

Applicant's Address: 3201–B Millcreek Rd., Wilmington, DE 19808.

Leader Mutual Funds [File No. 811–8494]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 18, 2005, applicant transferred its assets to corresponding series of Regions Morgan Keegan Select Funds and Morgan Keegan Select Fund, Inc., based on net asset value. Expenses of $340,328 incurred in connection with the reorganization were paid by applicant and Morgan Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on February 3, 2006.

Applicant's Address: 3435 Stelzer Rd., Columbus, OH 43219.

Index Plus Fund, Inc. [File No. 811–21170]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 5, 2006, applicant made a final liquidating distribution to its remaining shareholder, based on net asset value. Expenses of approximately $2,000 incurred in connection with the liquidation were paid by applicant's investment adviser, Adams Asset Advisors, LLC.

Filing Dates: The application was filed on December 5, 2005, and two amendments were filed on February 6, 2006.

Applicant's Address: 8150 N. Central Expressway #101, Dallas, TX 75206.

Centennial America Fund, L.P. [File No. 811–5051]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 30, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on December 13, 2005, and amended on February 15, 2006.

Applicant's Address: 6803 S Tucson Way, Centennial, CO 80112.

[5] 17 CFR 200.30–3(a)(1).

Mercury Variable Trust [File No. 811–8163]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders approved the merger of Applicant's fund on November 17, 2003, and Applicant distributed its assets on November 21, 2003. The fund surviving the merger is the Merrill Lynch International Value V.I. Fund, a series of Merrill Lynch Variable Series Fund, Inc. Legal expenses of $52,138.08 were deducted from Applicant's assets prior to consummation of the merger. Other merger related expenses of approximately $143,597.51 were paid by the Applicant's investment adviser, Fund Assets Management, L.P.

Filing Date: The application was filed on November 30, 2005, as amended.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, NJ 08536.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–2957 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53357; File No. SR–BSE–2005–52]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Amendments No. 2, 3, and 4 to Proposed Rule Change To Modify the Information Contained in a Directed Order on the Boston Options Exchange

February 23, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. On December 20, 2005, the BSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on December 29, 2005.[4] The Commission received eight comment letters.[5] In response to the concerns raised in the comment letters and discussions with Commission staff, the BSE filed Amendments No. 2, 3, and 4 on February 7, 2006, February 15, 2006, and February 21, 2006, respectively.[6] The Commission is publishing this notice to solicit comments on Amendments No. 4 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its rules governing its Directed Order process and to modify the information contained in a Directed Order on BOX. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rules of the Boston Options Exchange Facility

* * * * *

Chapter VI Market Makers

* * * * *

Section 5 Obligations of Market Makers

(a)–(b) No Change

(c) When acting as agent for a Directed Order, a Market Maker must comply with subparagraphs (i)–(iii) of this Paragraph (c).

i. A Market Maker shall not receive a Directed Order other than through the BOX Trading Host. A Market Maker that receives a Directed Order shall not, under any circumstances, reject the *receipt of the* Directed Order *from the BOX Trading Host.* A Market Maker who desires to accept Directed Orders must systemically indicate [they are an executing participant] each day [that] *and whenever* the Market Maker [wishes to receive Directed Orders] *reconnects after disconnection during the day that it is willing to accept Directed Orders ("Executing Participant" or "EP").* If a Market Maker does not systemically indicate that [they are] *it is* an [e]Executing Participant, the BOX Trading Host will not forward any Directed Orders to the Market Maker. *In such a case, the BOX Trading Host will send the order directly to the BOX Book. Prior to accepting a Directed Order through the Trading Host, an EP must inform BOX of the OFPs from which it has agreed to accept Directed Orders through the Trading Host ("Listed OFPs" or "LOFPs"). The Trading Host will then only send to the EP Directed Orders from LOFPs. Such orders will be sent to the EP on an anonymous basis.*

ii.–iii. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 4 supersedes and replaces the previous amendments and the original filing in its entirety. The original rule filing and Amendment No. 1 proposed to clarify that, when Directed Orders are sent to a Market Maker, they contain an identifier associated with the firm that sent the Directed Order. In response to the original filing, the BSE received comments both in support of and opposing the proposal. The commenters opposing the proposal argue that the lack of anonymity of Directed Orders allows the Market Maker receiving such orders to discriminate among the firms for which it will seek to execute Directed Orders, and suggest that this selection process is discriminatory, may discourage aggressive quoting, and is inconsistent with the Act.[7] The commenter supporting the proposal argues that the lack of anonymity of Directed Orders encourages greater levels of price improvement, allows

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the BSE amended the rule text of Chapter V, Section 14(e) of the Boston Options Exchange ("BOX") Rules to clarify that the identities of Options Participants that send Directed Orders to the Trading Host are not anonymous.

[4] *See* Securities Exchange Act Release Act No. 53015 (December 22, 2005), 70 FR 77207.

[5] *See* letters to Nancy Morris, Secretary, Commission, from Adam C. Cooper, Senior Managing Director & General Counsel, Citadel, dated January 11, 2006 and January 12, 2006 ("Citadel Letters"); from Michael Simon, General Counsel, International Securities Exchange ("ISE"), dated January 19, 2006 ("ISE Letter"); from James Gray, Chairman, optionsXpress Holdings, Inc., dated January, 19, 2006 ("optionsXpress Letter"); from Thomas Peterffy, Chairman, and David M. Battan, Vice President, Interactive Brokers Group, dated January 24, 2006 ("IB Letter"); from David Chavern, Vice President and Chief of Staff, U.S. Chamber of Commerce, dated January 25, 2006 ("Chamber of Commerce Letter"); and from Neal L. Wolkoff, Chairman & Chief Executive Officer, American Stock Exchange, dated February 3, 2006 and February 7, 2006 ("Amex Letters").

[6] Amendment No. 2 superseded and replaced the original filing and Amendment No. 1. Amendment No. 3 superseded and replaced the original filing and Amendments No. 1 and 2. Amendment No. 4 supersedes and replaces the original filing and all previous amendments.

[7] *See* Citadel Letters, ISE Letter, Chamber of Commerce Letter, optionsXpress Letter, and Amex Letters, *supra* note 5.

Market Makers to protect themselves from predatory firms that engage in anti-competitive behavior, and is consistent with the Act.[8]

While, as is discussed more fully below, the BSE completely disagrees with the core concern expressed by the commenters opposing the original proposal, the BSE does believe that it is appropriate to amend its proposal to permit EPs to choose the firms from which they will accept Directed Orders while providing complete anonymity for Directed Orders that are passed on to the Executing Participant ("EP") for possible representation in a PIP auction.[9] The BSE believes that certain commenters have materially mischaracterized the Directed Order process. The BSE assumes this mischaracterization is in the pursuit of enlisting the Commission to support a market model that better suits its firm-centric business approach. In order to more fully address this mischaracterization, the BSE starts by first providing a brief overview of the Directed Order process. Subsequently, the BSE explains why it believes that the identification of the Order Flow Provider ("OFP") in the Directed Order process is not only appropriate and consistent with applicable legal standards but also would increase investor welfare by expanding, relative to the approach suggested by the commenter, the amount of price improvement provided investors. Finally, the BSE offers an explanation of the amendment to its proposal.

Under the BSE's Directed Order process, Market Makers on BOX are able to handle orders on an agency basis directed to them by OFPs. An OFP sends a Directed Order to BOX with a designation of the Market Maker to whom the order is to be directed. BOX then routes the Directed Order to the appropriate Market Maker. Under Chapter VI, section 5(c)(ii) of the BOX Rules, a Market Maker only has two choices when he receives a Directed Order: (1) Submit the order to the PIP process; or (2) send the order back to BOX for placement onto the BOX Book.

Under Chapter VI, section 5(c)(i) of the BOX Rules, a Market Maker who desires to accept Directed Orders must systemically indicate that it is an EP each day the Market Maker wishes to receive Directed Orders from the BOX Trading Host. Further, the BOX system requires a Market Maker to systematically indicate that it is an EP during any day the Market Maker has disconnected from the system and seeks to reconnect.[10] If a Market Maker does not systemically indicate that it is an EP, then the BOX Trading Host will not forward any Directed Orders to that Market Maker. In such a case, the BOX Trading Host will send the order directly to the BOX Book.

Chapter VI, section 5(c)(i) prohibits a Market Maker from rejecting a Directed Order. The BSE wishes to clarify this to mean that upon systematically indicating its desire to accept Directed Orders, the BOX system prevents a Market Maker that receives a Directed Order from either rejecting the receipt of the Directed Order from the BOX Trading Host or rejecting the Directed Order back to the OFP who sent it.

The BSE notes that in all events, whether a Market Maker elects to accept Directed Orders or chooses systematically not to accept any Directed Orders, its displayed best bid and offer are firm and accessible for automatic executions by all order submitters. In other words, the Directed Order process is a discretionary service that Market Makers may choose to provide or not, above and beyond satisfying their core Market Maker obligations of providing continuous two-sided firm quotations on a non-discriminatory basis. Just as Market Makers may and do choose to provide, or not, other discretionary services, such as payment for order flow, the BSE believes that Market Makers also may identify the firms for which they may choose to provide such discretionary services.[11]

The BOX system provides Market Makers with information regarding the identity of the firms from which a Directed Order originates.[12] The BSE believes that this is not inconsistent with the fact that the Directed Order process is a discretionary service and with the statute—which does not prohibit broker-dealers from determining which customer for whom it will provide a discretionary service (again, as used here to mean a service the broker-dealer is not legally required to provide at all)—but also is highly desirable. As is true with respect to any discretionary service, without some control over the OFPs from which Market Makers will accept Directed Orders, Market Makers could be expected to provide less of the service. This is specifically true with respect to the Directed Order process because the customer protections built into the Directed Order process, absent the ability to control the OFPs for which it will provide the service, could and almost certainly would have the unintended consequences of creating an opportunity for Options Participants to engage in abusive practices that jeopardize the ability of all Market Makers to price improve customer orders. Some Options Participants, including Market Makers, could send large numbers of proprietary Directed Orders to competitors using strategies that effectively amount to arbitraging the PIP auction against previous executions obtained on exchanges that do not provide price improvement opportunities. The EP receiving these Directed Orders either will end up providing a competitor's order price improvement, or yielding priority (if it declines to submit the order to the PIP auction) and yet still guarantee his Firm Quote for three seconds regardless of whether market prices change during that time. The latter outcome is particularly problematic since, at a minimum, the EP is forced to forgo whatever time priority he may have had over his competitors at the top of the BOX book for the option series in the Directed Order. Moreover, the EP is also obligated to freeze his quote for three seconds and trade with any unexecuted Directed Order quantity (but only if no other Market Maker wants to trade with the Directed Order). Essentially this means the EP will trade with the

[8] *See* IB Letter, *supra* note 5.

[9] *See* Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (SR–PCX–2005–56) (generally approving proposal by the Pacific Exchange to "add a provision that requires Users to be given permission by DMMs in order to send a Directed Order to that DMM."); *see also* Rule 229A(b)(1) of the Philadelphia Stock Exchange (generally providing for directed orders which are defined as orders that a member organization directs to a particular specialist pursuant to an agreement).

[10] Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and Alden Adkins, General Counsel, BSE, on February 23, 2006.

[11] *See id.; see also* Securities Exchange Act Release No. 47351 (February 11, 2003), 68 FR 8055 (February 19, 2003) (SR–NASD–2002–60). As stated in the adopting release, the New York Stock Exchange comment letter on the Primex rule proposal argued that "participants may selectively trade against agency orders alone by using a mechanism to screen out professional orders." The Nasdaq Stock Market responded "that this feature ensures that any price improvement or enhanced liquidity opportunities be reserved for public customers, and not necessarily professional traders who could otherwise take advantage of the System's benefits and 'pre-empt' the ability of a public customer to receive such benefits." *See* Securities Exchange Act Release No. 47351 (February 11, 2003), 68 FR 8055, 8058 (February 19, 2003) (SR–NASD–2002–60). *See generally* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11,388 (March 2, 2000) (stating that the Primary Market Makers and Competitive Market Makers on the ISE "will have the ability to set parameters regarding their willingness to trade generally with a broker-dealer's proprietary order.").

[12] Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and Alden Adkins, General Counsel, BSE, on February 23, 2006.

declined Directed Order only when no one else wishes to interact with the order.

The BSE's original proposal addressed this unfair competitive situation by enabling EPs to limit Directed Orders from hostile competitors and to provide price improvement to the customers for whom the Directed Order process was intended. Without this protection, the BSE believes that EPs will have to modify their risk assessment and therefore give less price improvement to everyone—or perhaps stop giving price improvement at all. This would significantly harm the retail investors who have benefited from the BOX price improvement system since its inception.[13]

The BSE's amended proposal seeks to maintain these very significant investor benefits of the original proposal by allowing EPs to provide the Exchange a list of firms to which the EP will provide Directed Order services. At the same time the BSE also believes that it is appropriate to modify the original proposal to prohibit Directed Orders delivered to EPs from identifying the firm from which the order comes. This would protect the anonymity of individual orders of Options Participants and their Directed Orders entered into the Trading Host. An EP has no need to know the identity of the Options Participant sending a Directed Order on an order-by-order basis once the threat from competitors has been mitigated. The BSE believes that the decision to price improve, or not, an anonymous Directed Order would be based only on objective factors.

2. Statutory Basis

The Exchange believes that the proposal, as amended, is consistent with the requirements of section 6(b) of the Act,[14] in general, and section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 4 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2005–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2005–52. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2005–52 and should be submitted on or before March 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2929 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–P

[13] Over half of marketable public customer orders sent to BOX in 2005 received price improvement—slightly under 3,000 public customer orders each day, with an average price improvement per contract of over $2.50. Price improvement particularly benefited small customer orders, as over 85% of all price improvement was for orders of 20 contracts or fewer.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53355; File No. SR–CBOE–2005–105]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to the Membership Rules for Foreign Member Organizations

February 23, 2006.

I. Introduction

On December 7, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 3.4, "Qualifications of Foreign Member Organizations," to provide that a member organization that is not organized under the laws of one of the states of the United States (a "foreign member organization"), and that is approved by the Exchange to act solely as a lessor, need not register as a broker or dealer pursuant to section 15 of the Act.[3] The proposed rule change was published for comment in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78o.

Federal Register on January 18, 2006.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

An organization that is not organized under the laws of one of the states of the United States ("foreign member organization"), among other things, must satisfy the requirements in CBOE Rule 3.4 in order to become a CBOE member. Under CBOE Rule 3.4, a foreign member organization that is approved by the Exchange to act solely as a lessor must be registered as a broker-dealer pursuant to section 15 of the Act[5] and must maintain in English at a location in the United States any books and records that an organization registered as a broker-dealer is required to maintain at a location in the United States.[6] In contrast, CBOE Rule 3.3(a)(ii) exempts a U.S. member organization, if it is approved to act solely as a lessor, from the requirement in CBOE Rule 3.3 that such an organization be registered as a broker-dealer under section 15 of the Act.

The Exchange proposes to amend CBOE Rule 3.4 to exempt a foreign member organization that is approved by the Exchange to act solely as a lessor from certain requirements set forth in the rule. In particular, the Exchange proposes to exempt such a foreign member organization from: (i) CBOE Rule 3.4(a)(xii), which requires a foreign member organization to be registered as a broker or dealer pursuant to section 15 of the Act; and (ii) CBOE Rule 3.4(a)(iii)(B), which requires a foreign member organization to maintain, in English and at a location in the United States, any books and records of the foreign member organization that an organization registered as a broker or dealer pursuant to section 15 of the Act is required to maintain.

According to CBOE, a member organization approved to act solely as a lessor has no trading functions on the Exchange, and the sole business function of such a member is to lease its CBOE membership to another CBOE member. CBOE represents that, since a foreign member organization approved to act solely as a lessor conducts no activities on the Exchange that otherwise would require it to register as a broker-dealer, it is appropriate not to require such registration. The Exchange also asserts that, if the only activities conducted by the foreign member organization on the Exchange relate to its lease activities, the provisions set forth in Rule 3.4(a)(iii)(A), which require the foreign member organization to maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange, should ensure that the Exchange will have the ability to have access to adequate information with respect to the foreign member organization.

The Exchange notes that a foreign member organization approved to act solely as a lessor would remain subject to CBOE qualification and application rules for member organizations. In this regard, CBOE notes the additional application requirements set forth in CBOE Rule 3.4 for foreign member organizations would provide it with both access to the information it would need to review the foreign member organization's application for membership and, if necessary, the requisite jurisdiction to litigate matters related to the foreign member organization's business on the Exchange. In addition, CBOE states that it would investigate a foreign organization applying for membership in a lessor-only capacity in accordance with the requirements of CBOE Rule 3.9, "Application Procedures and Approval or Disapproval." CBOE further notes that, through the associated person application process set forth in CBOE Rule 3.6, "Persons Associated with Member Organizations," the Exchange would have the ability to examine the direct owners and executive officers of a foreign member organization to ensure that those persons who are not qualified under CBOE rules and the Act to be associated with a CBOE member are not associated with the foreign member organization.[7]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.[9]

Under CBOE Rule 3.3(a)(ii), a CBOE member organization organized under the laws of one of the states of the United States and approved by CBOE to act solely as a lessor need not register as a broker or dealer pursuant to section 15 of the Act. The proposal amends CBOE Rule 3.4 to provide the same treatment under the Exchange's rules for foreign member organizations that are approved by the Exchange to act solely as lessors. The Commission believes that it is reasonable for the Exchange to extend the same treatment to a foreign member organization approved to act solely as a lessor that is accorded to such lessor U.S. member organizations with respect to the broker-dealer registration requirement.

Further, under the proposal, although foreign member organizations approved to act solely as lessors no longer would be required to maintain the books and records that an organization registered as a broker or dealer pursuant to section 15 of the Act would be required to keep, such foreign member organizations would continue to be required to comply with CBOE Rule 3.4(a)(iii)(A), which requires foreign member organizations to maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange. The Commission believes that the recordkeeping requirement of CBOE Rule 3.4(a)(iii)(A) should help to ensure that the Exchange will have access to adequate information with respect to a foreign member organization approved to act solely as a lessor. The Commission notes that the proposal does not alter the remaining provisions of CBOE Rule 3.4 or any other CBOE application, qualification and membership rules that a foreign member organization that intends to act solely as a lessor must satisfy to be

[4] Securities Exchange Act Release No. 53092 (January 10, 2006), 71 FR 2963 ("Notice"). The Commission published an amended Notice to indicate that the correct date of the Notice is January 10, 2006, rather than January 10, 2005. *See* Securities Exchange Act Release No. 53092A (January 19, 2006), 71 FR 4391 (January 26, 2006).

[5] *See* CBOE Rule 3.4(a)(xii).

[6] *See* CBOE Rule 3.4(a)(iii)(B).

[7] For an entity not required to register as a broker-dealer, CBOE Rule 3.6(b) provides that each associated person of the organization that would be required to be disclosed on Form BD as a direct owner or executive officer must submit to CBOE's Membership Department, pursuant to CBOE Rule 3.9, an application for approval to become associated with the member organization in that capacity. Under CBOE Rule 3.6(b), no person may become associated with a member organization in the capacity of a direct owner or executive officer that would be required to be disclosed on Form BD unless and until CBOE's Membership Committee approves that association.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

approved as a CBOE member organization.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2005–105) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2930 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53362; File No. SR–NASD–2006–028]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Allow Nasdaq To Take Certain Actions on Behalf of Its Issuers in Connection With Nasdaq's Transition to a National Securities Exchange

February 24, 2006.

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 23, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to adopt NASD Rule 4130 to allow Nasdaq to file an application with the Commission or another appropriate regulator on behalf of its issuers to register their listed securities under Section 12(b) of the Act, or seek a temporary exemption from Section 12, in connection with Nasdaq's transition to one of its subsidiaries operating as a national securities exchange. Nasdaq will implement the proposed rule upon approval. The text of the proposed rule change is below. Proposed new language is in *italics.*[3]

4130. Permission to Act on Behalf of Issuer

In connection with The NASDAQ Stock Market LLC (the "Nasdaq Exchange") commencing operations as a national securities exchange, each issuer authorizes Nasdaq and the Nasdaq Exchange to file an application to register under Section 12(b) of the Act any class of the issuer's securities that is listed on Nasdaq on the day immediately preceding the day the Nasdaq Exchange commences such operations; provided, however, that this provision shall not be applicable to any security that the issuer informs Nasdaq, pursuant to procedures set forth by Nasdaq, should not be so registered. The application to register under Section 12(b) of the Act will be filed with the Commission or, for those securities subject to Section 12(i) of the Act, with the appropriate banking regulator specified in Section 12(i). The authorization in this paragraph includes allowing Nasdaq and the Nasdaq Exchange to request any appropriate regulatory relief from the provisions of Section 12.

* * * * *

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2006, the Commission approved Nasdaq's application to register one of its subsidiaries, The Nasdaq Stock Market LLC ("Nasdaq Exchange"), as a national securities exchange.[4] Once the Nasdaq Exchange begins operation, securities listed on Nasdaq will need to have been registered under Section 12(b) of the Act so that brokers and dealers may effect transactions in these securities on the Nasdaq Exchange consistent with Section 12(a) of the Act.[5] Accordingly, absent relief from the Commission and other regulators, Nasdaq's transition to the Nasdaq Exchange beginning operations as a national securities exchange would require approximately 3,200 Nasdaq National Market and Capital Market issuers to register their Nasdaq-listed securities under Section 12(b) of the Act. This process would require each issuer to file a registration statement with the Commission or other appropriate regulator.[6] The Nasdaq Exchange would then be required to certify to the Commission and the Banking Regulators that each issuer's securities are approved for listing and registration.

Nasdaq believes that this registration process would be confusing and would place an unnecessary cost and administrative burden on issuers, on the Commission and Banking Regulators, and on Nasdaq, and would not be in the public interest. For the great majority of issuers whose securities are currently listed on Nasdaq, this additional registration process would not result in any significant benefit to the marketplace or investors because they would not receive any additional information regarding the security. Nasdaq issuers whose securities are registered under Sections 12(b) or 12(g) of the Act would have already filed a registration statement pursuant to the Act to register those securities. Similarly, issuers registered under the Investment Company Act of 1940 (the "1940 Act") will have filed detailed information with the Commission.[7] There are also no material differences in

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com.* No pending rule filings would affect the text of this rule. Because of the nature of this rule, no conforming change will be made to the rules of The NASDAQ Stock Market LLC. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[4] Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[5] Section 12(a) of the Act, 15 U.S.C. 78l(a). As discussed in footnote 10, Nasdaq anticipates that it will seek relief from the Section 12(b) registration requirement during a limited transition period for certain securities that are currently exempt from registration under Section 12(g).

[6] Section 12(i) of the Act requires filings relating to certain financial institutions to be made with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision (collectively, the "Banking Regulators"). 15 U.S.C. 78l(i).

[7] In particular, each registered investment company has filed a registration statement with the Commission under the 1940 Act and has made periodic filings under the 1940 Act identical in form to those required of investment companies that have registered their securities under Section 12(b) of the Act.

the regulatory requirements for issuers whose securities are registered under Section 12(b) and those whose securities are registered under Section 12(g) or are exempted pursuant to Section 12(g)(2)(B) of the Act that would negatively impact investors or place additional burdens on the issuers.[8]

As a result, Nasdaq proposes to file a single application for registration on behalf of these issuers by means of a letter to the Commission and Banking Regulators. To provide notice of Nasdaq's plan to seek Section 12(b) registration on behalf of its issuers and to assure sufficient authority for Nasdaq to make this application, however, Nasdaq has proposed adopting a rule specifically permitting Nasdaq and the Nasdaq Exchange to take this action.

Prior to filing this application, Nasdaq will provide notice to each issuer and will allow any issuer that does not wish to register under Section 12(b) the ability to opt-out of Nasdaq's request to the Commission and Banking Regulators.[9] Nasdaq expects to provide companies 10 business days to request to opt-out of Nasdaq's application on their behalf under Section 12(b). The result of an issuer choosing to opt-out would be that the issuer's securities would be ineligible to be listed and traded on the Nasdaq Exchange as of the operational date; such issuers would instead trade on the pink sheets or OTC Bulletin Board unless the issuer filed a Section 12(b) registration statement with the Commission in connection with listing on the Nasdaq Exchange or on another national securities exchange. Following this opt-out period, Nasdaq will submit a letter to the Commission and Banking Regulators requesting that such letter serve as the application for registration under Section 12(b), as well as the Nasdaq Exchange's certification of such application, for all those issuers with securities registered under Section 12(b) or 12(g) or exempt from registration under Section 12(g)(2)(B) and listed on Nasdaq on the day immediately preceding Nasdaq Exchange's operation as a national securities exchange.[10] Nasdaq will notify issuers when this relief is granted.[11]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] in general, and furthers the objectives of section 15A(b)(6),[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The proposed rule change would allow Nasdaq's issuers to seamlessly transition to the Nasdaq Exchange, thus removing a potential impediment to the mechanism of a free and open market and protecting the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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 NASD 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–NASD–2006–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–028. 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 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 publicly available. All submissions should refer to File Number SR–NASD–2006–028 and should be submitted on or before March 23, 2006.

[8] Nasdaq believes that the only differences relate to how the issuer identifies itself on the cover of its periodic reports (*e.g.*, as registered under Section 12(b) instead of Section 12(g)) and the process surrounding a decision to delist or deregister. Nasdaq also notes that an issuer registered under the 1940 Act will satisfy its obligation to file reports under the Act through the filing of reports that it is already required to make under the 1940 Act.

[9] Nasdaq will make this notification via e-mail to the issuer's e-mail address on file with Nasdaq, or, if no e-mail address is available, via facsimile. Nasdaq will also issue a press release describing this process and post information about this process to its Web site.

[10] Nasdaq also anticipates that this letter will seek relief from the registration requirement for securities currently exempt from registration under Section 12(g)(2)(G) of the Act and Rule 12g3–2(b) thereunder to allow these securities to trade on the Nasdaq Exchange during a limited transition period. The proposed rule would specifically permit Nasdaq to request such regulatory relief. Nasdaq would follow the same notice and opt-out procedures for these companies.

[11] Nasdaq will make this notification in the same manner as the earlier notification, including the issuance of a press release. *See* footnote 9, *supra*.

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2960 Filed 3–1–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53359; File No. SR–NYSE–2006–09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automatic Conversion of CAP–DI Orders

February 24, 2006.

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 21, 2006, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. NYSE filed the proposed rule change as effecting a change in an existing order-entry or trading system pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE is proposing to amend Exchange Rule 123A.30(a)(iv)(P), which was part of the pilot ("Pilot")[5] which put into operation Phase 1 of the NYSE HYBRID MARKET SM ("Hybrid Market") initiative, as proposed in SR–NYSE–2004–05[6] and amendments thereto ("Hybrid Market filings") and certain system changes discussed in SR–NYSE–2005–57.[7] The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The Exchange proposed a Pilot to put into operation Phase 1 of the Hybrid Market initiative with respect to a group of securities, known as Phase 1[8] Pilot securities ("Pilot securities"). Following Commission approval, the Pilot commenced during the week of December 12, 2005 and will terminate the earlier of: (1) March 14, 2006, or (2) Commission approval of the Exchange's Hybrid Market proposal, if granted.

Commencing with the Pilot; the Exchange systemically ensures that the specialist's participation when trading along with CAP–DI orders is in accordance with the parity requirements of Exchange Rule 123A.30. The system assigns the proper number of shares to the specialist and CAP–DI orders. The Exchange filed SR–NYSE–2005–57[9] for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(5) thereunder[11] to effect this change.

Automatic Conversions of CAP–DI Orders. Current Exchange Rule 123A.30 provides that specialists have the ability, subject to certain restrictions noted in the rule, to convert CAP–DI orders to participate in transactions or to bid or offer, without an electing trade.

Exchange Rule 123A.30(a)(P)[12] provides in part that the elected or converted portion of a "percentage order that is convertible on a destabilizing tick and designated immediate execution cancel election" ("CAP–DI order") may be automatically executed. An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume associated with the bid (offer) remaining after the electing order is filled in its entirety. An elected or converted CAP–DI order on the contra-side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume remaining in the electing order.

In addition, the Exchange added new section (iv)(P) to proposed Exchange Rule 123A.30(a)(P) to provide that when a specialist is bidding or offering and an automatic execution occurs with such bid/offer, marketable CAP–DI orders on the Display Book® on the same side as the specialist's interest will be automatically converted to participate in this execution, with the system assigning the proper number of shares to the specialist and auto-converted CAP–DI orders, as discussed above. This will allow CAP–DI orders to better participate in executions.

However, in certain instances, an automatic conversion of marketable CAP–DI orders will not occur even though the specialist is trading for its own account. This will occur where the execution that included automatically converted CAP–DI orders elects a contra-side stop or stop limit order. In this situation, pursuant to current Exchange Rule 123A.40, the specialist, as party to the election of the stop order, owes such elected stop order an execution at the same price as the specialist traded. The execution of such stop orders, in which the specialist is the contra-party, may be manual[13] or automatic,[14] depending upon whether

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] *See* Securities Exchange Act Release No. 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005).

[6] *See* Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004); 50667 (November 15, 2004) 69 FR 67980 (November 22, 2004); and 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) *See also* Amendment No. 6, filed on September 16, 2005, and Amendment No. 7, filed on October 11, 2005.

[7] *See* Securities Exchange Act Release No. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005). While submitted as effective upon filing, the Exchange intended to implement these changes upon approval of the Hybrid Market filings by the Commission, if such approval is granted.

[8] *See* Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005).

[9] *See supra* note 7.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(5).

[12] This rule is parallel to amendments made to Rule 123A.30. *See* Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005).

[13] If there is no specialist interest remaining in the bid/offer, and the specialist must guarantee an execution to the stop order at the electing price pursuant to Exchange Rule 123A.40, the specialist must do a manual transaction to guarantee that the stop order receives the same price as the specialist.

[14] If there is specialist interest remaining in the bid/offer and the specialist must guarantee an execution to the stop order at the electing price pursuant to Exchange Rule 123A.40, the Display Book system will automatically execute the

any specialist interest remains at the execution price. In either situation, marketable CAP–DI interest at that price will not be automatically converted to participate along with the specialist in the execution of such elected stop order. The specialist is, however, alerted to the fact that there are CAP–DI orders on the Display Book® capable of trading so that is can take appropriate action and manually trade such CAP–DI interest.

Modification to the Pilot. The Exchange is proposing to modify Exchange Rule 123A.30(a)(iv)(P) to clarify that when a specialist is bidding, offering, or trading and an automatic execution occurs with the specialist's proprietary interest, which elects contra-side stop or stop limit orders, marketable CAP–DI orders on the Display Book® on the same side as the specialist will be automatically converted to participate in the execution of such contra-side stop or stop limit orders with the system assigning the proper number of shares to the specialist and CAP–DI orders. In other words, in all circumstances where the specialist is trading for its own account and the specialist, as party to the election of a stop order, owes an elected stop order an execution at the same price as the specialist traded pursuant to current Exchange Rule 123A.40, an automatic conversion of marketable CAP–DI orders will occur. This modification, however, will not effect the proper allocation of shares to CAP–DI orders.

The Exchange believes that this modification is beneficial for the market in that it reduces the chances for error by removing the responsibility from the specialist to manually ensure the CAP–DI interest trading is allocated correctly. This will allow CAP–DI orders to better participate in executions. This modification is part of a package of software corrections to the Pilot which the Exchange would like to implement as quickly as possible. This modification will expire upon the termination of the Pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The exchange believes that the proposed rule change is also designed to support the principles of section 11A(a)(1) of the act[17] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.[18]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission action

Because the proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; or

(iii) have the effect of limiting access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A) of the Act[19] and paragraph (f)(5) of Rule 19b–4 thereunder.[20] The Exchange believes that this modification to the Pilot would allow the Pilot to continue in effect and reduce the chance of error by the specialist by allowing the system to automatically convert CAP–DI orders and execute with the proper allocation.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-comment@sec.gov.* Please include File Number SR–NYSE–2006–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–09. 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 Commissiona 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–09 and should be submitted on or before March 23, 2006.

remaining specialist interest against the elected stop order at the same price the specialist traded.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78K–1(a)(1).

[18] *See* telephone conversation between Jeffrey Rosenstrock, Principal Rule Counsel, Market Surveillance, NYSE, and Kelly Riley, Assistant Director, Division of Market Regulation, Commission, dated February 23, 2006.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 20 CFR 240.19b–4(f)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. 06–1962 Filed 3–1–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53354; File No. SR–NYSE–2006–08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .26 to Exchange Rule 301 To Waive the Posting Requirements in Relation to Transfers for Nominal Consideration Between Employees of the Same Member Organization and New Leases

February 23, 2006.

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 17, 2006, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to transfers for nominal consideration between employees of the same member organization and new leases.

The text of the proposed rule changes is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to transfers for nominal consideration between employees of the same member organization and new leases.

Article II, section 10, of the Exchange Constitution authorizes the Exchange's board of directors to (i) approve the transfer of membership of a regular member and the lease of such a membership and (ii) adopt, amend and repeal such rules as it may deem necessary or proper relating to the posting of notice of the proposed transfer or lease of a membership and other similar matters. Supplementary Material .26 to Exchange Rule 301 sets forth the current posting requirements for transfers and leases of seats, requiring that a proposed transfer or lease of a membership must be posted on the Exchange's bulletin board and in the Exchange's Weekly Bulletin at least 10 days before board consideration of such transfer or lease.

A large percentage of Exchange memberships and leases of memberships are held on behalf of member organizations by individuals who are employees of those member organizations. When an employee who owns a membership on behalf of a member organization leaves that member organization, the member organization may instruct the employee to transfer such membership to another employee of the member organization for a nominal consideration ("nominal transfer"). Similarly, if a lessee member leaves his member organization, the member organization may cause another employee to sign a new lease to enable the member organization to retain the departed employee's floor trading rights.

On December 6, 2005, the members of the Exchange and the shareholders of Archipelago Holdings, Inc. ("Archipelago") voted to approve a merger between the Exchange and Archipelago. Upon consummation of the merger, all membership interests in the Exchange will be exchanged for a combination of cash and common stock of NYSE Group, Inc. After the merger, the right to trade on the floor of the Exchange will be pursuant to a system of trading licenses. In light of the fact that memberships will cease to exist upon consummation of the merger and the time and resources it takes to process transfers and leases of membership, the Exchange announced that it would not process any transfers or new leases of memberships entered into after the close of business on Friday, December 30, 2005.

At the time the Exchange announced its decision to cease processing transfers of memberships and new leases, the Exchange believed that the merger would be completed before the end of January 2006. As completion of the merger has taken longer than anticipated, a backlog has developed of memberships beneficially owned by member organizations that are not available for use by such member organizations. This problem is a consequence of the inability of those member organizations to cause the nominal transfer to continuing employees of memberships held by departed employees so as to allow those continuing employees to transact business on the trading floor. Similarly, member organizations have been unable to execute new leases in the names of continuing employees when the employee who had been a lessee member on behalf of the member organization has departed. In addition, member organizations frequently meet their expanding needs for trading floor personnel by causing employees to enter into new leases. The Exchange's decision not to process new leases has prevented member firms from expanding their floor trading capacity in this manner and has forced them to operate with fewer floor trading personnel than they consider desirable.

Some member organizations have experienced difficulty in effectively conducting their business as a result of this inability either to have employees admitted as members in place of departed employees or to acquire memberships by entering into new leases to expand their trading floor capacity. The Exchange has responded to this problem by recommencing the processing of nominal transfers and new

leases.[5] However, member organization personnel needs make it important to process these transfers and leases as quickly as possible. Therefore, the Exchange proposes to amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to nominal transfers and new leases, so as to shorten the process where an applicant is otherwise acceptable to the Exchange and ready for approval.

The Exchange believes that waiving the ten day notice period prior to Exchange approval of a transfer will provide significant relief to member organizations that need to replace departed employees on the trading floor, or expand their trading floor personnel, as quickly as possible. The Exchange intends this waiver for nominal transfers and leases to be of a limited duration and will reimpose the "posting" requirement if at any time the conditions that make such waiver necessary, as discussed above, no longer exist.

The purposes of the "posting" requirement are (i) to enable members to raise objections to the suitability of a proposed new member and (ii) to give notice to any member who may have a claim against the proceeds of the sale of the membership. As the "posting" process has not given rise to any objections to a proposed new member in many years and the Exchange performs a thorough background check as part of its approval process, the Exchange believes that waiving the "posting" requirement in the limited circumstances proposed by this filing will not meaningfully diminish the stringency of the new member approval process. Furthermore, the Exchange notes that there will be no "posting" procedure with respect to applicants for trading licenses under the rules that will be in effect after the consummation of the merger. In addition, since the only membership transfers that will be permitted are nominal transfers between employees of the same member organization, no true sale is occurring and there are therefore no proceeds for a third party to make claims against.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under section 6(b)(5)[6] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day prefiling requirement and the 30-day operative delay, and designate the proposed rule change immediately operative. The Commission believes that waiving the five-day prefiling requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission notes that the Exchange represented that the posting process has not resulted in objections to a proposed new member in many years and the Exchange performs a thorough background check as part of its approval process for new members. The Commission also notes that the Exchange represented that the proposed waiver of the 10-day posting period should provide relief to member organizations that, as a consequence of the backlog in processing membership transfers, need to replace departed employees on the trading floor, or expand their trading floor personnel, as quickly as possible to enable them to effectively conduct their business. Accordingly, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–08. 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

[5] All new leases are required to contain a provision specifying that they will terminate by their terms upon closing of the merger.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *Id.*

[10] 17 CFR 240.19b–(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–08 and should be submitted on or before March 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2931 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53361; File No. SR–PCX–2006–13]

Self-Regulatory Organizations; Pacific Exchange, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to its Fees and Charges

February 24, 2006.

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 14, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The PCX filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its Schedule of Fees and Charges for Exchange Services in order to eliminate the royalty fee that the Exchange assesses on options contracts traded on the NASDAQ 100 Tracking Index ("QQQQ"). The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the royalty fee that the Exchange assesses on options contracts that have as their underlying symbol QQQQ. The PCX presently charges Market Makers, broker dealers, and OTP Firms $0.05 per contract side when trading QQQQ options. In an effort to reduce costs associated with trading on the PCX, the Exchange proposes to eliminate this fee. By offering reduced fees, the PCX hopes to attract additional order flow and encourage more trading by market participants in QQQQ options. The PCX plans to implement the fee change on February 27, 2006.

2. Statutory Basis

The PCX believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2006–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–PCX–2006–13. 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

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2006–13 and should be submitted on or before March 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2958 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53356; File No. SR–Phlx–2004–37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to Its Audit Committee

February 23, 2006.

I. Introduction

On May 20, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the audit committee provisions of the Phlx By-Laws.[3] On October 20, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Exchange has proposed: (i) To allow the Exchange's Board of Governors ("Board") to increase the size of its audit committee ("Audit Committee") up to a number to be determined by its Board from time to time; (ii) to require the members of the Audit Committee to be "Independent Governors;" and (iii) to modify and enhance the responsibilities of the Audit Committee.

The proposed rule change, as amended, was published for comment in the **Federal Register** on November 28, 2005.[5] The Commission received no comments on the proposal. The Exchange filed Amendment No. 2 to the proposed rule change on February 10, 2006, and submitted its notification of withdrawal of Amendment No. 2 on February 14, 2006. On February 15, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.[6] This order approves the proposed rule change as modified by Amendment No. 1. Simultaneously, the Commission provides notice of filing of, and grants accelerated approval to, Amendment No. 3.

II. Description

The Exchange proposes to amend the Phlx By-Laws, Article X, Section 10–9 to: (i) Permit, but not mandate, the Board to increase the size of the Audit Committee; (ii) require all Audit Committee members to be "Independent Governors" as defined under the proposal; and (iii) modify and enhance the responsibilities of the Audit Committee. Currently, the Audit Committee is required to consist of three members. The Exchange proposes to require that the Audit Committee be composed of at least three members, and to have the Board establish the exact size of the Audit Committee from time to time.

The Exchange also proposes to require all Audit Committee members to be "Independent Governors." The Exchange proposes to define "Independent Governor" as a member of the Board who has no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of such member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange.[7] The proposal would define the term "material relationship" as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the Governor. The Exchange has represented that the Board would determine whether each Audit Committee member is an Independent Governor upon that Governor's nomination to the Audit Committee and thereafter no less frequently than annually and as often as necessary in light of the Governor's circumstances.

The Exchange also proposes to incorporate into the Phlx's By-Laws enhanced Audit Committee duties and responsibilities, including: (i) Sole responsibility for appointing, retaining, and replacing its external auditors; (ii) direct oversight over such auditors; (iii) reviewing at least annually the qualification and performance of such auditors; (iv) direct authority to resolve disagreements between management and such auditors regarding financial reporting; (v) responsibility to ensure the rotation of the lead and concurrent auditors every five years and certain other auditors every seven years, with time-out periods; (vi) evaluation of the independence of external auditors, including ensuring that, other than deferred tax and compliance services, external auditors do not engage in certain non-audit services when they conduct audits for the Exchange and approval of non-audit services where appropriate; (vii) establishing procedures for the receipt, retention, and treatment of complaints received by the Exchange regarding accounting, internal accounting controls, or other auditing matters and confidential anonymous submissions by Exchange employees regarding questionable accounting practices; and (viii) determining the appropriate amount of funding to be provided by the Exchange for the purpose of paying compensation to external auditors to prepare or issue an audit report, compensation to advisers to the Audit Committee necessary for it to carry out its duties, and ordinary administrative expenses of the Audit Committee.

The Exchange also proposes to remove the phrase "independent public accountants" from Article X, Section

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx By-Laws Article X, Sections 10–9(a)–(b).

[4] In Amendment No. 1, the Exchange added a definition of "independent director" and made technical changes to the proposed rule text, and revised the filing's purpose section to reflect the addition of the definition of "independent director."

[5] *See* Securities Exchange Act Release No. 52777 (November 16, 2005), 70 FR 71360.

[6] In Amendment No. 3, the Exchange replaced the term "independent director" in the proposed rule text with "Independent Governor," deleted references to a maximum five person Audit Committee in the description of the proposal, and made clarifying corrections to the proposed rule text.

[7] The Exchange has cited to the Commission's proposed rulemaking on the fair administration and governance of self-regulatory organizations for its proposed definitions of "Independent Governor" and "material relationship." *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) ("SRO Governance Proposal").

10–9(b) of the Phlx By-Laws and replace it with the phrase "external auditors," which would broaden the scope of the Audit Committee's oversight.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[8] In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[9] in that it is designed to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change would require every member of the Audit Committee to be an "Independent Governor," as such term is defined in the proposal, and also would require the Exchange's Board to determine the independence of such Governor upon his or her nomination to the Audit Committee and thereafter no less frequently than annually and as often as necessary in light of the Governor's circumstances. The Commission believes that the Exchange's proposed definition of Independent Governor is designed to provide parameters for ensuring that disinterested, objective Governors serve on the Audit Committee.[10] Moreover, the definition of Independent Governor and the requirement that the Exchange periodically assess the independence of Audit Committee members should help enhance the independence and integrity of the Audit Committee. The Commission also believes that the Phlx's proposed revisions to the Audit Committee's functions should help strengthen the Audit Committee's oversight of the Exchange's audit matters.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing hereof in the **Federal Register**. Phlx filed Amendment No. 3 to replace the term "independent director" in the proposed rule text with the term "Independent Governor," to delete references in the description section of the proposal to an increase in the size of the Audit Committee to a maximum of five persons, and to make clarifying changes and corrections to the proposed rule's text. The Commission believes that the proposed changes in Amendment No. 3 clarify the composition of the Audit Committee and make minor, clarifying corrections to the proposal's rule text, but raise no new issues of regulatory concern. For these reasons, the Commission finds good cause for accelerating approval of Amendment No. 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2004–37. 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 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–2004–37 and should be submitted on or before March 23, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–Phlx–2004–37), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2961 Filed 3–1–06; 8:45 am]

BILLING CODE 8010–01–P

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that the SRO Governance Proposal also proposed specific circumstances that would preclude a determination that a director is independent, which the Exchange has not incorporated in this proposal. The Commission notes, however, that the Exchange would be required to conform its definition of "Independent Governor," as well as any other related rules, to any rules that the Commission may adopt in the future with respect to the governance of national securities exchanges and the independence of their directors.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5334]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program: Linking Individuals, Knowledge and Culture (LINC)

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–06–25.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: April 27, 2006.

Executive Summary: The Youth Programs Division, Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, announces an open competition for LINC projects under the Youth Leadership Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to implement projects for youth in the United States and specified countries around the world. These projects will involve an educational and cultural exploration of one of three themes and will promote mutual understanding through reciprocal exchanges of three- to six-weeks each.

I. Funding Opportunity Description

Purpose: The Bureau of Educational and Cultural Affairs (ECA) and the Public Affairs Sections (PAS) of U.S. missions overseas are supporting the participation of youth in intensive, substantive exchanges through the LINC (Linking Individuals, Knowledge, and Culture) Program. This program is designed to foster mutual understanding between youth participants (ages 15–17) from the United States and from countries around the world through three to six week reciprocal exchange projects that enhance the participants' knowledge of their host country's history, culture, and system of government. Through these people-to-people exchanges, the Bureau seeks to break down stereotypes that divide peoples, promote good governance, contribute to conflict prevention and management, and build respect for cultural expression and identity in a world that is experiencing rapid globalization.

The overarching goals of the LINC Program are:

(1) To develop a sense of civic responsibility and commitment to community development among youth;

(2) To foster relationships among youth from different ethnic, religious, and national groups;

(3) To engage youth in building bridges of understanding and respect between the people of the United States and the people of other countries; and

(4) To develop a cadre of alumni with the skills and knowledge to transform their communities and countries.

Projects will also be designed to foster dialogue and joint activities around one of three themes: (1) Responsible Governance and Citizen Activism in Civil Society; (2) Using Arts and Culture for Inter-community Leadership Dialogue; and (3) Science and Technology. Proposals that target themes not listed below will be deemed technically ineligible. ECA will accept proposals for either multiple-country or single-country projects.

Applicants should present a rationale for a multiple-country application, and describe how participants from the various countries will interact with one another. In general ECA will be looking to fund a geographically and thematically diverse group of projects, but makes no guarantee that grants will be awarded for specific countries or in all themes.

The Department requests proposals only with the partner countries identified in the list below. Since the exchanges under this program are reciprocal, programs for these countries will be subject to U.S. Department of State travel advisories.

Sub-Saharan Africa: Mozambique, Tanzania, Ethiopia, Kenya, Uganda, Nigeria, Ghana, Cameroon

East Asia and Pacific: China, Malaysia, Thailand

North Africa and Middle East: Algeria, Bahrain, Egypt, Morocco, Oman, Tunisia, West Bank/Gaza

South Asia: Bangladesh, India

Each theme has specific aims, as outlined below. Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, cultural activities, seminars and other activities designed to achieve the projects' stated goals and objectives. Opportunities for participants to interact with American youth and adult educators will be included as much as possible.

Grants will support the travel of foreign students to the United States and Americans to the overseas partner countries. The minimum duration of stay is three weeks, but longer stays (up to six weeks) are possible under these grants. During the exchanges, the students will participate in activities designed to teach them about community life, citizen participation, and the culture of the host country in addition to the thematic program activities. The program will introduce the visitors to the community—its leaders and institutions and the ways citizens participate in local government and the resolution of societal problems—and will include educational excursions that serve to enhance the visitors' understanding of the history, culture, political institutions, ethnic diversity, and environment of the region. ECA requires participation in a community service project. Participants should also have opportunities to give presentations on their countries and cultures in community forums. After the exchanges, well-organized follow-on activities for alumni are an essential program component. Homestays will be the norm, although participants may spend a modest portion of their time as a group in a hotel or dormitory setting. Note: Delegations should have adults travel with them. These adults may be project staff, teachers, or chaperones. All should be considered exchange participants for program planning and budgetary purposes.

Applicants must demonstrate their capacity for conducting projects of this nature, focusing on three areas of competency: (1) Provision of programs aimed at achieving the goals and themes outlined in this document; (2) age-appropriate programming for the target audience; and (3) experience in working with the proposed partner country or countries. U.S. applicant organizations need to have the necessary capacity in the partner country, with either its own offices or a partner institution. The requisite capacity of both the U.S. organization and its overseas partner includes the ability to recruit and select participants, organize substantive exchange activities, provide follow-on activities, and handle the logistical and financial arrangements.

For the purposes of this solicitation, reciprocity means a two-way exchange: A delegation traveling from the partner country (or countries) to the United States and a delegation traveling from the United States to the partner country (or countries). The delegations do not have to be exactly equal in size or in their duration of stay (as long as the stay is between three and six weeks), though significant deviations from full reciprocity must be justified. Of key importance is the reciprocity of the learning experience for the American and foreign participants. Applicants are instructed to treat the exchange and follow-on activities in each country with equal importance, with active learning on both sides, and challenging, interesting, goal-oriented educational activities for both delegations.

Themes: Applicants should select one of these three themes for its program offering and clearly indicate how program activities will support the theme as described below. They are not in any order of priority. Woven throughout the program activities should be guidance and training that help the youth participants develop leadership skills including, for example, influential public speaking, team-building, critical thinking, and goal-setting, so that they are prepared to take action with what they have learned.

The program delivery should be primarily interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a civil society, community service, tolerance and respect for diversity, and building leadership skills. The activities could include a mix of workshops, simulations and role-playing, team-building exercises, a volunteer service project, leadership training exercises, meetings, classroom visits, site visits, training, and social time among peers. Many of these should be planned in conjunction with participation in school and community activities in a way that

is mutually educational for the exchange participants and their American hosts/peers. All programming should include American participants wherever possible. Cultural and recreational activities will balance the schedule.

Programs may consist of components that are part of an already existing activity, such as participation of exchange participants in a pre-established camp or workshop. If this is proposed, however, it needs to fulfill all of the stated objectives or do so in conjunction with other activities scheduled just for these delegations.

(1) Responsible Governance and Citizen Activism in Civil Society

ECA welcomes projects that provide an intensive experience in educating participants on the rights and responsibilities of a citizen in a civil society. Activities will provide participants with a theoretical review of civic education that is then followed up with practical, hands-on experiences to apply lessons learned to real-life situations. Project activities may include case studies, training in project planning, reviewing how to identify community issues and exploring ways that they can be addressed through public policy and through citizen action.

Projects should demonstrate for youth the principles of fair and transparent governance responsive to its citizenry and should promote dialogue among youth on this theme. Projects must be culturally sensitive and address specific needs of the partner country or countries. Individual projects might have the young participants explore ways that a country's government, academic institutions, media, and non-governmental organizations can encourage and support the involvement of its citizenry, increase citizen trust, and expand the democratic process.

All activities should relate to demonstrating citizen participation in governance and in addressing societal concerns, such as rule of law, ecological awareness, small business entrepreneurship, and tolerance. Participants should have a chance to see leaders in action.

(2) Using Arts and Culture for Inter-community Leadership Dialogue

The nature and quality of relationships between communities are critical determinants of sustainable democratic and civil societies throughout the world. Moving from relationships based on mistrust to those rooted in mutual recognition and trust is a key factor in bridging social differences, strengthening communication, and mitigating conflict. The arts and humanities have always served as an effective venue through which the quality of relationships can be better understood and improved by facilitating and increasing interactions between communities in numerous situations and settings—communal, economic, personal, political, and social.

Projects for this theme should provide artistic and cultural forums, rooted in the humanities, for youth to communicate and work with one another, as well as explore what makes the arts unique in each of the project's participating countries. Teenagers representing diverse communities will participate in arts and humanities programs, through both in-school and out-of-school enrichment projects, designed to bridge cultural and social differences, to foster creative interaction among youth, and to develop skills necessary for personal, academic and future professional leadership in their communities. Examples of projects must be collaborative in nature and may include dance, music, theater, and visual art projects that creatively bring participants of diverse backgrounds together in the goal of fostering mutual understanding, developing leadership skills, and modeling positive behavior for their peers through the arts. In the process, participants will have the chance to share experiences and views while acquiring listening, communication, and negotiation skills that allow them to explore differences and commonalities, build trust, address divisive issues, develop empathy and understanding for one another, and create long-term bonds.

In addition to creative arts and humanities collaborative activities, the program will include meetings with community members and government officials. Topics such as the essential attributes of leadership, teambuilding, and effective communication and problem-solving skills should be interlinked with other activities.

Proposals must demonstrate strong expertise in the target country and local community(ies) to address effectively the sensitive and competing interests of target populations. Applicants should demonstrate their knowledge of the diversity of the community and explain how the population is in need of and will benefit from this program promoting inter-community dialogue. Proposals to send or receive touring performance groups (bands, choirs, drama troupes, etc.) are not eligible for this competition.

(3) Science and Technology

Projects on the theme of science and technology will promote international cooperation in the areas of scientific research while introducing exchange participants to their peers in other countries. This theme encompasses science, technology, engineering, and mathematics, and specifically includes the conduct of science, that is, the development of critical inquiry skills, innovation, scientific method, and experimentation.

Participants should be advanced students with a demonstrated interest in science and technology and a desire to pursue a career in an associated field. The exchange activities will enable them to explore these fields in depth and to develop their skills of scientific investigation, including critical thinking, problem solving, and complex communication.

In addition to encouraging individual development, program activities will also involve participants in discussions on the role of science and technology in promoting democratic values, economic and social development, and the education necessary to provide adequate workforce development.

Activities may include participation in science competitions and fairs, as well as visits to museums and meetings with representatives of the scientific community. Applicants may wish to include e-learning components in their proposed projects.

Guidelines: Grant periods should begin on or about August 15, 2006. The grant period may be between 12 and 18 months in duration.

The program responsibilities of the grant recipient for each project include recruitment and selection of exchange participants, preparation for the exchanges, the program activities during the exchanges, and follow-on activities after the exchanges. These responsibilities are detailed in the Project Objectives, Goals, and Implementation (POGI) document.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2006.

Approximate Total Funding: $900,000.

Approximate Number of Awards: 4 to 8.

Floor of Award Range: $50,000.

Ceiling of Award Range: $250,000.

Anticipated Award Date: August 15, 2006.

Anticipated Project Completion Date: 12–18 months after start date, to be specified by applicant based on project plan.

Additional Information: Pending successful implementation of the projects and the availability of funds in subsequent fiscal years, ECA reserves the right to renew grants for up to two additional fiscal years before openly competing grants under this program again.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. Application and Submission Information:

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 *Contact Information to Request an Application Package:* Please contact the Youth Programs Division, ECA/PE/C/PY, U.S. Department of State, SA–44, 301 4th Street, SW., Room 568, Washington, DC 20547, (202) 453–8148, Fax (202) 203–7529, E-mail: *ShubairDM@state.gov* to request a Solicitation Package. Please refer to the Program Title and the Funding Opportunity Number (ECA/PE/C/PY–05–25) located at the top of this announcement when making your request.

The Solicitation Package contains the Project Objectives, Goals and Implementation (POGI) document and Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Bureau Program Officer David Shubair and refer to the Funding Opportunity Number located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 form that is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 *Adherence To All Regulations Governing The J Visa.* The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of

Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. *Budget Guidelines.* Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Grant requests must not be less than $50,000 nor greater than $250,000. There are no specific country allocations. The Bureau anticipates awarding multiple grants; the exact number of grants will be based on the number, quality, and regional diversity of the submitted proposals. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Proposal budgets must include a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package (both the POGI and the PSI) for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times: Application Deadline Date:* Thursday, April 27, 2006.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly

recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original, one fully-tabbed copy, and seven copies of the application with Tabs A–E (for a total of 9 copies, bound with large binder clips and a title page with your organization name clearly marked) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–06–25, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

Applicants must also submit the executive summary, proposal narrative, budget section, and any important appendices as e-mail attachments in Microsoft Word and Excel to the following e-mail address: *ShubairDM@state.gov*. In the e-mail message subject line, include the name of the applicant organization and the partner country(ies). The Bureau will transmit these files electronically to the Public Affairs Sections of the relevant U.S. embassies for review.

V. Application Review Information

V.1. *Review Process.* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

The proposal review criteria are outlined in the accompanying Project Objectives, Goals, and Implementation (POGI) document.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Interim reports, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. The ECA Program Officer must receive final schedules for in-country and U.S. activities at least three working days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: David Shubair, Program Officer, Youth Programs Division, ECA/PE/C/PY, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, D.C. 20547, (202) 453–8148, fax (202) 203–7529, e-mail: *ShubairDM@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–06–25.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 24, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–2977 Filed 3–1–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5323]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Monday, March 20, 2006, to consider the draft convention on the carriage of goods [wholly or partly] [by sea], under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1 p.m. to 5 p.m. in the offices of FedEx, 101 Constitution Avenue, NW., 8th floor, Washington, DC 20001.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in preparing for the next session of the UNCITRAL Working Group on this draft instrument, to be held in New York from April 3 to 13, 2006. The draft text of the convention, document A/CN.9/WG.III/WP.56, is available on UNCITRAL's Web site, *http://www.uncitral.org*, under the Working Group III (Transport Law) listings. Also available on that Web site is the agenda for the April 2006 session (paragraphs 26–29 of A/CN.9/WG.III/WP.60).

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments may be sent electronically to *carlsonmh@state.gov*. Due to security requirements, one of the following valid ID's will be required for admittance: Any U.S. driver's license with a photo, a passport, or a U.S. government agency ID. Also, anyone planning to attend this meeting should provide their name, affiliation and contact information in advance to Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@state.gov*.

David P. Stewart,

Assistant Legal Adviser, Office of the Legal Adviser for Private International Law, Department of State.

[FR Doc. 06–1998 Filed 3–1–06; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5322]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a meeting March 16, 2006 in the conference room of the U.S. Department of State Foreign Press Center in Washington, DC, Suite 800, National Press Building, 529 14th Street, NW. The meeting will be from 9 a.m. to 10 a.m. The Commissioners will discuss public diplomacy issues and hear from experts on Latin America.

The Commission was reauthorized pursuant to Public Law 109–108. (H.R. 2862, Science, State, Justice, Commerce, and Related agencies Appropriations Act, 2006). The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth Bagley of Washington, DC; Charles "Tre" Evers of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

Seating is limited. To attend the meeting and for more information, please contact Athena Katsoulos at (202) 203–7880.

Dated: February 24, 2006.

Athena Katsoulos,

Executive Director, ACPD, Department of State.

[FR Doc. 06–1999 Filed 3–1–06; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 5302]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 p.m. on Tuesday, March 14, 2006, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC, 20593–0001. The primary purpose of the meeting is to prepare for the 10th session of the Sub-Committee on Bulk Liquids and Gases (BLG) to be held at the International Maritime Organization (IMO) Headquarters in London, England from April 3 to April 8, 2006.

The primary matters to be considered include:

—Evaluation of safety and pollution hazards of chemicals and preparation of consequential Amendments.
—Development of guidelines for uniform implementation of the 2004 Ballast Water Management Convention.
—Requirements for protection of personnel involved in the transport of cargoes containing toxic substances in all types of tankers.
—Development of provisions for gas-fuelled ships.
—Amendments to resolution MEPC.2(VI).
—Development of standards regarding rate of discharge for sewage.
—Consideration of International Association of Classification Societies unified interpretations.
—Casualty analysis.
—Safety aspects of ballast water management.
—Guidelines on equivalent methods to reduce on-board NO_x emission.
—Guidelines on other technological methods verifiable or enforceable to limit SOx emissions.
—Review of MARPOL Annex VI and the NO_x Technical Code.

—Amendments to MARPOL Annex I for the prevention of marine pollution during oil transfer operations between ships at sea.

Hard copies of documents associated with the 10th session of BLG will be available at this meeting. To request further copies of documents please write to the address provided below.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Thomas Felleisen, Commandant (G–PSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1214, Washington, DC 20593–0001 or by calling (202) 267–0086.

Dated: February 23, 2006.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–3001 Filed 3–1–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5303]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Wednesday, April 12, 2006, in Room 1422 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting is to prepare for the Ninety-first Session of the International Maritime Organization's (IMO) Legal Committee (LEG 91) scheduled from 24–28 April 2005.

The provisional LEG 91 agenda calls for the Legal Committee to further examine the draft Wreck Removal Convention. To be addressed as well are the Provisions of Financial Security which includes a progress report on the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers; and includes follow-up resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The Legal Committee will examine Fair Treatment of Seafarers, with a report of the second session of the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers which will take place from 13–17 March 2006. Also on the LEG 91 agenda are places of refuge, monitoring of the implementation of the HNS Convention, and matters arising from the ninety-fourth session of the Council, the ninety-fifth session of the Council, the twenty-third extraordinary session of the Council, and the twenty-fourth meeting of the Assembly. Finally the committee will review technical cooperation activities related to maritime legislation and will review biennium activities within the context of the Organization's Strategic Plan, in addition to allotting time to address any other issues that may arise on the Legal Committee's work program, including a proposed CMI study on the implementation of procedural rules in limitation conventions.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain William Baumgartner or Lieutenant Laurina Spolidoro, at U.S. Coast Guard, Office of Maritime and International Law (G-LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *lspolidoro@comdt.uscg.mil,* telephone (202) 267–0733; fax (202) 267–4496.

Dated: February 23, 2006.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–3011 Filed 3–1–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: This is a recurring Notice of Availability, and request for comments, on the draft advisory circulars (ACs), other policy documents, and proposed technical standard orders (TSOs) currently offered by the Aircraft Certification Service.

SUMMARY: The FAA's Aircraft Certification Service publishes proposed nonregulatory documents that are available for public comment on the Internet at *http://www.faa.gov/aircraft/draft_docs/.*

DATES: We must receive comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the Federal Aviation Administration at the address specified on the Web site for the document being commented on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: See the individual or FAA office identified on the Web site for the specified document.

SUPPLEMENTARY INFORMATION:

Comments Invited

When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing a final document. You can obtain a paper copy of the draft document or proposed TSO by contacting the individual or FAA office responsible for the document as identified on the Web site. You will find the draft ACs, other policy documents and proposed TSOs on the "Aircraft Certification Draft Documents Open for Comment" Web site at *http://www.faa.gov/aircraft/draft_docs/.* For Internet retrieval assistance, contact the AIR Internet Content Program Manager at 202–267–8361.

Background

We do not publish an individual Federal Register Notice for each document we make available for public comment. Persons wishing to comment on our draft ACs, other policy documents and proposed TSOs can find them by using the FAA's Internet address listed above. This notice of availability and request for comments on documents produced by the Aircraft Certification Service will appear again in 30 days.

Terry Allen,

Acting Manager, Production and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 06–1949 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Amendment From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Outsource Maintenance Providers Quarterly Utilization Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve an amendment of a current information collection. The amendment is to add air agencies to the list of respondents. The data from this report will be used to assist the principal maintenance or avionics inspector in revising the annual FAA surveillance requirements of the leading contract maintenance providers to the air operators and air agencies.

DATES: Please submit comments by May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895, or by e-mail at: *Judy.Street@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Outsourcing Maintenance Providers Quarterly Utilization Report.

Type of Request: Amendment of an approved collection.

OMB Control Number: 2120–0708.

Forms(s): Quarterly Outsource Maintenance Providers Utilization Report.

Affected Public: An estimated 5,800 respondents.

Frequency: The information is collected quarterly.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 23,200 hours annually (This is an increase over the previous estimate for this collection. We have expanded the respondent base for this collection).

Abstract: The data from this report will be used to assist the principal maintenance or avionics inspector in revising the annual FAA surveillance requirements of the leading contract maintenance providers to the air operators and air agencies.

ADDRESSES: Send comments to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, ABA–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 24, 2006.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–1947 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Boise Air Terminal/Gowen Field, Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Boise Air Terminal/Gowen Field under the provisions of Title 49 of the United States Code (49 U.S.C.), the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act," and Title 14 of the Code of Federal Regulations, Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 23, 2005, the Federal Aviation Administration (FAA) determined that the noise exposure maps submitted by the Boise Air Terminal/Gowen Field under Part 150 were in compliance with applicable requirements. On February 8, 2006, the FAA approved the Boise Air Terminal/Gowen Field noise compatibility program. Thirty of thirty-two recommendations of the program were approved.

DATES: The effective date of the FAA's approval of the Boise Air Terminal/Gowen Field Noise Compatibility Program is February 8, 2006.

FOR FURTHER INFORMATION CONTACT: Cayla Morgan, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone 425–227–2653. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Boise Air Terminal/Gowen Field, effective February 8, 2006.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel. Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150.

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses.

c. Program measures would not create an undue burden on interstate of foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient

use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator, as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Seattle Airports District Office in Renton, Washington. Boise Air Terminal/Gowen Field submitted to the FAA on September 9, 2004, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 2002 through 2004. The Boise Air Terminal/ Gowen Field noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 12, 2005. Notice of this determination was published in the **Federal Register** on August 23, 2005 (FR Volume 70, Number 162, pages 49360–49361).

The Boise Air Terminal/Gowen Field study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from 2004 through 2009. It was requested that the FAA evaluate and approve this material as a noise compatibility program, as described in section 47504 of the Act. The FAA began its review of the program on August 12, 2005, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 32 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The FAA, therefore, approved the overall program, effective February 8, 2006.

Outright approval was granted for 30 program elements. Noise Abatement Measure 6—Downwind Arrival Flight Tracks was disapproved. The measure was disapproved because no demonstrable noise benefit would accrue if this measure were implemented on a voluntary basis. Vectoring aircraft to south downwind would create operational issues. The aircraft would have to be blended with south traffic and have to be kept clear of departing traffic. The new result would be increased workload, risk of error, and increased flying time and cost for users. Noise Abatement Measure 7—Flight Management System (FMS)/ Global Positioning System (GPS) Flight Procedures for 1–84 was also disapproved. The NCP did not demonstrate noise benefits for this measure, even assuming 100 percent compliance. Many aircraft presently are not equipped to carry out FMS/GPS procedures, so the compliance rate is unrealistic. Also, the FAA still would need to develop airport-specific procedures, which would take some time to study and determine their feasibility. This recommendation is more appropriate to pursue outside of the Part 150 process to determine local feasibility and possible inclusion in future updates.

These determinations are set forth in detail in a Record of Approval signed by the Associate Administrator of Airports on February 8, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Boise Air Terminal/Gowen Field. The Record of Approval also will be available online at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

* * * * *

Issued in Renton, Washington, on February 23, 2006.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 06–1946 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; St. Lucie County International Airport; Fort Pierce, FL

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by St. Lucie County for St. Lucie County International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for St. Lucie County International under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 22, 2006.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is February 23, 2006. The public comment period ends April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, FL 32822, (407) 812–6331, Extension 130. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for St. Lucie County National Airport are in compliance with applicable requirements of part 150, effective February 23, 2006. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 22, 2006. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 48503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The

Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and percent the introduction of additional non-compatible uses.

St. Lucie County submitted to the FAA on December 21, 2005 noise exposure maps, descriptions and other documentation that were produced during the St. Lucie County International Airport Part 150 Noise Compatibility Study Update conducted between August, 2003 and December, 2005. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measure, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47503 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by St. Lucie County. The specific documentation determined to constitute the noise exposure maps includes: "Existing Conditions 2005 Noise Exposure Contours" (Figure 10.1) and "Figure Conditions 2010 Noise Exposure Contours" (Figure 10.2) along with Table 5.2, "Runway Use Rates, by Runway End and Aircraft Type, Existing Conditions, 2005, St. Lucie International Airport", Table 5.3 "Runway Use Rates, by Runway End and Aircraft Type, Future Conditions with New Parallel Runway, 2010, St. Lucie International Airport", Table 5.4, "Flight Track Utilization Rates, Base Case Year 2005, St. Lucie County Intl. Airport", Figure 5.4, "Corporate Jet Arrival Tracks", Figure 5.5a, "Runway 9 Existing Piston Arrival Tracks", Figure 5.5b, "Runway 27 Existing Piston Arrival Tracks,", Figure 5.5c, "Runway 14, Existing Piston Arrival Tracks", Figure 5.5d, "Runway 32 Existing Piston Arrival Tracks", Figure 5.6, "Existing Jet Departure Tracks", Figure 5.7, "Existing Piston Departure Tracks", Figure 5.8a, "Existing Runway 9 Pattern Tracks", Figure 5.8b, "Existing Runway 27 Pattern Tracks", Figure 5.10a, "Proposed Runway 9L Pattern Tracks", Figure 5.9b, "Runway 32 Pattern Tracks", Figure 5.9a, "Runway 14 Pattern Tracks", Figure 5.10b, "Proposed Runway 27R Pattern Tracks", Table 5.5, "Historical Total Airport Operations, by Type, Year 2003", Table 5.6, "Forecast of Airport Operations, by Type, Calendar Year 2003—Forecast Year 2010, St. Lucie County Intl. Airport", Table 5.7, "Airport Operations, by time of Day, Calendar year 2003, St. Lucie County Intl. Airport", Table 5.8, "Base Year (2005) and Five-Year Forecast (2010) Operations, by Aircraft Type, St. Lucie County Intl. Airport", Figure 8.1, "2005 Existing Land use with Noise Sensitive Receptors", Table 10.1 "Modeled Average Daily Aircraft Operations, Existing Conditions 2005", Table 10.2, "Existing Conditions 2005 Noise Contour Interval Exposure Area, in Acres, Dwelling Units and Populations, by Local Jurisdiction, St. Lucie International Airport", Table 10.3 "Modeled Average Daily Aircraft Operations, Future Conditions 2010, St. Lucie International Airport", and Table 10.4, "Five-Year Forecast Conditions 2010 Noise Exposure Area, in Acres, Dwelling Units and Population, by Local Jurisdiction, St. Lucie International Airport", The FAA has determined that these maps for St. Lucie County International Airport are in compliance with applicable requirements. This determination is effective on February 23, 206. FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for St. Lucie County International Airport, also effective on February 23, 2006. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 22, 2006.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, February 23, 2006.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 06–1945 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of Finding of No Significant Impact (FONSI) on a Final Environmental Assessment (Final EA); Quad City International Airport; Moline, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of approval of documents.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Quad City International Airport, Moline, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal actions is: (a) To issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the development items listed below; (b) approval of the Airport Layout Plan (ALP) for the development items listed below; and (c) establish eligibility of the Metropolitan Airport Authority of Rock Island County to compete for Federal funding for the development projects depicted on the Airport Layout Plan.

The specific items in the local airport development project include: Construction, lighting and marking of a 500 foot long by 150 foot wide extension to Runway 5 that includes grading and drainage; Construction, lighting and marking of parallel and connecting taxiways to the Runway 5 extension; Construction of Taxiway Q; Widening of Taxiway F; Expansion of the General Aviation Ramp; Installation of a CAT II/III ILS to Runway 9 that includes an Approach Lighting System with sequenced Flashing Lights (ALSF–2), Touchdown Zone Lighting (TDZL) and Runway Centerline Lighting; Creation of a Standard CAT II/III Instrument Approach Procedure (SIAP) for Runway 9; Installation of a Mid-Field Runway Visual Range (RVR) Sensor; Relocation of the Runway 5 Visual Approach Decent Indicator (VADI); Construction of detention areas to mitigate approximately 0.6 acres of potential floodplain encroachment; and Approval of the Quad City International Airport's Layout Plan (ALP).

Copies of the environmental decision and the Final EA are available for public information review during regular business hours at the following locations:

1. Quad City International Airport, 2200 69th Avenue, Moline, IL 61265.
2. Division of Aeronautics-Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, IL 62707.
3. Chicago Airport District Office, Room 320, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION, CONTACT: E. Lindsay Butler, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Butler can be contacted at (847) 294–7723 (voice), (847) 294–7046 (facsimile) or by e-mail at *lindsay.butler@faa.gov.*

Issued in Des Plaines, Illinois, on February 15, 2006.

Larry H. Ladendorf,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–1948 Filed 3–1–06: 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No.: NHTSA–2005–23700]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (PRA), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 1, 2006.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., 401, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Allison Rusnak, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the PRA, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Motorcyclist Safety Grant Program.

OMB Control Number: N/A.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection.

Affected Public: State Governments.

Form Number: HS–217.

Abstract: Section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, authorizes a grant program for States that adopt and implement effective motorcycle safety programs. Eligibility for the section 2010 grants is based on 6 grant criteria: (1) Motorcycle Rider Training Courses; (2) Motorcyclists Awareness Program; (3) Reduction of Fatalities and Crashes Involving Motorcycles; (4) Impaired Driving

Program; (5) Reduction of Fatalities and Accidents Involving Impaired Motorcyclists; and (6) Fees Collected from Motorcyclists. To qualify for a section 2010 grant for the first fiscal year the State seeks to qualify, it must demonstrate compliance with at least 1 of the 6 grant criteria. To qualify for a section 2010 grant for the second and subsequent fiscal years it seeks to qualify, a State must demonstrate compliance with at least 2 of the 6 grant criteria.

The information collected for this grant program is to include application submissions and various reporting requirements. A State that seeks to qualify in the first fiscal year must submit an application containing information demonstrating that it satisfies 1 of the 6 grant criteria. For the second and subsequent fiscal years that it seeks to qualify, a State must submit an application containing information demonstrating that it satisfies 2 of the 6 grant criteria.

A State's application would identify under which of the 6 grant criteria it intends to qualify for a section 2010 grant. With respect to each of the criteria selected, the proposed rule would require certain supporting submissions from the State to demonstrate that it meets grant criteria.

A State that receives grant funds also must indicate to NHTSA how it intends to expend grant funds for each fiscal year and how grant funds were expended each fiscal year. It is important for NHTSA to be notified about these activities so that it can effectively administer the grant program and account for the expenditure of funds. To reduce burdens, A State will document these activities largely by making use of mechanisms that have received PRA clearance for other similar highway safety programs. A State will first notify NHTSA of its obligation of funds in accordance with the applicable provisions of SAFETEA–LU by submitting a Program Cost Summary (HS–217), a form with existing PRA clearance, within 30 days of the award notification. A State will also report to NHTSA, as part of its annual Highway Safety Plan under 23 U.S.C. 402, on how it intends to expend grant funds for each fiscal year. This reporting requirement, however, will not be a significant extra burden for the States because they are already required by statute to submit an annual Highway Safety Plan. Finally, a State that receives grants funds must submit each fiscal year, as part of the Annual Report for its highway safety program pursuant to 23 CFR 1200.33, a report indicating how grant funds were expended and identifying the programs carried out with the grant funds. Again, this reporting requirement will not be a significant extra burden for the States because they are already required by regulation to submit an Annual Report for their highway safety program.

Estimated Annual Burden: 1560 hours.

Estimated Number of Respondents: 52 (fifty States, the District of Columbia, and Puerto Rico).

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: February 27, 2006.

John Donaldson,

Assistant Chief Counsel for Legislation and General Law.

[FR Doc. E6–3008 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–2005–23090]

Amendments to Highway Safety Program Guidelines

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

ACTION: Extension of comment period for proposed amendments to highway safety guidelines.

SUMMARY: This document extends the comment period for proposed amendments to six (6) highway safety guidelines published on February 9, 2006 (71 FR 6830). The comment due date was March 13, 2006.

In a letter dated February 22, 2006, the Motorcycle Riders Foundation asked NHTSA for an extension of this due date. This document grants that request and extends the comment due date for the proposed highway safety guidelines to March 27, 2006.

DATES: The due date for comments on DOT Docket No. NHTSA–2005–23090 is extended to March 27, 2006.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: The following person at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590: Julie Ross, Program Development and Delivery, NTI–100, telephone (202) 366–9895, facsimile: (202) 366–7149.

SUPPLEMENTARY INFORMATION: On February 9, 2006 (71 FR 6830), NHTSA published a notice requesting comments on proposed amendments to six (6) existing highway safety guidelines: Guideline No. 3 Motorcycle Safety, Guideline No. 8 Impaired Driving, Guideline No. 14 Pedestrian and Bicycle Safety, Guideline No. 15 Traffic Enforcement Services (formerly Police Traffic Services), Guideline No. 19 Speed Management (formerly Speed Control), and Guideline No. 20 Occupant Protection.

Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. As the highway safety environment changes, it is necessary for NHTSA to update the guidelines to provide current information on effective program content for States to use in developing and assessing their traffic safety programs. Each of the proposed revised guidelines reflects the sound science and the experience of States in traffic safety program content. NHTSA updates the guidelines periodically to reflect new issues and to emphasize program methodology and approaches that have proven to be highly effective in these program areas.

The guidelines offer direction to States in formulating their highway safety plans for highway safety efforts that are supported with Section 402 grant funds. The guidelines provide a framework for developing a balanced highway safety program and serve as a tool with which States can assess the effectiveness of their own programs. NHTSA encourages States to use the guidelines and build upon them to optimize the effectiveness of highway

safety programs conducted at the State and local level. The revised guidelines will emphasize areas of national concern and highlight effective countermeasures.

The February 9, 2006 notice announced a comment due date of March 13, 2006. In a letter dated February 22, 2006, the Motorcycle Riders Foundation asked NHTSA for an extension of this due date. Although the letter did not indicate a specific length for the requested extension, the explanation for the requested extension was that "the motorcycling community should have more than thirty three calendar days to dissect and address all of the eleven recommendations put forth in the **Federal Register** on February 9th, 2006." We interpret the reference to the "eleven recommendations" to apply to the eleven (11) subparts of the proposed revised motorcycle safety guideline.

After considering the request for additional time to consider the proposed motorcycle safety guideline, NHTSA has decided that it is in the public interest to grant the request. In granting this request, the agency is mindful that early publication of the revised highway safety guidelines is important in light of the new motorcyclist safety grant program authorized in section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59. Therefore, NHTSA extends until March 27, 2006 the closing date for submission of comments for all six (6) proposed highway safety guidelines published on February 9, 2006. To the extent possible, comments filed after this extended closing date will also be considered. However, the final guidelines may be published at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Issued on: February 27, 2006.

Brian M. McLaughlin,

Senior Associate Administrator for Traffic Injury Control.

[FR Doc. E6–3007 Filed 3–1–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34837]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to BNSF Railway Company (BNSF), between UP "North Jct." milepost 242.57 on UP's Lost Springs Subdivision, and UP milepost 481.96 on UP's Wichita Industrial Lead.

BNSF indicates that the transaction was to be consummated on February 22, 2006, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to facilitate overhead movement of BNSF cars between BNSF's yard in Wichita, KS, and the Frisco Lead (BNSF's rail line severed by removal of railroad crossing diamonds at Washington Street in Wichita).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34837, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland, Jr., 3050 K Street NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 22, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–1833 Filed 3–1–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–307 (Sub–No. 6X)]

Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—in Carbon County, WY

On February 10, 2006, Wyoming and Colorado Railroad Company, Inc. (WYCO) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 23.71-mile line of railroad between milepost 0.57, near Walcott and milepost 24.28, at Saratoga, in Carbon County, WY. The line traverses United States Postal Service Zip Codes 82331 and 82335 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 31, 2006.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 22, 2006. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–307 (Sub-No. 6X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the WYCO petition are due on or before March 22, 2006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance

regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: February 23, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–1905 Filed 3–1–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8804–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8804–W, Installment Payments of Section 1446 Tax for Partnerships.

DATES: Written comments should be received on or before May 1, 2006 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Installment Payments of Section 1446 Tax for Partnerships.

OMB Number: 1545–1991.

Form Number: Form 8804–W.

Abstract: Regulations for section 1446 require a worksheet for installment payments of section 1446 tax. Form 8804–W will be used to adhere to these new regulations.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 59 hours 17 minutes.

Estimated Total Annual Burden Hours: 29,795.

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: February 22, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2905 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–9

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–9, Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles).

DATES: Written comments should be received on or before May 1, 2006 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles).

OMB Number: 1545–1988.

Form Number: Notice 2006–9.

Abstract: This notice sets forth a process that allows taxpayers who purchase passenger automobiles or light trucks to rely on the domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic

distributor's) certification that both a particular make, model and year of vehicle qualifies as an advanced lean burn technology motor vehicle under Section 30B(a)(2) and (c) of the Internal Revenue Code or a qualified hybrid motor vehicle under Section 30B(a)(3) and (d), and the amount of the credit allowable with respect to the vehicle.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 7.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 280.

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: February 16, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2906 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8903

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8903, Domestic Production Activities Deduction.

DATES: Written comments should be received on or before May 1, 2006 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Domestic Production Activities Deduction.

OMB Number: 1545–1984.

Form Number: 8903.

Abstract: Taxpayers will use the new Form 8903 and related instructions to calculate the domestic production activities deduction.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 17,095,800.

Estimated Time Per Respondent: 31 hours, 54 minutes.

Estimated Total Annual Burden Hours: 545,356,020.

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: February 16, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2907 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8271

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8271, Investor Reporting of Tax Shelter Registration Number.

DATES: Written comments should be received on or before May 1, 2006 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: Investor Reporting of Tax Shelter Registration Number.

OMB Number: 1545–0881.

Form Number: 8271.

Abstract: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their tax return from a tax shelter required to be registered under Internal Revenue Code section 6111 must report the tax shelter registration number to the IRS. Form 8271 is used for this purpose. The IRS uses the information provided on Form 8271 to identify the tax shelter from which the benefits are claimed and to determine if any compliance actions are needed.

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: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and State, local or tribal governments.

Estimated Number of Responses: 98,175.

Estimated Time Per Respondent: 41 minutes.

Estimated Total Annual Burden Hours: 67,741.

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: February 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2908 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–118861–00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–118861–00, Application of section 338 to Insurance Companies.

DATES: Written comments should be received on or before May 1, 2006 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application of section 338 to Insurance Companies.

OMB Number: 1545–1990.

Form Number: REG–118861–00.

Abstract: REG–118861–00, Application of section 338 to Insurance Companies, will allow companies to retroactively apply the regulations to transactions completed prior to the effective date and to stop an election to use a historic loss payment pattern.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 12.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 12.

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: February 22, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2911 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4255

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4255, Recapture of Investment Credit.

DATES: Written comments should be received on or before May 1, 2006 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: Recapture of Investment Credit.

OMB Number: 1545–0166.

Form Number: 4255.

Abstract: Internal Revenue Code section 50(a) requires that a taxpayer's income tax be increased by the investment credit recapture tax if the taxpayer disposes of investment credit property before the close of the recapture period used in figuring the original investment credit. Form 4255 provides for the computation of the recapture tax.

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, individuals, and farms.

Estimated Number of Respondents: 13,200.

Estimated Time Per Respondent: 9 hrs. 49 min.

Estimated Total Annual Burden Hours: 129,492.

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: February 23, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2912 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–131478–02]

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–131478–02 (TD 9048), Guidance under Section 1502; Suspension of Losses on Certain Stock Disposition.

DATES: Written comments should be received on or before May 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 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 Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Guidance under Section 1502 Suspension of Losses on Certain Stock Disposition.

OMB Number: 1545–1828.

Regulation Project Number: REG–131478–02.

Abstract: The information in § 1.1502–35T(c) is necessary to ensure that a consolidated group does not obtain more than one tax benefit from both the utilization of a loss from the disposition of stock and the utilization of a loss or deduction with respect to another asset that reflects the same economic loss; to allow the taxpayer to make an election under § 1.1502–35T(c)(5) that would benefit the taxpayer; the election in § 1.1502–35T(f) provides taxpayers the choice in the case of worthless subsidiary to utilize a worthless stock deduction or absorb the subsidiary's losses; and § 1.1502–35T(g)(3) applies to ensure that taxpayers do not circumvent the loss suspension rule of § 1.1502–35–T(c) by deconsolidating a subsidiary and then re-importing to the group losses of such subsidiary.

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 and/or Recordkeepers: 7,500.

Estimated Average Annual Burden per Respondent and/or Recordkeeper: 2 hours.

Estimated Total Reporting and/or Recordkeeping Burden Annual Burden Hours: 15,000.

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: February 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2913 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 911

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 911, Application for Taxpayer Assistance Order (ATAO).

DATES: Written comments should be received on or before May 1, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 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 Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Application for Taxpayer Assistance Order (ATAO).

OMB Number: 1545–1504.

Form Number: 911.

Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the district where the taxpayer lives.

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: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and state, local or tribal governments.

Estimated Number of Respondents: 93,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 46,500.

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: February 22, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2914 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–11, Relief from Certain Low-Income Housing Requirements Due to Hurricane Rita.

DATES: Written comments should be received on or before May 1, 2006 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Relief from Certain Low-Income Housing Requirements Due to Hurricane Rita.

OMB Number: 1545–1997.

Form Number: Notice 2006–11.

Abstract: The Internal Revenue Service is suspending certain income limitations requirements under section 42 of the Internal Revenue Code for certain low-income housing credit properties as a result of the devastation caused by Hurricane Rita. This relief is being granted pursuant to the Service's authority under section 42(n) and § 1.42–13 of the Income Tax Regulations.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

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: February 22, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–2915 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 21, 2006 from 11:30 a.m. e.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, March 21, 2006, from 11:30 a.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: February 22, 2006.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–2909 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, March 23, 2006 from 10 a.m. Pacific time to 11:30 a.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: February 24, 2006.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–2910 Filed 3–1–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
March 2, 2006

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 948
West Virginia Regulatory Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–106–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with certain exceptions, an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia amended the Code of West Virginia (W. Va. Code or WV Code) and the Code of State Regulations (CSR) as authorized by several bills passed during the State's regular 2004–2005 legislative session. The State revised its program to be consistent with certain corresponding Federal requirements, and to include other amendments at its own initiative.

DATES: *Effective Date:* March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, e-mail address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

West Virginia proposed revisions to the Code of West Virginia (W. Va. Code or WV Code) and the Code of State Regulations (CSR) as authorized by several bills passed during the State's regular 2004–2005 legislative session. West Virginia also proposed an amendment that relates to the State's regulations concerning erosion protection zones (EPZ) associated with durable rock fills. The State revised its program to be consistent with certain corresponding Federal requirements, and to include other amendments at its own initiative. The amendments include, among other things, changes to the State's surface mining and blasting regulations as authorized by Committee Substitute for House Bill 2723; various statutory changes to the State's approved program as a result of the passage of Committee Substitute for House Bill 3033 and House Bills 2333 and 3236; the submission of a draft policy regarding the State's EPZ requirement and requesting that OSM reconsider its previous decision concerning EPZ; State water rights and replacement policy identifying the timing of water supply replacement; the revised Permittee's Request For Release form; the submission of a Memorandum of Agreement (MOA) between the West Virginia Department of Environmental Protection (WVDEP), Division of Mining and Reclamation, and the West Virginia Division of Natural Resources, Wildlife Resources Section that is intended to partially resolve a required program amendment relating to planting arrangements for Homestead post-mining land use; and a memorandum from the West Virginia Division of Forestry to the WVDEP supporting the tree stocking standards for Homestead.

By letters dated June 13, 2005 (Administrative Record Numbers WV–1419, WV–1420, and WV–1421), the WVDEP submitted amendments to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendments consist of several bills passed during West Virginia's 2004–2005 legislative session and a draft policy concerning EPZs associated with durable rock fills.

House Bill (HB) 2333 amends the W. Va. Code by adding new Article 27 entitled the Environmental Good Samaritan Act (Sections 22–27–1 through 22–27–12). HB 2333 was adopted by the Legislature on March 24, 2005, and signed into law by the Governor on April 6, 2005, with an effective date of June 22, 2005. In its letter, the WVDEP stated that HB 2333 establishes a program to encourage voluntary reclamation of lands adversely affected by mining activities by limiting the liability that could arise as a result of the voluntary reclamation of abandoned lands or reduction/abatement of water pollution.

Committee Substitute for HB 2723 authorizes (at paragraph g) amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38–2 and (at paragraph i) amendments to the Surface Mining Blasting Rule at CSR 199–1. This bill was passed by the Legislature on April 8, 2005, and approved by the Governor on May 3, 2005, with an effective date from the date of passage. We note that some of the amendments to CSR 38–2 and CSR 199–1 are intended to address required program amendments that are codified in the Federal regulations at 30 CFR 948.16(a), (sss), (wwww), (fffff), (iiiii), (jjjjj), (kkkkk), (lllll), (ooooo), (ppppp), and (rrrrr).

Committee Substitute for HB 3033 amends the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) at W. Va. Code Section 22–3–11 concerning the State's special reclamation tax. This bill was passed by the Legislature on April 1, 2005, and signed by the Governor on April 18, 2005, with an effective date of April 1, 2005. In its letter, the WVDEP stated that HB 3033 extends the temporary special reclamation tax that funds the State's alternative bonding system for an additional 18 months (at WV Code 22–3–11(h)(1)) and provides additional duties for the WVDEP Secretary in managing the State's alternative bonding system (at W. Va. Code 22–3–11(h)(2), (3), and (4)). We note that OSM previously approved West Virginia's temporary special reclamation tax on December 28, 2001 (66 FR 67446), with additional modification on May 29, 2002 (67 FR 37610, 37613–37614). The State's current extension of that temporary tax by an additional 18 months does not need OSM's specific approval because the State has only lengthened the time period of the temporary tax. Except as discussed below, the State has not modified any duties or functions under the approved West Virginia program, and the change is in keeping with the intent of our original approvals. Therefore, we did not seek public comment on the State's

extension of the temporary tax from thirty-nine to fifty-seven months at W. Va. Code 22–3–11(h)(1). The extension took effect from the date of passage of Committee Substitute for HB 3033, on April 1, 2005. In addition, we did not seek public comment on the State's new language at W. Va. Code 22–3–11(h)(3) and (4). These new provisions only direct the Secretary of the WVDEP to conduct various studies and authorize the Secretary of the WVDEP to propose legislative rules concerning its bonding program as appropriate. These provisions do not modify any duties or functions under the approved West Virginia program and do not, therefore, require OSM's approval. However, we asked for public comment on the State's provisions at WV Code 22–3–11(h)(2)(A) and (B). Under these new provisions, the WVDEP Secretary will be required to pursue cost effective alternative water treatment strategies, conduct formal actuarial studies every two years, and conduct informal reviews annually on the Special Reclamation Fund. Upon further consideration of new W. Va. Code 22–3–11(h)(2)(A) concerning the requirement to pursue cost effective alternative water treatment strategies, we have concluded that that requirement does not represent a substantive change to the West Virginia program. That is, new Subsection (h)(2)(A) will have no immediate effect on the implementation of the provisions of the approved West Virginia program. Additionally, in its pursuit of cost-effective water treatment strategies, if the State does identify any needed regulatory revisions or additions, such changes would be pursued through established rulemaking procedures and subject to OSM review and approval. Therefore, we have determined that the amendment to CSR 38–2–11(h)(2)(A) does not require OSM's approval and we have not made a finding on that provision in our findings below.

HB 3236 amends the WVSCMRA by adding new W. Va. Code Section 22–3–11a concerning the special reclamation tax, and adding new Section 22–3–32a concerning the special tax on coal. HB 3236 was passed by the Legislature on April 9, 2005, and approved by the Governor on May 2, 2005, with an effective date of April 9, 2005. HB 3236 provides that the special reclamation tax and the special tax, which is used to administer the State's approved regulatory program, are applicable to thin seam coal, and the special reclamation tax is subject to the WV Tax Crimes and Penalties Act and the WV Tax Procedure and Administration Act.

In addition, WVDEP submitted Committee Substitute for HB 3033 which contains strikethroughs and underscoring showing the actual language that has been added and deleted from the WVSCMRA, as a result of the passage of Enrolled Committee Substitute for HB 3033 discussed above (Administrative Record Number WV–1422).

WVDEP submitted a MOA dated September 2003 between the WVDEP, Division of Mining and Reclamation, and the West Virginia Division of Natural Resources, Wildlife Resources Section (Administrative Record Number WV–1405). This MOA outlines responsibilities of both agencies in reviewing surface and underground coal mining permit applications; evaluating lands unsuitable for mining petitions; developing wildlife planting plans as part of reclamation plans of permit applications; and restoring, protecting and enhancing fish and wildlife on mined lands within the State. The MOA was developed in response to a letter to the State from OSM in accordance with the Federal regulations at 30 CFR Part 732 and dated March 6, 1990 (Administrative Record Number WV–834). Such letters sent by OSM are often referred to as "732 letters" or "732 notifications." In the March 6, 1990, letter, OSM stated that the State program did not require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by State agencies responsible for the administration of forestry and wildlife programs as required by 30 CFR 816/817.116(b)(3)(i). The West Virginia Division of Forestry has concurred with the State's tree stocking and groundcover standards at CSR 38–2–9.8.g.

However, OSM maintains that the Wildlife Resources Section still has to concur with the wildlife planting arrangement standards. The WVDEP submitted the MOA in response to that part of the outstanding 30 CFR Part 732 notification and, as discussed below, to satisfy part of an outstanding required amendment at 30 CFR 948.16(ooooo).

The Federal regulations at 30 CFR 948.16(ooooo) provide that the WVDEP must consult with and obtain the approval of the West Virginia Division of Forestry and the Wildlife Resources Section of the West Virginia Division of Natural Resources on the new stocking standards and planting arrangements for Homesteading at CSR 38–2–7.5.o.2. The submission of the MOA is to resolve the part of the required amendment relating to planting arrangements. The State also revised its rules earlier at CSR 38–2–9.3.g to provide that a professional wildlife biologist employed by the Division of Natural Resources must develop the planting plan. OSM approved that revision in the **Federal Register** on February 8, 2005 (70 FR 6582). At the time of submission, WVDEP advised OSM that it had consulted with the Division of Forestry concerning the stocking standards for Homesteading. According to WVDEP, the Division of Forestry would be submitting a letter explaining its position with regard to those stocking standards (Administrative Record Number WV–1423). On August 23, 2005, the Division of Forestry submitted a memorandum to WVDEP in support of the new stocking requirements for Homesteading. Specifically, the Division of Forestry agreed with the provisions at CSR 38–2–7.5.i.8, 7.5.l.4 and 7.5.o.2 regarding conservation easements, public nurseries, and survival rates and ground cover requirements at the time of bond release (Administrative Record Number WV–1428). The WVDEP submitted this memorandum to help satisfy the required program amendment at 30 CFR 948.16(ooooo).

WVDEP also submitted the Permittee's Request for Release form dated March 2005 (Administrative Record Number WV–1424). This form is being submitted in response to an OSM 30 CFR Part 732 notification dated July 22, 1997 (Administrative Record Number WV–1071). In that notification, OSM advised the State that the Federal regulations at 30 CFR 800.40(a)(3) were amended to require that each application for bond release include a written, notarized statement by the permittee affirming that all applicable reclamation requirements specified in the permit have been completed. OSM notified WVDEP that the State regulations at CSR 38–2–12.2 do not contain such a requirement. In response, the State revised its bond release form by adding new item Number 11, which requires that all copies of the Permittee's Request For Release form include the following: "11. A notarized statement by the permittee that all applicable reclamation requirements specified in the permit have been completed."

We announced receipt of the proposed amendment in the August 26, 2005, **Federal Register** (70 FR 50244). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV–1429). We did not hold a hearing or a meeting because no one requested one. The public comment

period was to close on September 26, 2005. Prior to the close of the comment period, we received a request from the West Virginia Coal Association (WVCA) to extend the comment period for an additional five days (Administrative Record Number WV–1437). On September 26, 2005, we granted their request and extended the comment period through September 30, 2005 (Administrative Record Number WV–1437). We received comments from one industry group and four Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, except as discussed below. Any revisions that we do not specifically discuss below concern nonsubstantive, minor wording, editorial, or renumbering of sections changes, and are approved herein without discussion.

1. House Bill 2333

HB 2333 amends the W. Va. Code by adding a new article Sections 22–27–1 through 12 to provide as follows:

Article 27. Environmental Good Samaritan Act

22–27–1. Declaration of Policy and Purpose

This article is intended to encourage the improvement of land and water adversely affected by mining, to aid in the protection of wildlife, to decrease soil erosion, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of the citizens of this state and to eliminate or abate hazards to health and safety. It is the intent of the Legislature to encourage voluntary reclamation of lands adversely affected by mining. The purpose of this article is to improve water quality and to control and eliminate water pollution resulting from mining extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution. This article is not intended to limit the liability of a person who by law is or may become responsible to reclaim the land or address the water pollution or anyone who by contract, order or otherwise is required to or agrees to perform the reclamation or abate the water pollution.

22–27–2. Legislative Findings

The Legislature finds and declares as follows:

(1) The state's long history of mining has left some lands and waters unreclaimed and polluted.

(2) These abandoned lands and polluted waters are unproductive, diminish the tax base and are serious impediments to the economic welfare and growth of this state.

(3) The unreclaimed lands and polluted waters present a danger to the health, safety and welfare of the people and the environment.

(4) The state of West Virginia does not possess sufficient resources to reclaim all the abandoned lands and to abate the water pollution.

(5) Numerous landowners, citizens, watershed associations, environmental organizations and governmental entities who do not have a legal responsibility to reclaim the abandoned lands or to abate the water pollution are interested in addressing these problems but are reluctant to engage in such reclamation and abatement activities because of potential liabilities associated with the reclamation and abatement activities.

(6) It is in the best interest of the health, safety and welfare of the people of this state and the environment to encourage reclamation of the abandoned lands and abatement of water pollution.

(7) That this act will encourage and promote the reclamation of these properties.

22–27–3. Definitions

As used in this article unless used in a context that clearly requires a different meaning, the term:

(a) "Abandoned lands" means land adversely affected by mineral extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.

(b) "Consideration" means something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purpose of this article, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

(c) "Department" means the West Virginia Department of Environmental Protection.

(d) "Eligible land" means land adversely affected by mineral extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or causing water pollution and for which no person has a continuing reclamation or water pollution abatement obligation.

(e) "Eligible landowner" means a landowner that provides access to or use of the project work area at no cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(f) "Eligible project sponsor" means a person that provides equipment, materials or services at no cost or at cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(g) "Landowner" means a person who holds either legal or equitable interest in real property.

(h) "Mineral" means any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining. This includes, but is not limited to, limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and anthracite and bituminous coal.

(i) "Permitted activity site" means a site permitted by the department of environmental protection under the provisions of article two, three or four of this chapter.

(j) "Person" means a natural person, partnership, association, association members, corporation, an agency, instrumentality or entity of federal or state government or other legal entity recognized by law as the subject of rights and liabilities.

(k) "Project work area" means that land necessary for a person to complete a reclamation project or a water pollution abatement project.

(l) "Reclamation project" means the restoration of eligible land to productive use by regrading and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water, or to decrease or eliminate discharge of water pollution.

(m) "Water pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water located in the state.

(n) "Water pollution abatement facilities" means the methods for treatment or abatement of water pollution located on eligible lands. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate water pollution.

(o) "Water pollution abatement project" means a plan for treatment or abatement of water pollution located on eligible lands.

22–27–4. Eligibility and Project Inventory

(a) *General rule.*—An eligible landowner or eligible project sponsor who voluntarily provides equipment, materials or services at no charge or at cost for a reclamation project or a water pollution abatement project in accordance with the provisions of this article is immune from civil liability and may raise the protections afforded by the provisions of this article in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability. An eligible landowner or eligible project sponsor is only entitled to the protections and immunities provided by this article after meeting all eligibility requirements and compliance with a detailed written plan of the proposed reclamation project or water pollution abatement project which is submitted to and approved by the department. The project plan shall include the objective of the project and a description of the work to be performed to accomplish the objective and shall, additionally, identify the project location, project boundaries, project participants and all landowners.

(b) *Notice.*—The department shall give written notice by certified mail to adjacent property owners and riparian land owners

located downstream of the proposed project, provide Class IV public notice of the proposed project in a newspaper of general circulation, published in the locality of the proposed project, and shall give public notice in the state register. The project sponsor may also provide public notice. Any person having an interest which may be adversely affected by the proposed project has the right to file written objections to the department within thirty days after receipt of the written notice or within thirty days after the last publication of the Class IV notice. The department shall provide to the project sponsor a copy of each written objection received during the public comment period, which shall conclude at the expiration of the applicable thirty-day period provided for in this section.

(c) *Advice.*—The department may provide advice to the landowner or to other interested persons based upon the department's knowledge and experience in performing reclamation projects and water pollution abatement projects.

(d) *Departmental review.*—The department shall review each proposed reclamation project and approve the project if the department determines the proposed project:

(1) Will result in the appropriate reclamation and regrading of the land according to all applicable laws and regulations;

(2) Will result in the appropriate revegetation of the site;

(3) Is not likely to result in pollution as defined in article eleven of this chapter; and

(4) Is likely to improve the water quality and is not likely to make the water pollution worse.

(e) *Project inventory.*—The department shall develop and maintain a system to inventory and record each project, the project location and boundaries, each landowner and each person identified in a project plan provided to the department. The inventory shall include the results of the department's review of the proposed project and, where applicable, include the department's findings under subsection (b), section ten of this article.

(f) *Appeal.*—A person aggrieved by a department decision to approve or disapprove a reclamation project or a water pollution abatement project has the right to file an appeal with the environmental quality board under the provisions of article one, chapter twenty-two-b of this code.

22–27–5. Landowner Liability Limitation and Exceptions

(a) *General rule.*—Except as specifically provided in subsections (b) and (c) of this section, an eligible landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

(1) Is immune from liability for any injury or damage suffered by persons working under the direct supervision of the project sponsor while such persons are within the project work area;

(2) Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of the project sponsor which occurs during the implementation of the reclamation project or the water pollution abatement project;

(3) Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a reclamation project or a water pollution abatement project;

(4) Is immune from liability for any pollution resulting from a reclamation project or water pollution abatement project;

(5) Is immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the eligible landowner negligently damages or destroys the water pollution abatement facilities or denies access to the project sponsor who is responsible for the operation, maintenance or repair [*sic*] the water pollution abatement facilities.

(b) *Duty to warn.*—The eligible landowner shall warn the project sponsor of known, latent, dangerous conditions located on the project work area which are not the subject of the reclamation project or the water pollution abatement project. Nothing in this article shall limit an eligible landowner's liability which results from the eligible landowner's failure to warn of such known, latent, dangerous conditions.

(c) *Exceptions to immunity.*—Nothing in this article may limit an eligible landowner's liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

(1) For injury or damage resulting from the landowner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(2) Where the landowner accepts or requires consideration for allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

(3) For the landowner's unlawful activities.

(4) For damage to adjacent landowners or downstream riparian landowners which results from a reclamation project or water pollution abatement project where written notice or public notice of the proposed project was not provided.

22–27–6. Project Sponsor Liability Limitation and Exceptions

(a) *General rule.*—Except as specifically provided in subsection (b) of this section, a project sponsor who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

(1) Is immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project;

(2) Is immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project. Provided that the project sponsor implements, operates, and maintains the project in accordance with the plans approved by the department;

(3) Is immune from liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) *Exceptions.*—

(1) Nothing in this article shall limit in any way the liability of a project sponsor which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(A) For injury or damage resulting from the project sponsor's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(B) For the person's unlawful activities.

(C) For damages to adjacent landowners or downstream riparian landowners which result from a reclamation project or a water pollution abatement project where written notice or public notice of the proposed project was not provided.

(2) Nothing in this article shall limit in any way the liability of a person who the department has found to be in violation of any other provision or provisions of this chapter.

22–27–7. Permits and Zoning

Nothing in this article may be construed as waiving any existing permit requirements or waiving any local zoning requirements.

22–27–8. Relationship to Federal and State Programs

The provisions of this article shall not prevent the department from enforcing requirements necessary or imposed by the federal government as a condition to receiving or maintaining program authorization, delegation, primacy or federal funds.

22–27–9. General Permits

If the department determines it will further the purposes of this article, the department may issue a general permit for each reclamation project or water pollution abatement project, which shall:

(1) Encompass all of the activities included in the reclamation project or water pollution abatement project.

(2) Be issued in place of any individual required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

22–27–10. Exceptions

(a) *General rule.*—Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for consideration or who receives some other benefit through a contract or any person who through a consent order and agreement or [*sic*] is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond

for the site is not eligible nor may receive the benefit of the protections and immunities available under this article.

(b) *Projects near mining or coal refuse sites.*—This article does not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under articles two, three or four of this chapter unless:

(1) The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started; and

(2) The department finds:

(A) The reclamation project or the water pollution abatement project will not adversely affect the permittee's obligations under the permit and the applicable law;

(B) The activities on the project work area cannot be used by the permittee to avoid the permittee's reclamation or water pollution treatment or abatement obligations; and

(3) The department issues a written notice of its findings and the approval of the project.

(c) *Projects in lieu of civil or administrative penalties.*—This article shall not apply to a reclamation project or a water pollution abatement project that is performed in lieu of paying civil or administrative penalties.

22–27–11. Water Supply Replacement

A public or private water supply affected by contamination or the diminution caused by the implementation of a reclamation project or the implementation of a water pollution abatement project shall be restored or replaced by the department with an alternate source of water adequate in quantity and quality for the purposes served by the water supply.

22–27–12. Rules

The department may propose legislative rules in accordance with article three, chapter twenty-nine-a of this code as needed to implement the provisions of this article.

There are no specific provisions under SMCRA relating to the voluntary reclamation of lands affected by mining activities. Because this article also relates to the voluntary treatment of water pollution from abandoned mined lands, we solicited comments from the U.S. Environmental Protection Agency (EPA). Like SMCRA, the Clean Water Act (CWA) does not contain comparable provisions. However, EPA recently launched the Good Samaritan Initiative (Administrative Record Number WV–1432). This is a new agency-wide effort to foster greater collaboration to accelerate the restoration of watersheds and fisheries threatened by abandoned mine runoff. EPA is pioneering the Good Samaritan Initiative as a tool to identify an individual's rights and responsibilities related to the voluntary clean up of abandoned mines and to protect such volunteers against pre-existing liabilities. Specific comments from EPA regarding the proposed State legislation are contained in "Section IV. Summary and Disposition of Comments." While this legislation has no direct Federal counterpart, we do not find any of the proposed State provisions presented above to be inconsistent with the purpose and intent of SMCRA, and therefore it can be approved. Furthermore, as discussed in Section IV, given EPA's concern about the possible legal effects of the proposed State legislation on EPA's authority under the CWA, we find that State's Environmental Good Samaritan Act at W. Va. Code 22–27–1 *et seq.* is only approved to the extent that none of the provisions therein can be interpreted as abrogating the authority or jurisdiction of the EPA. Section 702(a) of SMCRA provides that nothing in the Act can be construed as superseding, amending, modifying, or repealing other Federal laws or any regulations promulgated thereunder.

2. Committee Substitute for House Bill 2723

This bill authorizes amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38–2 and the Surface Mining Blasting Rule at CSR 199–1.

Amendments to CSR 38–2

a. CSR 38–2–2.92. This definition is new, and provides as follows:

2.92 Previously mined areas means land affected by surface mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this rule.

In its amendment, the WVDEP stated that the revision is intended to resolve an outstanding 30 CFR Part 732 issue relating to previously mined areas as contained in a letter from OSM dated July 22, 1997 (Administrative Record Number WV–1071). We find that the State's new definition of "previously mined areas" is substantively identical to the Federal definition of "previously mined area" at 30 CFR 701.5, and it can be approved.

b. CSR 38–2–3.29.a. This provision concerns incidental boundary revisions (IBRs) and is amended by deleting the following language from the end of the first sentence: "is the only practical alternative to recovery of unanticipated reserves or necessary to enhance reclamation efforts or environmental protection."

In its submittal of this amendment, the WVDEP stated that the amendment is intended to delete language that was not approved by OSM (see the February 9, 1999, **Federal Register**, 64 FR 6201, 6208). In the February 9, 1999, notice, OSM found the language to be inconsistent with the intent of section 511(a)(3) of SMCRA and 30 CFR 774.13(d) of the Federal regulations, which pertain to IBR's.

As amended, CSR 38–2–3.29.a provides as follows:

3.29.a. Incidental Boundary Revisions (IBRs) shall be limited to minor shifts or extensions of the permit boundary into non-coal areas or areas where any coal extraction is incidental to or of only secondary consideration to the intended purpose of the IBR or where it has been demonstrated to the satisfaction of the Secretary that limited coal removal on areas immediately adjacent to the existing permit. IBRs shall also include the deletion of bonded acreage which is overbonded by another valid permit and for which full liability is assumed in writing by the successive permittee. Incidental Boundary Revisions shall not be granted for any prospecting operations, or to abate a violation where encroachment beyond the permit boundary is involved, unless an equal amount of acreage covered under the IBR for encroachment is deleted from the permitted area and transferred to the encroachment area.

We find that, with this revision, proposed CSR 38–2–3.29.a is consistent with and no less effective than the Federal regulations at 30 CFR 774.13(d), and it can be approved. The proposed deletion, however, does leave the sentence incomplete; and we advised WVDEP that it should be corrected. The State acknowledged that the rest of the sentence should have been deleted. Therefore, we are approving this provision with the understanding that the State will insert a period after "IBR" and delete the words, "or where it has been demonstrated to the satisfaction of the Secretary that limited coal removal on areas immediately adjacent to the existing permit."

c. CSR 38–2–5.4.a. This provision concerns general sediment control provisions, and it is amended by adding language to incorporate by reference the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs." As amended, Subsection 5.4.a provides as follows:

Sediment control or other water retention structures shall be constructed in appropriate locations for the purposes of controlling sedimentation. All runoff from the disturbed area shall pass through a sedimentation control system. All such systems or other water retaining structures used in association with the mining operation shall be designed, constructed, located, maintained, and used in accordance with this rule and in such a manner as to minimize adverse hydrologic impacts in the permit and adjacent areas, to prevent material damage outside the permit area and to assure safety to the public. The U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, October 1985), "Earth

Dams and Reservoirs," Technical Release No. 60 (TR–60) is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87–57509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

In this revision, the State added language referencing "Earth Dams and Reservoirs" Technical Release No. 60 (TR–60) (210–VI–TR60, October 1985). This new language is consistent with the Federal citation of TR–60 at 30 CFR 816/817.49(a)(1) and with the terms of a Part 732 letter that OSM sent to the State dated July 22, 1997, in accordance with the Federal regulations at 30 CFR 732.17(c). In that 732 letter, OSM asked the State to resolve issues pertaining to impoundments and criteria that the impoundments must comply with, especially impoundments meeting Class B or C criteria for dams at TR–60. We must note that due to a name change, the former Soil Conservation Service is now the Natural Resources Conservation Service (NRCS). We must also note that publication TR–60 has been revised, and the current version is Revised Amendment 1, TR–60A, dated October 1990. The WVDEP's Web page at *http://www.wvdep.org/item.cfm?ssid=9&ss1id=710* contains a copy of TR–60, and it includes the NRCS revisions that were adopted in October 1990.(Administrative Record Number WV–1438). Therefore, because the State intends to require that the revised version of TR–60 be used by operators when designing and constructing sediment control or other water retention structures within the State, we find that the proposed amendment is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(1), and it can be approved.

d. CSR 38–2–5.4.b.9. This provision concerns the design and construction of freeboards of sediment control structures, and is amended by adding a proviso that impoundments meeting the Class B or C criteria for dams in "Earth Dams and Reservoirs", TR–60 shall comply with the freeboard hydrograph criteria in "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60. As amended, Subsection 5.4.b.9 provides as follows:

5.4.b.9. Provide adequate freeboard to resist overtopping by waves or sudden increases in volume and adequate slope protection against surface erosion and sudden drawdown. Provided, however, impoundments meeting the Class B or C criteria for dams in "Earth Dams and Reservoirs", TR–60 shall comply with the freeboard hydrograph criteria in "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60.

We find that, as amended, CSR 38–2–5.4.b.9 is substantively identical to the Federal regulations at 30 CFR 816/817.49(a)(5) concerning freeboard design and can be approved. The amendment also satisfies a portion of the 732 letter that OSM sent to the State dated July 22, 1997. As we discussed in Finding 2.c. above, WVDEP's Web page contains a copy of TR–60, and it includes the revisions that were adopted in October 1990. Therefore, it is apparent that the State intends to require that the revised version of TR–60 be used when designing and constructing sediment control or other water retention structures within the State. We note that, existing subsection CSR 38–2–22.4.h.1, and in a separate rulemaking proposed CSR 38–4–7.1.g, provide that any open channel spillway designed for less than 100 percent probable maximum precipitation (PMP) must be provided with a freeboard above the maximum water surface using the equation 1+.025vd1/3. According to State officials, the equation provides for a more simplistic freeboard design standard where "v" represents flow velocity and "d" represents flow depth of the design storm in the channel. TR–60 requires a calculation of freeboard design by surcharging the design storm. Given the proposed requirements, it is apparent that the State requires compliance with the freeboard design standards at both CSR 38–2–5.4.b.9 and CSR 38–2–22.4.h.1 (and proposed CSR 38–4–7.1.g.). According to State officials, there is no way to determine which standard (freeboard hydrograph or freeboard equation) is more stringent. Instead, this assessment must be determined on a case-by-case basis during permit preparation and resulting review. Consequently, the higher of those standards will always apply, and the lesser standard will automatically be complied with. Upon approval, the State will consider developing an interpretive policy that may include variable descriptions of the freeboard equation to further clarify this requirement.

e. CSR 38–2–5.4.b.10. This provision concerns minimum static safety factor, and has been amended by deleting language in the first sentence related to loss of life or property damage, and adding in its place language concerning impoundments meeting the Class B or C criteria for dams contained in "Earth Dams and Reservoirs," TR–60. As amended, Subsection 5.4.b.10 provides as follows:

5.4.b.10. Provide that an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or W. Va. Code [Section] 22–14 *et seq.*, or Impoundments meeting the Class B or C criteria for dams contained in "Earth Dams and Reservoirs", TR–60, shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. Impoundments not meeting the size or other criteria of 30 CFR 77.216(a) or W. Va. Code [Section] 22–14 *et seq.*, except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

The Federal regulations at 30 CFR 816/817.49(a)(4)(i), concerning impoundment stability, provide that an impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a), shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. Therefore, the amendment renders CSR 38–2–5.4.b.10 consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(4)(i) and can be approved. However, existing language at CSR 38–2–5.4.b.10 also provides that impoundments not meeting the size or other criteria of 30 CFR 77.216(a) or W. Va. Code section 22–14 *et seq.*, except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. That language does not appear to be consistent with the Federal regulations at 30 CFR 816/817.49(a)(4)(ii), which provides that impoundments not included in 816/817.49(a)(4)(i), except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of 30 CFR 780.25(c)(3). The State's language does not specify which static safety factor, if any, applies to TR–60 Class A impoundments. The Federal regulations provide that Class A impoundments, which do not meet the Class B or C criteria for dams in TR–60, must have a minimum static safety factor of 1.3. The State maintains that the last portion of this provision is applicable to impoundments not

meeting the Class B or C criteria in TR–60 (Administrative Record Number WV–1438). Because the proposed amendment clearly provides for a static safety factor of 1.5 for impoundments that meet the size or other criteria of 30 CFR 77.216(a) and impoundments meeting the Class B or C criteria for dams in TR–60, it is our understanding that CSR 38–2–5.4.b.10 provides for a 1.3 minimum static safety factor for all other impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or are not impoundments that meet the Class B or C criteria for dams in TR–60, and are not coal mine waste impounding structures. Therefore, we find that proposed CSR 38–2–5.4.b.10 is no less effective than the Federal regulations at 30 CFR 816/817.49(a)(4), and it can be approved. Our approval of proposed CSR 38–2–5.4.b.10 is based upon our understanding discussed above.

As amended, CSR 38–2–5.4.b.10 also satisfies a portion of the July 22, 1997, 732 letter that OSM sent to the State. As we discussed above in Finding 2.c, WVDEP's Web page contains a copy of TR–60, and it includes the revisions that were adopted in October 1990. Therefore, because the State intends to require that the revised version of TR–60 be used by operators when designing and constructing sediment control or other water retention structures within the State, we find that the proposed reference to TR–60 is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(4)(i).

f. CSR 38–2–5.4.b.12. This provision provides for stable foundations of sediment control structures, and it has been amended by adding language at the end of the final sentence to clarify that the laboratory testing of foundation material shall be to determine the design requirements for foundation stability. As amended, Subsection 5.4.b.12 provides as follows:

> 5.4.b.12. Provide for stable foundations during all phases of construction and operation and be designed based on adequate and accurate information on the foundation conditions. For structures meeting the criteria of paragraph 5.4.b.10 of this subdivision, provide foundation investigations and any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

It is our understanding that the reference to CSR 38–2–5.4.b.10 in the proposed provision means that foundation investigations and any necessary laboratory testing of foundation materials must be performed for impoundments that meet the Class B or C criteria for dams at TR–60, the size or other criteria of the Mine Safety and Health Administration (MSHA) at 30 CFR 77.216(a), or the West Virginia Dam Control Act. Thus, foundation investigations or laboratory testing of foundation material for Class A dams will not be required by this subsection. We find that as amended, CSR 38–2–5.4.b.12 is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(6) concerning foundation testing for impoundments, and can be approved. Our approval of this provision is based upon our understanding discussed above.

g. CSR 38–2–5.4.c.7. This provision is new and provides as follows:

> 5.4.c.7. Impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 shall comply with the following: (1) "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60; (2) the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, or larger event specified by the Secretary; and (3) and the requirements of this subdivision.

We find that the proposed language at CSR 38–2–5.4.c.7 is substantively identical to and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(1), 30 CFR 816/817.49(a)(5), and 30 CFR 816/817.49(a)(9)(ii)(A), and it can be approved. The proposed amendment also satisfies a portion of the July 22, 1997, 732 letter that OSM sent to the State. As we discussed above in Finding 2.c, WVDEP's Web page contains a copy of TR–60, and it includes the revisions that were adopted in October 1990. Therefore, because the State intends to require that the revised version of TR–60 be used by operators when designing and constructing sediment control or other water retention structures within the State, we find that the proposed reference to TR–60 is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(1).

In addition, we note that the State rules at CSR 38–2–5.4.c do not require design plans for structures that meet the Class B or C criteria for dams in TR–60 to include a stability analysis, as provided by 30 CFR 780.25(f). The stability analysis must include, but is not limited to, strength parameters, pore pressures, and long-term seepage conditions. In addition, the design plan must contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods. CSR 38–2–5.4.c.6.D, 38–4–10 and 38–4–11.4 require stability analyses for impoundments that meet the size or other criteria of MSHA or the West Virginia Dam Control Act standards. However, State rules at CSR 38–2–5.4.c.5 and 5.4.c.6 do not specifically require a stability analysis to be conducted for Class B or C impoundments. In addition, they do not specify what must be included in the stability analysis and the design plans for such structures. According to WVDEP (Administrative Record Number WV–1438), it is necessary for permit applicants to perform a stability analysis to demonstrate that impoundments that meet Class B or C criteria for dams in TR–60 are designed to have a static safety factor of 1.5 with steady state seepage saturation conditions and a seismic safety factor of 1.2. Steady state seepage analysis techniques include flow nets, finite element analyses, or finite difference analyses. To conduct a steady state seepage analysis, State officials say a set of factors is needed, which include strength and pore pressure. Saturated conditions or long-term seepage condition is just steady seepage at maximum storage pool. Therefore, to demonstrate that Class B or C impoundments are designed to have a static safety factor of 1.5 with a steady state seepage saturation, the permit applicant would have to provide information required by Subsection 5.4.c.6.D. Therefore, CSR 38–2–5.4.c remains approved with the understanding that stability analyses will be conducted for all structures that meet the Class B or C criteria for dams in TR–60 as required by 30 CFR 780.25(f).

h. CSR 38–2–5.4.d.4. This provision concerns design and construction certification of coal refuse impoundments and embankment type impoundments and has been amended by adding language concerning impoundments meeting the Class B or C criteria for dams. As amended, Subsection 5.4.d.4 provides as follows:

> 5.4.d.4. Design and construction certification of coal refuse impoundments and embankment type impoundments meeting or exceeding the size requirements or other criteria of Federal MSHA regulations at 30 CFR 77.216 (a) or impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 may be performed only by a registered professional engineer experienced in the design and construction of impoundments.

The Federal regulations at 30 CFR 816/817.49(a)(3) provide that the design of impoundments shall be certified in accordance with 30 CFR 780.25(a). The Federal regulations at 30 CFR 780.25(a)

provide that impoundments meeting the Class B or C criteria for dams in TR–60 shall comply with the requirements of 30 CFR 780.25 for structures that meet or exceed the size or other criteria of MSHA. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA regulations at 30 CFR 77.216(a) shall, as required by 30 CFR 780.25(a)(2)(i), be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture.

The West Virginia regulations at CSR 38–2–5.4.d.1, concerning certification, provide that prior to any surface mining activities in the component drainage area of a permit controlled by a sediment control structure, that specific structure shall be certified as to construction in accordance with the plans, designs, and specifications set forth in the preplan, or in accordance with as-built plans. The West Virginia regulations at CSR 38–2–5.4.d.4, as amended here, limit such design and construction certification to registered professional engineers experienced in the design and construction of impoundments when the designs concern MSHA impoundment regulations at 30 CFR 77.216(a) or when the impoundments meet the Class B or C criteria at TR–60.

We must note, however, that the State's requirements at Subsection 3.6.h.5 provide that only the design plan for impoundments that meet the size or storage capacity of the West Virginia Dam Control Act must be prepared by, or under the direction of, and certified by a qualified registered professional engineer. The proposed rule at Subsection 5.4.d.4 does not specifically require the design plan to be prepared by a registered professional engineer. The proposed rule only requires the design to be certified by a registered professional engineer. However, given that certification of the design by a registered professional engineer is required, we are approving Subsection 5.4.d.4 with the understanding that design plans for impoundments that meet the Class B or C criteria for dams in TR–60 and meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a) will be prepared by, or under the direction of, and certified by a registered professional engineer as provided by 30 CFR 780.25(a)(2).

Furthermore, we are approving Subsection 5.4.d.3 with the understanding that the design plans for all other structures not included in Subsections 3.6.h.5 or 5.4.d.4 will be prepared by, or under the direction of, and certified by a registered professional engineer or licensed land surveyor as provided by 30 CFR 780.25(a)(3). In addition, as provided by 30 CFR 780.25(a)(2), the detailed design plan for an impoundment that meets the Class B or C criteria for dams in TR–60 or meets or exceeds the size or other criteria of MSHA at 30 CFR 77.216(a) must include (1) A geotechnical investigation, (2) design and construction requirements for the structure, (3) an operation and maintenance of the structure, and (4) a timetable and plans for removal of the structure. Similar design plan requirements at 30 CFR 780.25(a)(3) apply to impoundments not included in paragraph (a)(2). Such requirements are not specifically provided for in Subsection 5.4. However, similar design requirements are set forth at Subsection 3.6.h. Therefore we are approving Subsection 5.4 with the understanding that the design plan requirements at Subsection 3.6.h apply to those impoundments that meet the Class B or C criteria for dams in TR–60 or meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a) as provided by 30 CFR 780.25(a)(2). We are also approving Subsection 5.4 to the extent that the design plan requirements at Subsection 3.6.h apply to all other impoundments not identified above as provided by 30 CFR 780.25(a)(3). In summary, we find that as amended, CSR 38–2–5.4.d.4 is consistent with and no less effective than the Federal regulations at 30 CFR 780.25(a)(2) and (a)(3) and 30 CFR 816/817.49(a)(3) concerning the design and certification of impoundments, and it can be approved based upon our understanding discussed above.

The proposed amendment at CSR 38–2–5.4.d.4 also satisfies a portion of the July 22, 1997, 732 letter that OSM sent to the State. As we discussed above in Finding 2.c, WVDEP's Web page contains a copy of TR–60, and it includes the revisions that were adopted in October 1990. Therefore, because the State intends to require that the revised version of TR–60 be used by operators when designing and constructing sediment control or other water retention structures within the State, we find that the proposed reference to TR–60 is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(1).

i. CSR 38–2–5.4.e.1. This provision concerns the inspection of impoundments and sediment control structures, and has been amended by adding language concerning impoundments meeting the Class B or C criteria for dams in TR–60. As amended, Subsection 5.4.e.1 provides as follows:

> 5.4.e.1. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect each impoundment or sediment control structure provided, that a licensed land surveyor may inspect those impoundments or sediment control or other water retention structures which do not meet the size or other criteria of 30 CFR 77.216(a), Impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 or W. Va. Code [Section] 22–14 *et seq.*, and which are not constructed of coal processing waste or coal refuse. The professional engineer, licensed land surveyor, or specialist shall be experienced in the construction of impoundments and sediment control structures.

The Federal regulations at 30 CFR 816/817.49(a)(11)(iv) provide that a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the Class B or C criteria of TR–60, the size or other criteria of 30 CFR 77.216(a), or is not a coal mine waste impounding structure covered by the Federal regulations at 30 CFR 816.84. The proposed amendment to CSR 38–2–5.4.e.1 provides the West Virginia program with a counterpart to the Federal regulations at 30 CFR 816/817.49(a)(11)(iv). We note, however, that as written, CSR 38–2–5.4.e.1 is not perfectly clear as to its intended meaning. Specifically, the phrase "Impoundments meeting" confuses the intended meaning of the proviso that identifies the impoundments that a licensed land surveyor may not inspect. It is our understanding that the proviso at CSR 38–2–5.4.e.1 means that a licensed land surveyor may not inspect impoundments or sediment control or other water retention structures which meet the size or other criteria of 30 CFR 77.216(a), the Class B or C criteria for dams in TR–60, or W.Va. Code section 22–14 *et seq.*, and which are constructed of coal processing waste or coal refuse. Therefore, in accordance with our understanding discussed above, we find that CSR 38–2–5.4.e.1 is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(11)(iv), and it can be approved, except for the words "Impoundments meeting" which are not approved.

The proposed amendment at CSR 38–2–5.4.e.1 also satisfies a portion of the 732 letter that OSM sent the State on July 22, 1997. As we discussed above in Finding 2.c, WVDEP's Web page contains a copy of TR–60, and it includes the revisions that were adopted in October 1990. Therefore, because the State intends to require that the revised version of TR–60 be used by operators

when designing and constructing sediment control or other water retention structures within the State, we find that the proposed reference to TR–60 is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(1).

j. CSR 38–2–5.4.f. This provision concerns examinations of embankments, and it has been amended by adding language concerning impoundments meeting the Class B or C criteria for dams in TR–60. As amended, Subsection 5.4.f provides as follows:

> 5.4.f. Examinations. Embankments subject to Federal MSHA regulations at 30 CFR 77.216 or impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 must be examined in accordance with 77.216–3 of said regulations. Other embankments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Examination reports shall be retained for review at or near the operation.

We find that, as amended, CSR 38–2–5.4.f is substantively identical to the Federal regulations at 30 CFR 816/817.49(a)(12) concerning the examination of impoundments, and it can be approved.

The proposed amendment at CSR 38–2–5.4.f also satisfies a portion of the July 22, 1997, 732 letter that OSM sent to the State. As we discussed above in Finding 2.c, WVDEP's web page contains a copy of TR–60, and it includes the revisions that were adopted in October 1990. Therefore, because the State intends to require that the revised version of TR–60 be used by operators when designing and constructing sediment control or other water retention structures within the State, we find that the proposed reference to TR–60 is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.49(a)(1).

k. CSR 38–2–7.4.b.1.A.1. This provision concerns the development of a planting plan and long-term management plan for commercial forestry. The first sentence of this provision is amended by clarifying that the professional forester charged with developing the commercial forestry planting and the long-term management plan must be a West Virginia registered professional forester. The provision is to ensure compliance with WV Code 30–19–1 *et seq.* regarding State registered foresters and to clarify that the development of planting plans for mountaintop removal mining operations may only be done by a registered State forester. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining use. We find that the proposed requirement that the professional forester specified at CSR 38–2–7.4.b.1.A.1 must be a West Virginia professional forester does not render the provision inconsistent with those Federal requirements, and it can be approved.

l. CSR 38–2–7.4.b.1.A.3. This provision concerns the commercial species planting plan for commercial forestry. It is amended in the first sentence to clarify that the registered professional forester must be a West Virginia registered professional forester. The provision is to ensure compliance with WV Code 30–19–1 *et seq.* regarding State registered foresters and to clarify that the development of planting plans for mountaintop removal mining operations may only be done by a registered State forester. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining use. We find that the proposed requirement that the professional forester specified at CSR 38–2–7.4.b.1.A.3 must be a West Virginia professional forester does not render the provision inconsistent with those Federal requirements, and it can be approved.

m. CSR 38–2–7.4.b.1.A.3.(b). This provision concerns the creation of a certified geology map relating to commercial forestry areas. The provision is amended by revising the kinds of information pertaining to physical and chemical properties of strata that must be provided in the permit application. As amended, Subsection 7.4.b.1.A.3.(b) provides as follows:

> 7.4.b.1.A.3.(b). An approved geologist shall create a certified geology map showing the location, depth, and volume of all strata in the mined area, the physical and chemical properties of each stratum to include rock texture, pH, potential acidity and alkalinity. For each stratum proposed as soil medium, the following information shall also be provided: total soluble salts, degree of weathering, extractable levels of phosphorus, potassium, calcium, magnesium, manganese, and iron and other properties required by the Secretary to select best available materials for mine soils.

In its submittal of its amendment to this provision, the WVDEP stated that the amendment is to clarify that only the material proposed to be the resulting soil medium needs the additional analyses. The State acknowledged that each stratum will be tested in accordance with acid-base accounting standards, but only the topsoil substitute requires further testing (Administrative Record Number WV–1438). SMCRA and the Federal regulations do not contain specific counterparts to the amended provision. However, when an applicant proposes to use selected overburden material as a supplement or substitute for topsoil, additional analyses, trials, and tests are required as provided by 30 CFR 779.21(b). Based on that understanding, we find that as amended, CSR 38–2–7.4.b.1.A.3.(b) is not inconsistent with the requirements of SMCRA section 515(c) and the Federal regulations at 30 CFR 785.14 concerning mountaintop removal mining operations, and it can be approved.

n. CSR 38–2–7.4.b.1.A.4. This provision concerns the commercial forestry long-term management plan, and it is amended in the first sentence by adding the words "West Virginia" immediately before the words "registered professional forester." The provision is to ensure compliance with WV Code 30–19–1 *et seq.* regarding State registered foresters and to clarify that the development of the long-term management plan for a mountaintop removal mining operation may only be done by a registered State forester. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining use. We find that the proposed requirement that the professional forester specified at CSR 38–2–7.4.b.1.A.4 must be a West Virginia professional forester does not render the provision inconsistent with those Federal requirements, and it can be approved.

o. CSR 38–2–7.4.b.1.B.1. This provision concerns a commercial forestry and forestry reclamation plan, and is amended by deleting the word "certified" immediately before the phrase "professional soil scientist" in the first sentence. As amended, Subsection 7.4.b.1.B.1 provides that a soil scientist employed by the WVDEP will review and field verify the soil slope and sandstone mapping in mountaintop removal mining permit applications involving commercial forestry.

In its submittal of its amendment to this provision, the WVDEP stated that the word "certified" is being deleted because West Virginia does not have a certification system for soil scientist. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed

postmining use. We find that the proposed deletion of the word "certified" does not render the provision inconsistent with the Federal requirements and it can be approved. We note the National Park Service (NPS) comment (see Section IV. Summary and Disposition of Comments, Federal Agency Comments, below) that the West Virginia Association of Professional Soils Scientists (WVAPSS) does have a registry of certified professional soils scientists. By requiring soil scientists to be listed on the WVAPSS registry or a similar one, the State would create a professional image throughout its regulatory program and encourage higher standards of quality.

p. CSR 38–2–7.4.b.1.C.1. This provision concerns commercial forestry areas, and is amended by adding the word "areas" immediately following the words "commercial forestry" in the first sentence, and by revising the standards for slopes of the postmining landform. As amended, Subsection 7.4.b.1.C.1 provides as follows:

7.4.b.1.C.1. For commercial forestry areas, the Secretary shall assure that the postmining landscape is rolling, and diverse. The backfill on the mine bench shall be configured to create a postmining topography that includes the principles of land forming (*e.g.*, the creation of swales) to reflect the premining irregularities in the land. Postmining landform shall provide a rolling topography with slopes between 5% and 20% with an average slope of 10% to 15%. The elevation change between the ridgeline and the valleys shall be varied. The slope lengths shall not exceed 500 feet. The minimum thickness of backfill, including mine soil, placed on the pavement of the basal seam mined in any particular area shall be ten (10) feet.

We find that the addition of the word "areas" improves the clarity of the intended meaning of this provision. In addition, the slope percentages are changed from 5% and 15% with an average slope of 10 to 12.5% to between 5% and 15% with an average slope of 10% to 15%. While the proposed change would allow an increase in the steepness of slopes by about 2.5%, the final average slopes on mountaintop removal mining operations receiving approximate original contour (AOC) variances with an approved postmining land use of commercial forestry could not exceed 15% or about 8.5 degrees. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining use. However, those Federal provisions do not provide the specificity that is provided in this provision. We find that the proposed amendment to CSR 38–2–7.4.b.1.C.1 does not render the provision inconsistent with those Federal requirements, and it can be approved.

q. CSR 38–2–7.4.b.1.C.2. This provision concerns commercial forestry areas and is amended by adding the word "areas" immediately after the phrase "commercial forestry" in the first sentence. We find that the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements at 30 CFR 785.14(c) concerning mountaintop removal mining operations, and it can be approved.

r. CSR 38–2–7.4.b.1.C.3. This provision concerns commercial forestry areas and is amended by deleting the words "in areas" in the first sentence and adding the word "areas" in their place. We find that the proposed amendment to this provision improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements at 30 CFR 785.14(c) concerning mountaintop removal mining operations, and it can be approved.

s. CSR 38–2–7.4.b.1.C.4. This provision concerns commercial forestry areas and is amended by adding the word "areas" immediately following the words "commercial forestry" in the first sentence. In addition, the first sentence is also amended by deleting the word "permitted" and replacing that word with the words "commercial forestry." We find that the addition of the word "areas" improves the clarity of the intended meaning of this provision. The deletion of the word "permitted" and its replacement with the words "commercial forestry" eliminates an inconsistency in the language of this provision. It is now clear that at least 3.0 acres of ponds, permanent impoundments or wetlands must be created on each 200 acres of commercial forestry area. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining use. However, those Federal provisions do not provide the specificity that is provided in this provision. We find that the proposed amendment to CSR 38–2–7.4.b.1.C.4 does not render the provision inconsistent with those Federal requirements and it can be approved.

t. CSR 38–2–7.4.b.1.C.5. This provision concerns forestry areas and is amended by adding the word "areas" immediately after the word "forestry" in the first sentence. We find that because the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements at 30 CFR 785.14(c) concerning mountaintop removal mining operations, it can be approved.

u. CSR 38–2–7.4.b.1.D.6. This provision concerns soil substitutes, and is amended by adding the words "and is in accordance with 14.3.c of this rule" at the end of the first sentence. As amended, the first sentence at CSR 38–2–7.4.b.1.D.6 provides as follows:

7.4.b.1.D.6. Before approving the use of soil substitutes, the Secretary shall require the permittee to demonstrate that the selected overburden material is suitable for restoring land capability and productivity and is in accordance with 14.3.c of this rule.

The WVDEP stated in its submittal that this change has been made to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(wwww). The Federal regulations at 30 CFR 948.16(wwww) provide that CSR 38–2–7.4.b.1.D.6 be amended to provide that the substitute material is equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation (see 65 FR 50409, 50418; August 18, 2000). The Federal regulations at 30 CFR 816.22(b) concerning topsoil substitutes and supplements provide that the operator must demonstrate that the resulting topsoil substitute or supplement medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation. West Virginia has amended CSR 38–2–7.4.b.1.D.6 by adding that topsoil substitutes must be in accordance with CSR 38–2–14.3.c. The State provision at CSR 38–2–14.3.c. concerns topsoil substitutes, and provides for a certification of analysis by a qualified laboratory stating that, at 14.3.c.1 that "the proposed substitute material is equally suitable for sustaining vegetation as the existing topsoil," and at Subsection 14.3.c.2, the "resulting soil medium is the best available in the permit area to support vegetation." Therefore, we find that as amended, CSR 38–2–7.4.b.1.D.6 is no less effective than the Federal regulations at 30 CFR 816.22(b), and it can be approved. We also find that this amendment satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(wwww), which can be removed.

v. CSR 38–2–7.4.b.1.D.8. This provision concerns the final surface material used as the commercial forestry mine soil and has been amended in the first sentence by adding the word "areas" immediately after the phrase "[f]or commercial forestry." We find that the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements at 30 CFR 785.14(c) concerning mountaintop removal mining operations, and it can be approved.

w. CSR 38–2–7.4.b.1.D.9. This provision concerns the final surface material used as the forestry mine soil and has been amended in the first sentence by adding the word "areas" immediately after the phrase "[f]or forestry." We find that the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements at 30 CFR 785.14(c) concerning mountaintop removal mining operations, and it can be approved.

x. CSR 38–2–7.4.b.1.D.11. This provision concerns forestry mine soil, and has been amended by adding the phrase "except for valley fill faces" at the end of the sentence. As amended, Subsection 7.4.b.1.D.11 provides that "[f]orestry mine soil shall, at a minimum, be placed on all areas achieving AOC, except for valley fill faces."

In its submittal of this provision, the WVDEP stated that the amendment is intended to provide clarification. As proposed, forestry mine soil shall, at a minimum, be placed on all areas achieving AOC, except for valley fill faces. This change is intended to clarify that valley fill faces do not have to be covered with four feet of soil or a mixture of soil and suitable substitutes. However, we notified the State that the revision as proposed could be interpreted as requiring fills to be returned to AOC. Under the Federal rules, excess spoil disposal areas do not have to achieve AOC. The State acknowledged that the definition of AOC at WV Code 22–2–3(e) clarifies that excess spoil disposal areas do not have to achieve AOC (Administrative Record Number WV–1438). Unlike the Federal requirements, the proposed revision could also be interpreted as not requiring any forestry mine soil to be placed on valley fill faces. Therefore, we are approving this provision with the understanding that the exemption only applies to the four-foot requirement at CSR 38–2–7.4.b.1.D.8 and 7.4.b.1.D.9. Sufficient forestry mine soil shall be placed on valley fill faces to sustain vegetation and support the approved postmining land use in accordance with Finding 2.ff below. Based on that understanding, we find that this revision does not render CSR 38–2–7.4.b.1.D.11 inconsistent with the Federal mountaintop removal mining requirements at 30 CFR 785.14(c) or the topsoil and subsoil provisions at 30 CFR 816.22, and it can be approved.

y. CSR 38–2–7.4.b.1.H.1. This provision concerns tree species and compositions for commercial forestry areas and forestry areas. The list of hardwoods in this provision for commercial forestry areas is amended by deleting "white and red oaks, other native oaks" and adding in their place "white oak, chestnut oak, northern red oak, and black oak" and by adding the words "basswood, cucumber magnolia" to the list. In addition, the word "areas" is added immediately following the words "[f]or forestry" in the third sentence. In addition, the list of hardwoods for forestry areas is amended by deleting the words "white and red oaks, other native oaks" and adding in their place the words "white oak, chestnut oak, northern red oak, black oak," and by adding the words " basswood, cucumber magnolia" to the list. As amended, Subsection 7.4.b.1.H.1 provides as follows:

> 7.4.b.1.H.1. Commercial tree and nurse tree species selection shall be based on site-specific characteristics and long-term goals outlined in the forest management plan and approved by a registered professional forester. For commercial forestry areas, the Secretary shall assure that all areas suitable for hardwoods are planted with native hardwoods at a rate of 500 seedlings per acre in continuous mixtures across the permitted area with at least six (6) species from the following list: white oak, chestnut oak, northern red oak, black oak, white ash, yellow-poplar, basswood, cucumber magnolia, black walnut, sugar maple, black cherry, or native hickories. For forestry areas, the Secretary shall assure that all areas suitable for hardwoods are planted with native hardwoods at a rate of 450 seedlings per acre in continuous mixtures across the permitted area with at least three (3) or four (4) species from the following list: white oak, chestnut oak, northern red oak, black oak, white ash, yellow-poplar, basswood, cucumber magnolia, black walnut, sugar maple, black cherry, or native hickories.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment is intended to provide clarification for oaks and mixtures. We find that the addition of the words "areas" improves the clarity of the intended meaning of this provision, and does not render the provision inconsistent with the Federal requirements concerning mountaintop removal mining operations and can be approved. The amendment to the lists of hardwoods for both commercial forestry areas and forestry areas provides increased specificity of hardwood tree species. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining use. In addition, 30 CFR 816.116(b)(3) requires stocking and planting arrangements to be based on local and regional conditions and after consultation and approval by State forestry and wildlife agencies. However, those Federal provisions do not provide the specificity of tree species that is provided in this provision. Nevertheless, we find that the proposed amendment to CSR 38–2–7.4.b.1.H.1 does not render the provision inconsistent with the aforementioned Federal requirements, and it can be approved.

z. CSR 38–2–7.4.b.1.H.2. This provision has been amended in the first sentence by adding the word "areas" immediately after the phrase "[f]or commercial forestry." We find that because the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements concerning mountaintop removal mining operations at 30 CFR 785.14(c), and it can be approved.

aa. CSR 38–2–7.4.b.1.H.6. This provision has been amended in the first sentence by adding the word "areas" immediately after the phrase "[f]or commercial forestry." We find that because the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements concerning mountaintop removal mining operations at 30 CFR 785.14(c), and it can be approved.

bb. CSR 38–2–7.4.b.1.I.1. Subsection 7.4.b.1.I.1 has been amended in the last sentence by deleting the word "certified" immediately before the words "soil scientist" and adding in its place the word "professional." As amended, the sentence provides as follows: "[b]efore approving Phase I bond release, a professional soil scientist shall certify, and the Secretary shall make a written finding that the mine soil meets these criteria." In its submittal of its amendment to CSR 38–2–7.4.b.1.B.1, the WVDEP stated that the word "certified" is being deleted

because West Virginia does not have a certification system for soil scientist. SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining use. We find that the proposed deletion of the word "certified" does not render the provision inconsistent with the Federal requirements regarding mountaintop removal mining operations at 30 CFR 785.14(c) and bond release at 30 CFR 800.40, and it can be approved. We note that as mentioned above at Finding 2.o., the NPS commented that the WVAPSS does have a registry of certified professional soils scientists. By requiring soil scientists to be listed on the WVAPSS registry or a similar one, the State would create a professional image throughout its regulatory program and encourage higher standards of quality.

cc. CSR 38–2–7.4.b.1.I.2. Subsection 7.4.b.1.I.2 has been amended in two places by adding the word "areas." The first sentence has been amended by adding the word "areas" immediately after the phrase "for commercial forestry." The second from last sentence has been amended by adding the word "areas" immediately after the phrase "both commercial forestry and forestry." We find that the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements at 30 CFR 785.14(c) concerning mountaintop removal mining operations, and it can be approved.

dd. CSR 38–2–7.4.b.1.I.3. Subsection 7.4.b.1.I.3 has been amended in three places by adding the word "areas." The first sentence has been amended by adding the word "areas" immediately after the phrase "for commercial forestry and forestry." The second sentence has been amended by adding the word "areas" immediately after the words "[f]or forestry." The third sentence has been amended by adding the word "areas" immediately after the phrase "for commercial forestry." We find that the addition of the word "areas" improves the clarity of the intended meaning of this provision and does not render the provision inconsistent with the Federal requirements at 30 CFR 785.14(c) concerning mountaintop removal mining operations, and it can be approved.

ee. CSR 38–2–7.4.b.1.I.4 The State proposes to modify Subsection 7.4.b.1.I.4 by adding the phrase, "and the site meets the standards of Subsection 9.3.h of this rule." CSR 38–2–9.3.h contains forest resource conservation standards for commercial reforestation operations. The State rules at CSR 38–2–7.4.b.1.I.4. provide that a permittee who fails to achieve the "'commercial forestry'" productivity requirements at the end of the twelfth growing season must either pay into the Special Reclamation Fund an amount equal to twice the remaining bond amount or perform an equivalent amount of in-kind mitigation. The money collected under this plan will be used to establish forests on bond forfeiture sites. In-kind mitigation requires establishing forests on AML or bond forfeiture sites. According to State officials, the phrase "and the site meets the standards of Subsection 9.3.h of this rule" was to ensure that operators would, at a minimum, have to meet the commercial reforestation standards of that subsection if the 12-year productivity requirement of Subsection 7.4.b.1.I.3 was not met (Administrative Record Number WV–1438).

Initially, we were concerned that, by simply referencing the revegetation standards at Subsection 9.3.h, the State had not made it clear that all the other requirements of the approved program and the permit were fully met in accordance with section 519(c)(3) of SMCRA and 30 CFR 800.40(c)(3). That concern was further complicated by the fact that Subsection 7.4.b.1.I.5 only references the bond release requirements at Subsections 12.2.d and 12.2.e. At a minimum, we felt that the State should have referenced the bond release requirements at Subsection 12.2.c, especially Subsection 12.2.c.3. Subsection 12.2.c.3 provides that Phase III reclamation shall be considered completed and the Secretary may release the remaining bond(s) upon successful completion of the reclamation requirements of the Act, this rule, and the terms and conditions of the permit.

State officials further clarified that the references to Subsections 12.d and 12.e were added at the request of the coal industry to allow for incremental bond release, regardless of whether the operation was incrementally bonded initially or not. Accordingly, all reclamation requirements of the approved program and the permit must be met prior to final bond release for all mountaintop removal mining operations with a postmining land use of commercial forestry and forestry.

State officials also maintain that the penalty/mitigation requirement is not a civil penalty, but an optional performance standard that can be used in the determination of success if the 12-year productivity requirement is not met. According to the State, failure to achieve the productivity standard under these rules by the end of the 12th year is not a violation, and does not go through the State's civil penalty assessment process. That is, to meet the performance standards for Commercial Forestry, the permittee must meet the 12-year standards or, failing that, must meet the standards for success at CSR 38–2–9.3.h and the requirements of a commercial forestry mitigation plan. The commercial forestry mitigation plan may consist of either a payment to the Special Reclamation Fund of an amount equal to twice the remaining bond amount, or the performance of an equivalent amount of in-kind mitigation. These State provisions are in excess of OSM's 5-year revegetation requirements. The State's clarification is important, because in our previous decisions concerning this provision, we had interpreted the mitigation plan (the payment to the Special Reclamation Fund, and the in-kind mitigation) as a civil penalty provision (see the August 18, 2000, **Federal Register** (65 FR at 50423, 50424)). However, we now understand that the mitigation plan is not a substitute for or in lieu of a civil penalty to be issued under the approved program. With the clarification provided by the State, we understand that a violation will not occur unless a permittee fails to meet the requirements of CSR 38–2–9.3.h or fails to meet the requirements of the commercial forestry mitigation plan.

Considering the clarifications discussed above, we find that the provisions at Subsection 7.4.b.1.I.4 are consistent with section 519(c)(3) of SMCRA and 30 CFR 800.40(c)(3) and can be approved.

ff. CSR 38–2–7.4.b.1.J. This provision concerns the front faces of valley fills and has been amended by deleting existing Subsections 7.4.b.1.J.1.(b) and (c), correcting a typographical error in the citation at Subsection 7.4.b.1.J.1.d, and re-designating existing Subsections 7.4.b.1.J.1.(d) and (e) as new Subsections 7.4.b.1.J.1.(b) and (c). As amended, Subsection 7.4.b.1.J. provides as follows:

7.4.b.1.J. Front Faces of Valley Fills.

7.4.b.1.J.1. Front faces of valley fills shall be exempt from the requirements of this rule except that:

7.4.b.1.J.1.(a). They shall be graded and compacted no more than is necessary to achieve stability and non-erodability;

7.4.b.1.J.1.(b). The groundcover mixes described in subparagraph 7.4.b.1.G. shall be used unless the Secretary requires a different mixture;

7.4.b.1.J.1.(c) Kentucky 31 fescue, serecia lespedeza, vetches, clovers (except ladino

and white clover) or other invasive species may not be used; and

7.4.b.1.J.2. Although not required by this rule, native, non-invasive trees may be planted on the faces of fills.

To make Subsection 7.4.b.1.J.1 consistent with the other parts of Subsection 7.4, the State deleted 7.4.b.1.J.1.(b) which provides that, "No unweathered shales may be present in the upper four feet of surface material." The State also deleted 7.4.b.1.J.1.(c) which provides that, "The upper four feet of surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D. of this rule, when available, unless the Secretary determines other material is necessary to achieve stability."

The faces of excess spoil fills do not have to be covered with four feet of surface material. However, the effect of the deletion of Subsection (c) is that the front faces of fills are exempt from all the requirements of this rule, except for those provisions set forth in Subsection 7.4.b.1.J.1 which pertain to grading, compaction, stability, and vegetative cover. As such, the revised State rule would not require topsoil or topsoil substitutes to be redistributed on fill faces to achieve an approximate uniform, stable thickness consistent with the approved postmining land use as required by 30 CFR 816.22(d)(1) and 816.71(e)(2). As a result, Subsection 7.4.b.1.J.1 is rendered inconsistent with the Federal topsoil redistribution requirements at 30 CFR 816.22(d)(1) and 816.71(e)(2). To remedy this problem, we are not approving the deletion of the following words at CSR 38–2–7.4.b.1.J.1(c): "surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D." As a consequence of this disapproval, the language quoted above will remain in the West Virginia program. The effect of the disapproval of the language quoted above is that the front faces of valley fills will not be exempt from the requirements that topsoil or topsoil substitutes be redistributed on fill faces to achieve an approximate uniform, stable thickness consistent with the approved postmining land use as required by 30 CFR 816.22(d)(1) and 816.71(e)(2). With this disapproval, we find that the remaining portion of CSR 38–2–7.4.b.1.J.1 is consistent with the Federal topsoil redistribution requirements at 30 CFR 816.22(d)(1) and 816.71(e)(2) and can be approved.

In addition, the State changed a cross reference in new Subsection 7.4.1.J.1(b). We find that the correction of the citation of the location of groundcover plant mixes from subsection "7.4.d.1.G" to subsection "7.4.b.1.G" corrects a typographical error and can be approved.

gg. CSR 38–2–7.5.a. Subsection 7.5 concerns Homestead postmining land use. Subsection 7.5.a has been amended by adding a new sentence to the end of the existing language. As amended, CSR 38–2–7.5.a provides as follows:

7.5.a. Operations receiving a variance from AOC for this use shall establish homesteading on at least one-half (½) of the permit area. The remainder of the permit area shall support an alternate AOC variance use. The acreage considered homesteading shall be the sum of the acreage associated with the following: the civic parcel; the commercial parcel; the conservation easement; the homestead parcel; the rural parcel and any required infra structure.

According to the State, the rule does not dictate the requirements for every acre, but provides flexibility for land use, so long as certain conditions exist. A breakdown based on the minimum and maximum acreages in the rule can be provided, but one must remember that they will not total 100 percent of the homestead acreage. Using a 1,000-acre mountaintop removal mining operation as an example, an operator would have to establish homesteading on 50 percent of the permitted area or 500 acres. At least 300 acres of the homestead area may be quantifiable based on the specific requirements in the rule. In this example, the common lands would be 50 acres (10% × 500); the conservation easement would be 50 acres (10% × 500); the civic parcel would be 100 acres (10% × 1,000); and the village parcel would be 100 acres (20% × 500). The remaining 200 acres, less acreage for perpetual easement, may be a combination of the civic parcel, the conservation easement, and homestead village, rural and/or commercial. If the commercial parcel is included, then the operation would not get credit for the area in the development plan (Administrative Record Number WV–1438).

We note that this revision, together with other changes discussed in Finding 2.mm., is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (rrrrr). The requirement at 30 CFR 948.16 (rrrrr) provides for the amendment to revise: (1) CSR 38–2–7.5.a to clarify whether or not the calculated acreage of the Commercial Parcel(s) is to be summed with the total Homestead acreage for the purpose of calculating the acreage of other various components of the Homestead Area (such as Common Lands, Village Parcels, Conservation Easement, etc.); and (2) CSR 38–2–7.5.l.4 to clarify whether or not the acreage for Public Nursery is to be calculated based on the amount of acreage available for the Village Homestead, the Civil Parcel, or the entire Homestead Area (Finding 2.mm. below addresses part 2 of 30 CFR 948.16(rrrrr)). We find that the amendment at Subsection 7.5.a satisfies part (1) of the required program amendment codified at 30 CFR 948.16 (rrrrr). The proposed amendment clarifies that the acreage for "commercial parcels" is indeed summed with the other various components of the Homestead Area (such as Common Lands, Village Parcels, Conservation Easement, etc.). Therefore, we find that part (1) of the required program amendment codified at 30 CFR 948.16 (rrrrr) is satisfied and can be removed, and the amendment can be approved.

hh. CSR 38–2–7.5.b.3. This provision concerns the definition of "Commercial parcel," and has been amended by deleting the word "regulation" in the last sentence and replacing that word with the word "rule." In addition, a new sentence has been added to the end of the provision. As amended, Subsection 7.5.b.3 provides as follows:

7.5.b.3. Commercial parcel means a parcel retained by the landowner of record and incorporated within the homestead area on which the landowner or its designee may develop commercial uses. The size and location of commercial parcels shall comply with the requirements of this rule. Provided, however, parcels retained by the landowner for commercial development and incorporated within the Homestead area must be developed for commercial uses as provided by subdivision 7.5.g.5 of this rule.

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(fffff). The requirement at 30 CFR 948.16(fffff) provides that CSR 38–2–7.5.b.3 must be amended, or the West Virginia program must otherwise be amended, to clarify that parcels retained by the landowner for commercial development and incorporated within the Homestead area must be developed for commercial uses as provided by subdivision CSR 38–2–7.5.g.5. We find that the amendment satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(fffff), and it can be removed. The amended language is approved.

ii. CSR 38–2–7.5.i.10. This provision concerns wetlands associated with Homestead areas, and is amended by adding a new sentence immediately following the existing first sentence. As amended, Subsection 7.5.i.10 provides as follows:

7.5.i.10. Wetlands. Each homestead plan may describe areas within the homestead area reserved for created wetlands. The created wetlands shall comply with the requirements of 3.5 of this rule. These created wetlands may be ponds, permanent impoundments or wetlands created during mining. They may be left in place after final bond release. Any pond or impoundment left in place is subject to requirements under subsection 5.5 of this rule.

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(iiiii). The requirement at 30 CFR 948.16(iiiii) provides that CSR 38–2–7.5.i.10 must be amended, or the West Virginia program must otherwise be amended, to require compliance with the permit requirements at CSR 38–2–3.5.d. This provision requires the submittal of cross sectional areas and profiles of all drainage and sediment control structures, including ponds, impoundments, diversions, sumps, etc. We find that the amendment satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(iiiii), and it can be removed. The amended language is approved.

jj. CSR 38–2–7.5.j.3.A. This provision concerns the definition of soil in relation to Homestead areas, and is amended in the first sentence by adding the soil horizon "E" between soil horizons "A" and "B."

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(jjjjj). The requirement at 30 CFR 948.16(jjjjj) provides that CSR 38–2–7.5.j.3.A be amended by adding an "E" horizon. The Federal definition of "topsoil" at 30 CFR 701.5 provides that topsoil is the A and E soil horizon layers of the four master soil horizons, which include the A, E, B and C horizons. The State added the "E" horizon to its definition of topsoil at 7.5.j.3.A to be consistent with the State's definition of topsoil at CSR 38–2–2.127 and the Federal definition at 30 CFR 701.5. We find that the amendment satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(jjjjj), and it can be removed. The amendment is approved.

kk. CSR 38–2–7.5.j.3.B. This provision concerns the recovery and use of soil on Homestead areas, and it is amended by deleting the exception that is stated in the first sentence. As amended, Subsection 7.5.j.3.B provides as follows:

7.5.j.3.B. The Secretary shall require the operator to recover and use all the soil on the mined area, as shown on the soil maps. The Secretary shall assure that all saved soil includes all of the material from the O and A horizons.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (kkkkk). The requirement at 30 CFR 948.16 (kkkkk) provides that CSR 38–2–7.5.j.3.B must be amended by deleting the phrase, "except for those areas with a slope of at least 50%," and by deleting the phrase, "and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered." With this change, the State rules at CSR 38–2–14.3, like the Federal rules at 30 CFR 816.22, still require an operator to save and redistribute all topsoil. Under this revision, topsoil on slopes greater than 50 percent may be removed in combination with and saved with the other soil horizons. We find that the amendment satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(kkkkk), and it can be removed. The amended language is approved.

ll. CSR 38–2–7.5.j.3.E. This provision concerns soil substitutes and is amended by adding the phrase "and is in accordance with 14.3.c of this rule" at the end of the first sentence.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (lllll). The requirement at 30 CFR 948.16 (lllll) provides that CSR 38–2–7.5.j.3.E be amended, or the West Virginia program otherwise be amended, to provide that soil substitute material must be equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation. The West Virginia rules at CSR 38–2–14.3.c concerning top soil substitutes provide that a qualified laboratory must certify that:

14.3.c.1. The proposed substitute material is equally suitable for sustaining vegetation as the existing topsoil;

14.3.c.2. The resulting soil medium is the best available in the permit area to support vegetation; and

14.3.c.3. The analyses were conducted using standard testing procedures.

We find that the provisions at subsections 14.3.c.1 and 14.3.c.2 quoted above are substantively identical to the Federal requirements at 30 CFR 816.22(b). Therefore, we find that the required program amendment at 30 CFR 948.16(lllll) is satisfied by the addition of the requirement that the permittee demonstrate that the selected overburden material used as soil substitute be in accordance with the requirements at CSR 38–2–14.3.c, and that 30 CFR 948.16(lllll) can be removed. The amended language is approved.

mm. CSR 38–2–7.5.l.4.A. This provision concerns public nursery associated with Homestead areas, and is amended by adding the word "village" between the words "homestead" and "area" in the first sentence.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with required program amendment codified in the Federal regulations at 30 CFR 948.16 (rrrrr). The requirement at 30 CFR 948.16 (rrrrr) provides for the amendment of: (1) CSR 38–2–7.5.a to clarify whether or not the calculated acreage of the Commercial Parcel(s) is to be summed with the total Homestead acreage for the purpose of calculating the acreage of other various components of the Homestead Area (such as Common Lands, Village Parcels, Conservation Easement, etc.); and (2) CSR 38–2–7.5.l.4 to clarify whether or not the acreage for Public Nursery is to be calculated based on the amount of acreage available for the Village Homestead, the Civil Parcel, or the entire Homestead Area. We find that as amended, the first sentence at CSR 38–2–7.5.l.4.A clearly provides that "the nursery shall be 1 acre per 30 acres of homestead village area." With the proposed change, WVDEP has clarified that the acreage for Public Nursery is to be calculated based on the amount of acreage available for the Village Homestead. Therefore, we find that as amended CSR 38–2–7.5.l.4.A satisfies part (2) of the required program amendment at 30 CFR 948.16(rrrrr), and it can be removed. See Finding 2.gg., above for our finding on part (1) of 30 CFR 948.16(rrrrr). The amended language is approved.

nn. CSR 38–2–7.5.o.2. This provision concerns revegetation success standards for mountaintop removal mining operations with a Homestead postmining land use during Phase II bond release. While the State's proposed amendment listed the required amendment at 30 CFR 948.16(ooooo), it was not addressed in the State's initial submittal. The requirement at 30 CFR 948.16(ooooo) provides in part that WVDEP must consult with and obtain the approval of the West Virginia Division of Forestry on the new stocking arrangements for Homestead at CSR 38–2–7.5.o.2.

On August 23, 2005, the Division of Forestry submitted a memorandum to WVDEP in support of the new stocking requirements for Homesteading (Administrative Record Number WV–1428). Specifically, the Division of Forestry agreed with the provisions at CSR 38–2–7.5.i.8, 7.5.l.4, and 7.5.o.2 regarding conservation easements, public nurseries, and survival rates and ground cover requirements at the time of bond release. Therefore, we find that the Division of Forestry's memorandum dated August 23, 2005, satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(ooooo) and it can be removed. We should note that the Wildlife Resources Section of the Department of Natural Resources already submitted its approval letter.

oo. CSR 38–2–7.5.o.2. This provision concerns Phase II bond release of mountaintop removal mining operations with a Homestead postmining land use, and is amended by adding a proviso at the end of the existing provision. As amended, CSR 38–2–7.5.o.2 provides as follows:

> 7.5.o.2. Phase II bond release may not occur before two years have passed since Phase I bond release. Before approving Phase II bond release, the Secretary shall assure that the vegetative cover is still in place. The Secretary shall further assure that the tree survival on the conservation easements and public nurseries are no less than 300 trees per acre (80% of which must be species from the approved list). Furthermore, in the conservation easement and public nursery areas, there shall be a 70% ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter. Trees and shrubs counted in considering success shall be healthy and shall have been in place at least two years, and no evidence of inappropriate dieback. Phase II bond release shall not occur until the service drops for the utilities and communications have been installed to each homestead parcel. Provided, however, the applicable revegetation success standards for each phase of bond release on Commercial Parcels, Village Parcels, Rural Parcels, Civic Parcels and Common Lands shall be its corresponding revegetation success standards specified in 9.3 of this rule.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (ppppp). The requirement at 30 CFR 948.16 (ppppp) provides that CSR 38–2–7.5.o.2 be amended, or the West Virginia program otherwise be amended, to identify the applicable revegetation success standards for each phase of bond release on Commercial Parcels, Village Parcels, Rural Parcels, Civic Parcels and Common Lands. With this amendment, the State has clarified that the applicable revegetation standards for Commercial Parcels, Village Parcels, Rural Parcels, Civic Parcels and Common Lands are provided in the West Virginia regulations at CSR 38–2–9.3. Subsection 9.3 contains standards for evaluating vegetative cover. CSR 38–2–9.3.f provides standards for postmining land uses that require legumes and perennial grasses, such as hay land, pastureland, and rangeland. CSR 38–2–9.3.f.1 provides standards for postmining land uses to be developed for industrial or residential uses. CSR 38–2–9.3.f.2 provides standards for lands used for cropland. CSR 38–2–9.3.g provides standards for lands used for forest and/or wildlife use. CSR 38–2–9.3.h provides standards for commercial reforestation operations. We find that as amended, CSR 38–2–7.5.o.2 satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(ppppp), and it can be removed. The amended language is approved.

pp. CSR 38–2–9.3.d. Subsection 9.3 concerns the standards for evaluating vegetative cover. Subsection 9.3.d is amended by deleting the word "determine" in the first sentence, and adding in its place the word "verify." The existing second sentence concerning a statistically valid sampling technique is deleted, and is replaced by a new sentence that requires the operator to provide the Secretary of the WVDEP with a vegetative evaluation using a statistically valid sampling technique. As amended, Subsection 9.3.d provides as follows:

> 9.3.d. Not less than two (2) years following the last date of augmented seeding, the Secretary shall conduct a vegetative inspection to verify that applicable standards for vegetative success have been met. The operator shall provide to the Secretary a vegetative evaluation using a statistically valid sampling technique with a ninety (90) percent statistical confidence interval. An inspection report shall be filed for each inspection and when the standard is met, the Secretary shall execute a Phase II bond release.

The Federal regulations at 30 CFR 816.116 provide the standards for success of revegetation. The Federal regulations at 816.116(a)(2) provide that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). Further, 30 CFR 816.116(a)(1) provides that the standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. Currently, a State bond release specialist conducts the vegetative evaluation prior to bond release. Under the revised rule, the operator will perform the evaluation, and a State inspection will be conducted to verify the results. The State's approved policy dated May 1, 2002, and entitled "Productivity and Ground Cover Success Standards" identifies the statistically valid sampling techniques for measuring productivity and ground cover within the State. Under the revised provisions, only these approved sampling techniques can be used by an operator to evaluate or by the State to verify revegetation success in conjunction with Phase II and III bond release. As amended, the West Virginia provision provides an alternative, yet as-effective version of the Federal requirements.

Prior to the amendment, the WVDEP used a statistically valid sampling technique with a ninety (90) percent statistical confidence interval to evaluate the success of revegetation during its vegetative evaluation inspection. The amended provision, however, appears to allow the operator to select and use a statistically valid sampling technique with a ninety (90) percent statistical confidence interval to confirm revegetation success, while a WVDEP inspection will be made to verify the operator's evaluation. The amendments to CSR 38–2–9.3.d appear to increase the flexibility of which statistical sampling techniques may be used to evaluate revegetation success while at the same time continuing to maintain the standard that the selected standard must be a statistically valid sampling technique with a ninety (90) percent statistical confidence interval as is required by the Federal regulations at 30 CFR 816.116(a)(2).

However, the Federal regulations at 30 CFR 816.116(a)(1) provide that the statistically valid sampling technique must be selected by the regulatory authority and included in an approved regulatory program. As amended, CSR 38–2–9.3.d differs from 30 CFR 816.116(a)(1) in that the State's provision appears to allow an operator to select and use a statistically valid sampling technique with a ninety (90) percent statistical confidence interval. Nevertheless, it is our understanding that the sampling technique to be used to evaluate the success of revegetation will be submitted by the operator to the WVDEP as part of the revegetation plan required by CSR 38–2–9.2, and this understanding is further supported by the fact that Subsection 9.3.e requires the use of an approved sampling technique with a ninety (90) percent statistical confidence interval. The State's requirements at CSR 38–2–9.2

provide that a complete revegetation plan shall be made part of each permit application. Therefore, it is our understanding that the statistically valid sampling technique to be used must receive the approval of the regulatory authority and it will be a part of the approved permit application. We find that, as amended, CSR 38–2–9.3.d is consistent with and no less effective than the Federal regulations for measuring revegetation success at 30 CFR 816.116(a)(1) and can be approved. Our approval of this provision is based upon our understanding discussed above.

qq. CSR 38–2–9.3.e. Subsection 9.3.e concerns request of final bond release, and is amended by adding the phrase "which includes a final vegetative evaluation using approved, statistically valid sampling techniques" to the end of the first sentence. In addition, the words "inspection to verify the" are added to the second sentence, immediately following the phrase "the Secretary shall conduct." Finally, the words "using approved, statistically valid sampling techniques" are deleted from the end of the second sentence. As amended, Subsection 9.3.e provides as follows:

> 9.3.e. After five (5) growing seasons following the last augmented seeding, planting, fertilization, revegetation, or other work, the operator may request a final inspection and final bond release which includes a final vegetative evaluation using approved, statistically valid sampling techniques. Upon receipt of such request, the Secretary shall conduct a [*sic*] inspection to verify the final vegetative evaluation. A final report shall be filed and if the applicable standards have been met, the Secretary shall release the remainder of the bond. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 (ninety) percent of the success standard.

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to make it clear that the operator will provide the information to determine if the vegetation success standard has been met. As we discussed above in Finding 2.pp., West Virginia amended its regulations at CSR 38–2–9.3.d to require the operator to select and use a statistically valid sampling technique with a ninety (90) percent statistical confidence interval to confirm revegetation success, while a WVDEP inspection will be made to verify the operator's evaluation. Also as discussed above at Finding 2.pp., it is our understanding that the statistically valid sampling technique with a ninety (90) percent statistical confidence interval that is proposed by the operator to be used to evaluate the success of revegetation will be submitted to the WVDEP as part of the revegetation plan required by CSR 38–2–9.2. The State's requirements at CSR 38–2–9.2 provide that a complete revegetation plan shall be made part of each permit application. Therefore, the statistically valid sampling technique to be used must receive the approval of the regulatory authority, and it will be a part of the approved permit application. This understanding is further supported by the fact that this subsection requires the use of an approved sampling technique by the operator. We find that, as amended, CSR 38–2–9.3.e is consistent with and no less effective than the Federal regulations for measuring revegetation success at 30 CFR 816.116(a)(1) and can be approved. Our approval of this provision is based upon our understanding discussed above.

rr. CSR 38–2–14.5.h. Subsection 14.5 concerns performance standards for hydrologic balance. Subsection 14.5.h is amended by adding two new sentences at the end of this provision relating to the waiver of water supply replacement. As amended, Subsection 14.5.h provides as follows:

> 14.5.h. A waiver of water supply replacement granted by a landowner as provided in subsection (b) of section 24 of the Act shall apply only to underground mining operations, provided that a waiver shall not exempt any operator from the responsibility of maintaining water quality. Provided, however, the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (sss). The requirement at 30 CFR 948.16 (sss) provides that CSR 38–2–14.5.h must be amended, or the West Virginia program must otherwise be amended, to require that, if the water supply is not needed for the existing or postmining land use, such waiver can only be approved where it is demonstrated that a suitable alternative water source is available and could feasibly be developed. The proposed State revision clarifies that the replacement of a water supply is required, unless consideration is given to the effect on premining and postmining land uses. In addition, the proposed revision clarifies that a waiver can only be approved where it is demonstrated that a suitable alternative water source is available and could feasibly be developed. We find that the new language added to CSR 38–2–14.5.h is substantively identical to the Federal definition of "replacement of water supply," paragraph (b), at 30 CFR 701.5 and can be approved. In addition, the new language satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(sss), which can be removed.

ss. CSR 38–2–14.15.c.3. Subsection 14.15 concerns performance standards for contemporaneous reclamation. Subsection 14.15.c.3 is amended by deleting the reference to the "National Environmental Policy Act" and adding in its place a reference to the "Endangered Species Act."

In its submittal of the amendment to this provision, the WVDEP stated that the amendment is to correct a wrong cross-reference. We did not act on this provision in the December 3, 2002, **Federal Register** notice (67 FR 71832). As explained in that notice, under SMCRA, the issuance of a SMCRA permit by the State is not considered an action under NEPA. In addition, individual States have no authority to require compliance with NEPA and, therefore, the State's proposed reference to NEPA has no effect on the West Virginia program. Because we did not render a decision on the proposed language, it has not been part of the approved State program. Under the proposed revision, the WVDEP Secretary could allow operators to cut trees on areas larger than 30 acres when it is necessary to comply with the Endangered Species Act. The State is trying to protect the Indiana bat and other endangered plant and animal species by minimizing habitat loss at certain times of the year, most notably during mating season. The proposed reference to the Endangered Species Act is an attempt by the State to correct the earlier problem. Therefore, we find that this amendment corrects the erroneous reference to the "National Environmental Policy Act" and can be approved.

tt. CSR 38–2–20.6.d. Section 20 concerns inspection and enforcement. Subsection 20.6.d concerns Notice of Informal Assessment Conference, and is amended by deleting the second sentence of this provision. The deleted

sentence provided as follows: "[p]rovided, however, the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account." In its submittal, WVDEP stated that the requirement to pre-pay the proposed civil penalty assessment prior to informal conference caused confusion and did not achieve the desired results. We find that the deletion of the requirement to place the amount of proposed penalty assessment in an interest bearing escrow account does not render the provision less effective than the counterpart Federal regulations at 30 CFR 845.18 concerning assessment conference procedures. The regulations at 30 CFR 845.18 do not provide for the placement of the amount of proposed penalty assessment in an interest bearing escrow account. Therefore, we find that the revised State procedure at CSR 38–2–20.6.d is the same as or similar to the Federal procedure at 30 CFR 845.18 and can be approved.

uu. CSR 38–2–20.6.j. Subsection 20.6.j concerns escrow, and is amended by deleting the words "an informal conference or" and adding in their place the word "a." As amended, CSR 38–2–20.6.j provides as follows: "Escrow. If a person requests a judicial review of a proposed assessment, the proposed penalty assessment shall be held in escrow until completion of the judicial review."

In its submittal of this amendment, the WVDEP stated that the requirement to pre-pay penalty prior to informal conference did not achieve the desired results. WVDEP also stated that it has led to confusion between agency and industry alike and, therefore, the agency is deleting this requirement. We find that the deletion of the requirement to place the amount of proposed civil penalty assessment in an interest bearing escrow account prior to the informal conference does not render the provision less effective than the counterpart Federal regulations at 30 CFR 845.18 or 30 CFR 845.19. As discussed above, the Federal regulations at 30 CFR 845.18, concerning assessment conference procedures, do not require the placement of the amount of proposed penalty assessment in an interest bearing escrow account. The Federal regulations at 30 CFR 845.19 concern request for a hearing, and provide that the person charged with the violation may contest the proposed penalty assessment or reassessment by submitting a petition and an amount equal to the proposed penalty for placement in an escrow account. Therefore, we find that the revised State procedure at CSR 38–2–20.6.j is the same as or similar to the Federal procedures at 30 CFR 845.18 and 30 CFR 845.19 and can be approved.

Amendments to CSR 199–1

a. CSR 199–1–2.36a. Section CSR 199–1–2 concerns definitions. New Subsection 2.36a has been added to define the term "Community or Institutional Building." New Subsection 2.36a provides as follows:

2.36a. Community or Institutional Building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment further defines the definition, and the information was taken from CSR 38–2, the State's Surface Mining Reclamation Regulations. We find that this new definition is substantively identical to the Federal definition of "community or institutional building" at 30 CFR 761.5 and can be approved.

b. CSR 199–1–2.36b. New Subsection 2.36b has been added to define the term "Public Building." New Subsection 2.36b provides as follows:

2.36b. Public Building means any structure that is owned or leased by a public agency or used primarily for public business or meetings.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment further defines the definition, and the information was taken from CSR 38–2, the State's Surface Mining Reclamation Regulations. We find this new definition to be substantively identical to the Federal definition of "public building" at 30 CFR 761.5 and can be approved.

c. CSR 199–1–2.37. New Subsection 2.37 has been added to define the term "Structure." Existing Subsections 2.37, 2.38, and 2.39 have been renumbered as Subsections 2.38, 2.39, and 2.40. New Subsection 2.37 provides as follows:

2.37 Structure means any man-made structures within or outside the permit areas which include, but is not limited to: Dwellings, outbuildings, commercial buildings, public buildings, community buildings, institutional buildings, gas lines, water lines, towers, airports, underground mines, tunnels and dams. The term does not include structures built and/or utilized for the purpose of carrying out the surface mining operation.

In its submittal of the amendment to this provision, the WVDEP stated that the definition was taken from CSR 38–2, the State's Surface Mining Reclamation Regulations. There is no Federal counterpart definition to the State's new definition of "structure." However, we find that the new definition of "structure" is not inconsistent with the Federal use of the term "structure(s)" in the Federal blasting regulations at 30 CFR Parts 816/817 and can be approved.

d. CSR 199–1–3.3.b. Subsection 3.3 concerns public notice of blasting operations, and has been amended by adding new Subsection 3.3.b to provide as follows:

3.3.b. Blasting Signs. The following signs and markers shall be erected and maintained while blasting is being conducted:

3.3.b.1. Warning signs shall be conspicuously displayed at all approaches to the blasting site, along haulageways and access roads to the mining operation and at all entrances to the permit area. The sign shall at a minimum be two feet by three feet (2′ x 3′) reading "WARNING! Explosives in Use" and explaining the blasting warning and the all clear signals and the marking of blasting areas and charged holes; and

3.3.b.2. Where blasting operations will be conducted within one hundred (100) feet of the outside right-of-way of a public road, signs reading "Blasting Area", shall be conspicuously placed along the perimeter of the blasting area.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment adds information from CSR 38–2, the State's Surface Mining Reclamation Regulations, relating to blasting signs. This change is necessary because the State's Blasting Rule currently lacks specific provisions regarding blasting signs. Such provisions are only set forth in the State's Surface Mining Reclamation Regulations at Subsection 14.1.e. We find that new CSR 199–1–3.3.b is substantively identical to the Federal blasting provisions at 30 CFR 816/817.66(a)(1) and (2) concerning blasting signs, warnings, and access control and can be approved.

e. CSR 199–1–3.7. Subsection 3.7.a concerns blasting control for other structures, and has been amended by deleting the words "in subsection 2.35 of this rule" in the first sentence.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment eliminates an incorrect reference to the definition of "Protected Structure." The definition of "Protected Structure" is located at CSR 199–1–2.36. With this change, these provisions still provide for the protection of protected structures and other structures. We find that the deletion of the incorrect

reference number does not render the provision less effective than the Federal blasting provisions at 30 CFR 816/817.67, concerning the control of the adverse effects of blasting, and can be approved.

f. CSR 199–1–4.8. Subsection 4.8 concerns violations by a certified blaster, and has been amended by deleting the words "director shall" and replacing those words with the words "Secretary may." In addition, the words "written notification" are added immediately after the word "issue." The phrase "or revoke the certification of" is added immediately after the phrase "a temporary suspension order," and the word "against" has been deleted. As amended, the paragraph at Subsection 4.8 provides as follows:

4.8. Violations by a Certified Blaster.—The Secretary may issue written notification, a temporary suspension order, or revoke the certification of a certified blaster who is, based on clear and convincing evidence, in violation of any of the following:

With these changes, the Secretary may issue written notification, a temporary suspension order, or revoke the certification of a certified blaster who is, based on clear and convincing evidence, in violation of the provisions listed at CSR 199–1–4.8.a through 4.8.e. We find that CSR 199–1–4.8, as revised, is consistent with the Federal regulations at 30 CFR 850.15(b), concerning suspension and revocation of blaster certification, and can be approved.

g. CSR 199–1–4.8.c. Subsection 4.8.c has been amended by deleting the words "[s]ubstantial or significant" which modify the word "violations" at the beginning of the first sentence, and by capitalizing the word "federal" in the first sentence. In a **Federal Register** notice dated December 10, 2003 (68 FR 68724, 68733), OSM approved CSR 199–1–4.8.c, except for the words "substantial or significant," which were not approved. In this amendment, the State has deleted words "substantial or significant." Therefore, any violations of Federal or State laws or regulations relating to explosives by a certified blaster could require disciplinary action. We find that, as amended, CSR 199–1–4.8.c is consistent with and no less effective than the Federal regulations at 30 CFR 850.15(b)(1)(iii), concerning violations of State or Federal explosives laws or regulations, and can be approved.

h. CSR 199–1–4.8.f and 4.8.g. Subsections 4.8.f and 4.8.g are added and provide as follows:

4.8.f. A pattern of conduct which is not consistent with acceptance of responsibility for blasting operations, *i.e.*, repeated violations of state or federal laws pertaining to explosives; or

4.8.g. Willful Conduct—The Secretary shall suspend or revoke the certification of a blaster for willful violations of State or Federal laws pertaining to explosive.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment was made because the wording was not consistent with previously approved rule 22–4–6.01, according to OSM. In addition, the WVDEP stated that this subsection has been reorganized and renumbered for clarity reasons, as required by the Council of Joint Rulemaking. These revisions are in response to a finding made by OSM as published in the **Federal Register** on December 10, 2003 (68 FR at 68733–68734). There is no direct Federal counterpart to the new language at CSR 199–1–4.8.f. However, we find that the new language at CSR 199–1–4.8.f is consistent with the Federal requirements concerning suspension or revocation of blaster certification at 30 CFR 850.15(b) and with the requirements concerning practical experience of blasters that is needed for certification at 30 CFR 850.14(a)(2). Therefore, we find that new CSR 199–1–4.8.f can be approved.

We find that new CSR 199–1–4.8.g is consistent with and no less effective than the Federal regulations at 30 CFR 850.15(b)(1), which provide that a certification shall be suspended or revoked upon a finding of willful conduct, and can be approved. In addition, we find that new CSR 199–1–4.8.g satisfies the required program amendment codified in the Federal regulations at 30 CFR 948.16(a). The required amendment at 30 CFR 948.16(a) requires that the State must amend CSR 199–1–4.9.a and 4.9.b, or must otherwise amend the West Virginia program, to provide that upon finding of willful conduct, the Secretary shall revoke or suspend a blaster's certification. The required amendment can, therefore, be removed.

i. CSR 199–1–4.9. Subsection 4.9 concerns penalties, and has been amended, reorganized and renumbered. A new title, "Suspension and Revocation" has been added at Subsection 4.9.a. Existing Subsection 4.9.a. has been renumbered as 4.9.a.1 and 4.9.a.2. Existing Subsection 4.9.b has been renumbered as 4.9.a.3 and the reference to Subsection 12.1 deleted. New Subsection 4.9.a.4 has been added.

Existing Subsections 4.9.c and 4.9.d have been renumbered as-4.10 and 4.11, respectively. Finally, existing Subsections 4.10, 4.11, and 4.12 have been renumbered as Subsections 4.12, 4.13, and 4.14, respectively. As amended, Subsections 4.9, and 4.10 through 4.14 provide as follows:

4.9. Penalties.

4.9.a. Suspension and Revocation.

4.9.a.1. Suspension.—Upon service of a temporary suspension order, the certified blaster shall be granted a hearing before the Secretary to show cause why his or her certification should not be suspended or revoked.

4.9.a.2. The period of suspension will be conditioned on the severity of the violation committed by the certified blaster and, if the violation can be abated, the time period in which the violation is abated. The Secretary may require remedial actions and measures and re-training and re-examination as a condition for re-instatement of certification.

4.9.a.3. Revocation.—If the remedial action required to abate a suspension order, issued by the Secretary to a certified blaster, or any other action required at a hearing on the suspension of a blaster's certification, is not taken within the specified time period for abatement, the Secretary may revoke the blaster's certification and require the blaster to relinquish his or her certification card. Revocation will occur if the certified blaster fails to re-train or fails to take and pass reexamination as a requirement for remedial action.

4.9.a.4. In addition to suspending or revoking the certification of a blaster, failure to comply with the requirements of this subsection may also result in further suspension or revocation of a blaster's certification.

4.10. Reinstatement—Subject to the discretion of the Secretary, and based on a petition for reinstatement, any person whose blaster certification has been revoked, may, if the Secretary is satisfied that the petitioner will comply with all blasting law and rules, apply to re-take the blasters certification examination, provided the person meets all of the requirements for blasters certification specified by this subsection, and has completed all requirements of the suspension and revocation orders, including the time period of the suspension.

4.11. Civil and Criminal Penalties.—Every certified blaster is subject to the individual civil and criminal penalties provided for in W. Va. Code § 22–3–17.

4.12. Hearings and Appeals.—Any certified blaster who is served a suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in W. Va. Code §§ 22–3–16 and 17.

4.13. Blasting Crew.—Persons who are not certified and who are assigned to a blasting crew, or assist in the use of explosives, shall receive directions and on-the-job training from a certified blaster.

4.14. Reciprocity With Other States.—The Secretary may enter into a reciprocal agreement with other states wherein persons holding a valid certification in that state may apply for certification in West Virginia, and upon approval by the Secretary, be certified without undergoing the training or examination requirements set forth in this rule.

In its submittal of the amendments to this provision, the WVDEP stated that

the amendments provide clarification and remove an incorrect reference. In addition, the WVDEP stated that Subsection 4.9 has been reorganized and renumbered for clarity reasons, as required by the Council of Joint Rulemaking. The deletion of the reference at re-numbered Subsection 4.9.a.3 eliminates an incorrect reference and improves the clarity of the provision. We find that the amendment to re-numbered Subsection 4.9.a.3 does not render this provision inconsistent with the Federal blasting requirements at 30 CFR 850.15(b) and can be approved.

We find that the new language at Subsection 4.9.a.4, concerning further suspension or revocation of a blasters certification upon failure to comply with the provisions of CSR 199–1–4.9, is not inconsistent with the Federal suspension and revocation provisions at 30 CFR 850.15(b) and can be approved.

As mentioned, the other changes listed above at Subsections 4.10 through 4.14 resulted from the renumbering of Subsections 4.9 through 4.12. The revisions are non-substantive changes that relate primarily to the reorganization of this section.

3. Committee Substitute for House Bill 3033

WV Code 22–3–11 has been amended by adding new Subdivision 22–3–11(h)(2)(B) to provide as follows:

(2) In managing the Special Reclamation Program, the Secretary shall:

* * * * *

(B) Conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund.

On May 29, 2002 (67 FR 37610), OSM approved amendments to the West Virginia program that satisfied a required program amendment which required the State to eliminate the deficit in the State's alternative bonding system, commonly referred to as the Special Reclamation Fund (Fund), and to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites (Administrative Record Number WV–1308). An important component of OSM's approval of that amendment was the fact that West Virginia had previously established, at W. Va. Code 22–1–17, the Special Reclamation Fund Advisory Council (Advisory Council) to oversee the State's alternative bonding system (*see* OSM's approval in the December 28, 2001, **Federal Register** notice, 66 FR 67446).

One of the duties of the Advisory Council is to study the effectiveness, efficiency and financial stability of the Special Reclamation Fund. Another duty of the Advisory Council, as provided by W. Va. Code 22–1–17(f)(5), is to contract with a qualified actuary to determine the Fund's fiscal soundness. The first actuarial study was required to be completed by December 31, 2004. Additional actuarial studies must be completed every four years thereafter.

In the proposed amendment at WV Code 22–3–11, West Virginia has added language at Subdivision 22–3–11(h)(2)(B) that requires the Secretary of the WVDEP to conduct actuarial studies every two years and to conduct annual informal reviews of the Special Reclamation Fund. As drafted, it appears that the actuarial studies required under new Subdivision 22–3–11(h)(2)(B) will be in addition to those performed under contract of the Advisory Council, because the State has not submitted any amendment to the statutory requirements of the Advisory Council at W. Va. Code 22–1–17. However, State officials acknowledge that the actuarial studies to be conducted under Subdivision 22–3–11(h)(2)(B) are to be done in lieu of those required under Subdivision 22–1–17(f)(5). The State intends to submit an amendment in the future that will correct this oversight. Nevertheless, we still find that the new requirement at Subdivision 22–3–11(h)(2)(B) is consistent with the bases of our previous approvals of State program amendments regarding the financial stability of the State's Special Reclamation Fund. The bi-annual actuarial studies and the annual, informal financial reviews of the Special Reclamation Fund should assist the WVDEP and the State in ensuring that sufficient money will be available to complete land reclamation and water treatment at existing and future bond forfeiture sites within the State, a requirement that parallels the criterion for approval of a State's alternative bonding system under 30 CFR 800.11(e)(1). Therefore, we are approving the amendment to Subdivision 22–3–11(h)(2)(B) of the W. Va. Code regarding the State's Special Reclamation Fund.

4. House Bill 3236

This Bill amended the W. Va. Code by adding new Section 22–3–11a and new Section 22–3–32a to provide as follows:

22–3–11a. Special reclamation tax; clarification of imposition of tax; procedures for collection and administration of tax; application of Tax Procedure and Administration Act and Tax Crimes and Penalties Act.

(a) It is the intent of the Legislature to clarify that from the date of its enactment, the special reclamation tax imposed pursuant to the provisions of section eleven of this article is intended to be in addition to any other taxes imposed on persons conducting coal surface mining operations including, but not limited to the tax imposed by section thirty-two of this article, the tax imposed by article twelve-b, chapter eleven of this code, the taxes imposed by article thirteen-a of said chapter and the tax imposed by article thirteen-v of said chapter.

(b) Notwithstanding any other provisions of section eleven of this article to the contrary, under no circumstance shall an exemption from the taxes imposed by article twelve-b, thirteen-a or thirteen-v, chapter eleven of this code be construed to be an exemption from the tax imposed by section eleven of this article.

(c) When coal included in the measure of the tax imposed by section eleven of this article is exempt from the tax imposed by article twelve-b, chapter eleven of this code, the tax imposed by section eleven of this article shall be paid to the tax commissioner in accordance with the provisions of sections four through fourteen, inclusive, article twelve-b, chapter eleven of this code, which provisions are hereby incorporated by reference in this article.

(d) General procedure and administration.—Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of the code applies to the special tax imposed by section eleven of this article with like effect as if such act were applicable only to the special tax imposed by said section eleven and were set forth *in extenso* in this article, notwithstanding the provisions of section three of said article ten.

(e) Tax crimes and penalties.—Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of said chapter eleven applies to the special tax imposed by section eleven of this article with like effect as if such act were applicable only to the special tax imposed by said section eleven and set forth *in extenso* in this article, notwithstanding the provisions of section two of said article nine.

22–3–32a. Special tax on coal; clarification of imposition of tax; procedures for collection and administration of tax.

(a) It is the intent of the Legislature to clarify that from the date of its enactment, the special tax on coal imposed pursuant to the provisions of section thirty-two of this article is intended to be in addition to any other taxes imposed on every person in this state engaging in the privilege of severing, extracting, reducing to possession or producing coal for sale profit or commercial use including, but not limited to the tax imposed by section eleven of this article, the tax imposed by article twelve-b, chapter eleven of this code, the taxes imposed by article thirteen-a of said chapter and the tax imposed by article thirteen-v of said chapter.

(b) Notwithstanding any other provisions of section thirty-two of this article to the contrary, under no circumstance shall an exemption from the taxes imposed by article twelve-b, thirteen-a or thirteen-v, chapter

eleven of this code be construed to be an exemption from the tax imposed by section thirty-two of this article.

(c) When coal included in the measure of the tax imposed by section thirty-two of this article is exempt from the tax imposed by article twelve-b, chapter eleven of this code, the tax imposed by section thirty-two of this article shall be paid to the tax commissioner in accordance with the provisions of sections four through fourteen, inclusive, article twelve-b, chapter eleven of this code, which provisions are hereby incorporated by reference in this article.

The HB 3236 provides for two new sections of the West Virginia Code, designated Sections 22–3–11a and 22–3–32a. These new provisions relate to the special reclamation tax (at W. Va. Code 22–3–11), which provides revenue to the State's Special Reclamation Fund, and the special tax on coal (at W. Va. Code 22–3–32), which is used to administer the State's approved regulatory program. The preamble to HB 3236 states that the new provisions are intended to clarify that both of these taxes apply to the production of thin seam coal and provide for payment thereof. Thus, this change will result in additional revenue for the reclamation of bond forfeiture sites and for program support. The HB 3236 also provides that the special reclamation tax is subject to the West Virginia Tax Crimes and Penalties Act and the West Virginia Tax Procedure and Administration Act.

While there is no direct Federal counterpart to the clarifications provided at new W. Va. Code 22–3–11a, we find that the provision is not inconsistent with SMCRA section 509(b) and 30 CFR 800.11(e), which provide that an alternative bonding system must have available sufficient revenue to complete all reclamation obligations at any given time. The proposed revision will enable the State to meet its bond forfeiture reclamation obligations under the Special Reclamation Fund. Therefore, we find that new W. Va. Code 22–3–11a is not inconsistent with the aforementioned Federal requirements and can be approved.

Further, there is no direct Federal counterpart to the clarifications provided at new W. Va. Code 22–3–32a. However, section 503(a)(3) of SMCRA, concerning State program approval, provides that a State regulatory authority must have, among other things, sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. We find that the revisions provided at new W. Va. Code 22–3–32a are not inconsistent with SMCRA section 503(a)(3) and can be approved.

5. CSR 38–2–14.14.g.2.A.6 Removal of Erosion Protection Zone (EPZ)

This amendment consists of information provided by the WVDEP, including a draft memorandum, to support its assertion that OSM should reverse its previous disapproval of language concerning EPZ at CSR 38–2–14.14.g.2.A.6. In its submittal concerning this provision, the WVDEP stated that in a letter to OSM dated March 8, 2005 (the letter's date was March 9, 2005, Administrative Record Number WV–1418), the State had explained its position on EPZ and the circumstances when the EPZ could be left in place as a permanent structure. The WVDEP's March 9, 2005, letter was in response to OSM's disapproval of language concerning EPZ at CSR 38–2–14.14.g.2.A.6 that was part of a proposed amendment submitted to OSM by letter dated March 18, 2003 (Administrative Record Number WV–1352). The language was not approved, WVDEP stated, based on the lack of U.S. Environmental Protection Agency (EPA) concurrence with the State's proposed language. Background information on OSM's previous disapproval of language concerning EPZ at CSR 38–2–14.14.g.2.A.6 is presented below.

Under the Federal regulations at 30 CFR 732.17(h)(11)(ii), OSM is required to obtain written concurrence from EPA for proposed provisions of a State program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On April 1, 2003, we asked EPA for concurrence and comments on the proposed amendments that were submitted to OSM by letter dated March 18, 2003 (Administrative Record Number WV–1355).

The EPA responded by letter dated June 13, 2003, (Administrative Record Number WV–1363). The EPA stated that it reviewed the proposed revisions and had concerns about the requirement of EPZ associated with single-lift valley fills at CSR 38–2–14.14.g.1 (Durable Rock Fills).

OSM published its decision on a proposed West Virginia program amendment that addressed, in part, the addition of new language concerning EPZ related to durable rock fills on July 7, 2003 (see 68 FR 40157, finding 19, pages 40161 and 40162). In that finding, OSM did not approve language at CSR 38–2–14.14.g.2.A.6 that would have allowed the permanent retention of EPZ if approval were granted in the reclamation plan. In particular, OSM did not approve the words "Unless otherwise approved in the reclamation plan" because approval would have been inconsistent with EPA's conditional concurrence to remove fill material associated with EPZs from streams and to reconstruct the stream channels after mining.

The EPA stated that it understands that an EPZ is a buffer zone between the toe of a single lift valley fill and its downstream sedimentation pond. It consists of a wide and low fill, revegetated to dissipate runoff energy from the valley fill face and prevent pond overloading during severe storm periods. The EPA stated that a single lift fill is particularly subject to erosion, since it is constructed in a downstream direction toward the pond with no reclamation or revegetation of the fill face until completion of mining.

The EPA stated that it was concerned that EPZs may result in permanent stream fills after completion of mining. According to CSR 38–2–14.14.g.2.A.1, the EPA stated, a 250-foot long EPZ would be required for a 500-foot high valley fill, which, EPA stated, is not unusual in southern West Virginia. Although Section 14.14.g.2.A.6 requires EPZ removal, regrading, and revegetating after mining, EPA stated, it does not appear to include the removal of the stream fill associated with the EPZ or reconstruction of the stream channel. An alternative valley fill design, which appears more environmentally acceptable, EPA stated, is also indicated in Section 14.14.g.1 and further described in Section 14.14.g.3. The EPA stated that this involves starting valley fill construction from the toe and proceeding upstream in multiple lifts (layers) of 100 feet or less in thickness. The EPA stated that the face of each lift would be reclaimed and revegetated before starting the next lift. The toe of the first lift would be at the sedimentation pond, the EPA stated, and an EPZ would not be necessary due to better erosion control features.

The EPA stated that it concurred with the proposed revisions submitted by the State on March 18, 2003, under the condition that a requirement be included to remove stream fills associated with EPZs after mining and reconstruct the stream channels. The EPA stated that it should also be noted that stream filling during EPZ construction requires authorization under section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers. Considering the high erosion potential of single-lift valley fills, the EPA stated, it (EPA) recommends that the single lift method be replaced by the more environmentally favorable approach of

starting at the toe and proceeding upwards in multiple lifts. The EPA stated that it will likely make this recommendation for any proposed single lift fill coming before it for section 404 review.

In response to EPA's conditional concurrence, OSM did not approve the words "Unless otherwise approved in the reclamation plan" at CSR 38–2–14.14.g.2.A.6 because leaving an EPZ in place would be inconsistent with EPA's conditional concurrence to remove stream fills associated with EPZs and to reconstruct the stream channels after mining (see the July 7, 2003, **Federal Register**, Finding 19, pages 40161 and 40162). In addition, OSM approved CSR 38–2–14.14.g.2.A.6 only to the extent that following mining, all stream fills associated with EPZs will be removed and the stream channels shall be reconstructed.

In its June 13, 2005, submittal letter, the WVDEP requested that OSM reconsider its decision to disapprove certain language at CSR 38–2–14.14.g.2.A.6 (Administrative Record Number WV–1421). In support of its request, the WVDEP stated that following the submittal of its March 9, 2005, letter, discussion ensued among representatives of WVDEP, EPA, and OSM. The WVDEP stated that EPA expressed concern that the EPZ rule did not reference section 404 of the Clean Water Act and that it wasn't clear that the operator had to demonstrate leaving the EPZ would provide benefits to or protection to the environment and/or the public. The WVDEP stated that it reiterated that the present wording of the State rule requires removal and/or reclamation of EPZ areas and restoration of the stream, unless otherwise approved by the reclamation plan. The WVDEP further stated that the circumstances under which such areas could become permanent would be at the discretion of WVDEP, with a demonstration by the applicant to the satisfaction of the Secretary of the WVDEP that the environment/public benefits outweigh any anticipated impacts.

The WVDEP also stated that in addition to the mining requirements imposed by WVDEP, such construction is subject to provisions of section 404 of the Clean Water Act and under the ultimate jurisdiction of the U.S. Army Corps of Engineers and EPA. The WVDEP also submitted a draft memorandum to its staff for OSM's consideration in support of its request that OSM reconsider its previous decision on the EPZ provision at CSR 38–2–14.14.g.2.A.6. The draft memorandum submitted by the WVDEP is quoted below:

Interoffice Memorandum

To: All DMR Employees.
From: Randy Huffman, Director.
Date:
Subject: Durable rock fills with erosion protection zone.

38–2–14.14.g.2.A.6 requires removal and reclamation of erosion protection zone, and restoration of the stream and does provide that erosion protection zone may become permanent structure approved in the reclamation plan. It states:

"Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be reg[ra]ded and revegetated in accordance with the reclamation plan."

For an erosion protection zone to become a permanent structure, the applicant must provide a demonstration to the satisfaction of the Secretary that leaving the erosion protection zone provides benefits to or protection to the environment and/or public. Such benefits or protection include, but are not limited to; runoff attenuation, wildlife and wetland enhancement, and stream scour protection. This approval will be contingent upon the applicant obtaining all other necessary permits and/or approvals.

On November 22, 2005, EPA acknowledged that since it provided its conditional concurrence on June 13, 2003, discussions with WVDEP and OSM provided it additional information which lessened its concern about EPZs (Administrative Record Number WV–1449). EPA further stated that it was emphasized that EPZs would be left in place only where environmental/public benefits would outweigh any anticipated impacts and that EPZ construction would be subject to CWA section 404 under the jurisdiction of the U.S. Army Corps of Engineers and EPA. EPA concluded that these requirements were reiterated in the State's submission to OSM. With this understanding, EPA agreed to remove its condition for concurrence with CSR 38–2–14.14.g.2.A.6. Therefore, we are approving the provision at CSR 38–2–14.14.g.2.A.6 which provides, "Unless otherwise approved in the reclamation plan," and we find that the disapproval, which is codified at 30 CFR 948.12(g), has been fully resolved.

6. State Water Rights and Replacement Policy

WVDEP submitted a policy dated August 1995 regarding water rights and replacement (Administrative Record Number WV–1425). As noted in the policy, its purpose is to define the time periods for providing temporary and permanent water replacement. This policy is to supplement the proposed regulatory revisions that the State made at CSR 38–2–14.5(h). The policy is in response to our Part 732 notification dated June 7, 1996, regarding subsidence and water replacement (Administrative Record Number WV–1037(a)). The Federal regulations at 30 CFR 817.41(j) require prompt replacement of a residential water supply that is contaminated, diminished, or interrupted by underground mining activities conducted after October 24, 1992. We advised WVDEP that its program lacked guidance concerning timing of water supply replacement. A proposed statutory revision that was intended to address this issue failed to pass the Legislature. The policy is intended to satisfy the Federal requirement by setting forth the time periods within the State program for providing temporary and permanent water replacement. The policy provides as follows:

WV Division of Environmental Protection
Office of Mining and Reclamation
Inspection and Enforcement

Series: 14
Pg. No: 1 of 1
Revised: 8–95
Subject: Water Rights and Replacement.

1. *Purpose:* Define time periods as they relate to water rights and replacement.
2. *Definitions:*
3. *Legal Authority:* 22–3–24
4. *Policy/Procedures:* Upon receipt of notification that a water supply was adversely affected by mining, the permittee shall provide drinking water to the user within twenty-four (24) hours.

Within seventy two (72) hours, the permittee shall have the user hooked up to a temporary water supply. The temporary supply shall be hooked up to existing plumbing, if any, to allow the user to conduct all normal activities associated with domestic water use. This includes drinking, cooking, bathing. washing, non commercial farming, and gardening.

Within thirty (30) days of notification, the permittee shall begin activities to establish a permanent water supply or submit a proposal to the WVDEP outlining the measures and timetables to be utilized in establishing a permanent supply. The total elapsed time from notification to permanent supply hook-up cannot exceed two (2) years.

The permittee is responsible for payment of operation and maintenance costs on a replacement water supply in excess of reasonable and customary delivery costs that the user incurred.

Upon agreement by the permittee and the user (owner), the obligation to pay such operation and maintenance costs may be satisfied by a one-time lump sum amount agreed to by the permittee and the water supply user (owner).

The Federal provision at 30 CFR 817.41(j) was approved on March 31, 1995 (60 FR 16722, 16749). In the preamble to that approval, OSM provided the following guidance

concerning the meaning of the term "prompt replacement" that was intended to assist regulatory authorities in deciding if water supplies have been "promptly" replaced:

> OSM believes that prompt replacement should typically provide: emergency replacement, temporary replacement, and permanent replacement of a water supply. Upon notification that a user's water supply was adversely impacted by mining, the permittee should reasonably provide drinking water to the user within 48 hours of such notification. Within two weeks of notification, the permittee should have the user hooked up to a temporary water supply. The temporary water supply should be connected to the existing plumbing, if any, and allow the user to conduct all normal domestic usage such as drinking, cooking, bathing, and washing. Within two years of notification, the permittee should connect the user to a satisfactory permanent water supply.

We find that West Virginia's Water Rights and Replacement Policy dated August 1995 is consistent with the Federal guidelines concerning the "prompt replacement" of water supply quoted above. The State policy provides for emergency, temporary, and permanent replacement of a water supply as does the Federal guidance. The State's policy also provides reasonable timeframes for replacement that are consistent with the Federal guidance. We find that the provision of the State's policy which provides that the permittee is responsible for payment of operation and maintenance costs on a replacement water supply in excess of reasonable and customary delivery costs that the user incurred is consistent with the Federal definition of "replacement of water supply" at 30 CFR 701.5. We also find that the State's policy provision which provides that upon agreement by the permittee and the user (owner), the obligation to pay such operation and maintenance costs may be satisfied by a one-time lump sum amount agreed to by the permittee and the water supply user (owner) is consistent with the Federal definition of "replacement of water supply" at 30 CFR 701.5, Subsection (a). Therefore, we find that the State's Water Rights and Replacement Policy is consistent with the Federal regulations at 30 CFR 817.41(j) concerning the prompt replacement of water supply, and it can be approved.

7. Bond Release Certification

The State submitted the Permittee's Request for Release Form dated March 2005 (Administrative Record Number WV–1424). The form was being submitted in response to our Part 732 notification dated July 22, 1997 (Administrative Record Number WV–1071). In that letter, we advised the State that the Federal regulations at 30 CFR 800.40(a)(3) were amended to require that each application for bond release must include a written, notarized statement by the permittee affirming that all applicable reclamation requirements specified in the permit have been completed. We notified WVDEP that the State regulations at CSR 38–2–12.2 did not contain such a requirement. In response, the State revised its bond release form by adding new item Number 11, which requires that all copies of the Permittee's Request For Release Form include the following: "11. A notarized statement by the permittee that all applicable reclamation requirements specified in the permit have been completed." Therefore, we find that, with the addition, the revised State form dated March 2005 is consistent with the Federal regulations at 30 CFR 800.40(a)(3), and it can be approved.

IV. Summary and Disposition of Comments

Public Comments

On August 26, 2005, we published a **Federal Register** notice and asked for public comments on the amendment (Administrative Record Number WV–1429). In addition, on September 9, 2005, we solicited comments from various interest groups within the State on the proposed amendment (Administrative Record Number WV–1433). At the request of the West Virginia Coal Association (WVCA), the comment period was extended for five days and closed on September 30, 2005 (Administrative Record Number WV–1437). We received comments from the WVCA (Administrative Record Number WV–1445).

1. House Bill 3033. The WVCA requested that OSM suspend further review and approval of the provisions that OSM cited in the proposed rule notice published on August 26, 2005. The WVCA stated that OSM's review of the amendment at W. Va. Code 22–3–11(h)(2)(A) and 22–3–11(h)(2)(B) is inappropriate, because the changes do not present substantive changes to the West Virginia regulatory program. As we stated above at "Section II. Submission of the Amendment", we have determined that the amendment to W. Va. Code 22–3–11(h)(2)(A) is non-substantive and, therefore, does not require OSM's approval. Therefore, we are not addressing WVCA's comments regarding W. Va. Code 22–3–11(h)(2)(A).

The WVCA asserted that OSM's decision to review and approve language at W. Va. Code 22–3–11(H)(2)(B) is inappropriate for the same reasons that OSM stated that it would not review other provisions at W. Va. Code 22–3–11:

> These new provisions only direct the Secretary of WVDEP to conduct various studies and authorize the Secretary of WVDEP to propose legislative rules as appropriate. These provisions do not modify any duties or functions under the approved West Virginia program and do not, therefore, require OSM's approval.

The WVCA further stated that while the amendment does modify the duties and functions of the Secretary of WVDEP, it requires only studies and informal review. The WVCA asserted that these studies and reviews do not represent substantive changes to the approved West Virginia program. Such review and approval, the WVCA asserted, "equates to federal interference into the inter-workings of the approved state program."

We disagree. As we discussed above at Finding 3, on May 29, 2002 (67 FR 37610), OSM approved amendments to the West Virginia program that satisfied a required program amendment which required the State to eliminate the deficit in the State's alternative bonding system (ABS) and to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites (Administrative Record Number WV–1308). An important component of OSM's approval of that amendment was the fact that West Virginia had previously established, at W. Va. Code 22–1–17, the Special Reclamation Fund Advisory Council (Advisory Council) to oversee the State's ABS (see OSM's approval in the December 28, 2001, **Federal Register** notice at 66 FR 67446). One of the duties of the Advisory Council is to study the effectiveness, efficiency and financial stability of the Special Reclamation Fund. Another duty of the Advisory Council, as provided by W. Va. Code 22–1–17(f)(5), is to contract with a qualified actuary to determine the Fund's fiscal soundness. Following the initial actuarial study, additional studies are to be conducted every four years.

As drafted, it appears that the actuarial studies required under new Subdivision 22–3–11(h)(2)(B) will be in addition to those performed under contract of the Advisory Council, because the State has not submitted any amendment to the statutory requirements of the Advisory Council at W. Va. Code 22–1–17. However, State officials acknowledge that the actuarial studies to be conducted under

Subdivision 22–3–11(h)(2)(B) are to be done in lieu of those required under Subdivision 22–1–17(f)(5). The State intends to submit an amendment in the future that will correct this oversight. Consequently, the amendment at Subdivision 22–3–11(h)(2)(B) appears to represent a significant and substantive change that may greatly assist the WVDEP in assessing the financial stability of the State's ABS.

At Finding 3 above, we found that the new requirements at Subdivision 22–3–11(h)(2)(B) are consistent with the bases of our previous approvals of State program amendments regarding the financial stability of the State's Special Reclamation Fund. The bi-annual actuarial studies and the annual informal reviews of the Special Reclamation Fund should assist the State in ensuring that sufficient money will be available to complete land reclamation and water treatment at existing and future bond forfeiture sites within the State, a requirement that parallels the criterion for approval of a State's alternative bonding system under 30 CFR 800.11(e)(1).

2. Revisions to CSR 38–2–7.5.j.3.B. This provision concerns the recovery and use of soil, and the State is deleting language that provides as follows:

* * * except for those areas with a slope of at least 50%, and other areas from which the applicant affirmatively demonstrates and the Secretary finds that soil cannot reasonably be recovered.

As we discuss above at Finding 2.kk, this revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (kkkkk). The requirement at 30 CFR 948.16 (kkkkk) provides that CSR 38–2–7.5.j.3.B must be amended by deleting the phrase, "except for those areas with a slope of at least 50%," and by deleting the phrase, "and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered."

The WVCA requested that OSM reconsider the required amendment codified in the Federal regulations at 30 CFR 948.16(kkkkk). The WVCA stated that the State's rule language should be retained because of its importance to serious safety concerns on certain areas, especially on steep slopes. The WVCA also stated that a similar provision concerning an exception for areas with a slope of at least 50%, at CSR 38–2–7.4.b.1.D.2, was approved by OSM after it had reconsidered the required amendment at 30 CFR 948.16.(vvvv), which had required the deletion of the 50% provision at Subsection 7.4.b.1.D.2. The WVCA asserted that the same reasoning relied upon by OSM in its reconsideration of the 50% provision at CSR 38–2–7.4.b.1.D.2 applies with respect to the proposed revision at CSR 38–2–7.5.j.3.B currently at issue. Further, WVCA stated, OSM has admitted in past rulemaking that the Federal regulations contain no counterparts to CSR 38–2–7.5 concerning Homesteading as a post-mining land use. Therefore, WVCA asserted that OSM's concerns with respect to this section of the rules are misplaced and fall outside of OSM's statutorily-granted authority of review and approval of State program amendments.

We disagree. We reviewed the required program amendment codified in the Federal regulations at 30 CFR 948.16(kkkkk) and we believe the State's former rule language remains a problem for the following reasons. The State's provisions concerning the 50-percent slope and related provisions for Commercial Forestry, at CSR 38–2–7.4.b.1.D.2, differ significantly from those for Homesteading, at CSR 38–2–7.5.j.3.B, such that the rationale we used to approve the 50-percent provision in the Commercial Forestry rules is not applicable to the Homesteading rules. Specifically, concerning the Commercial Forestry rule, OSM asserted that while the topsoil might not be separately recovered on slopes over 50 percent, the soil would be recovered with the underlying brown sandstone that is required to be recovered by related provisions at CSR 38–2–7.4.b.1.D.3, D.4., and D.5. However, the 50-percent slope provision and related provisions in the Homesteading rule do not lend themselves to that same rationale. The Homesteading provision at CSR 38–2–7.5.j.3.D provides that if the brown sandstone from within 10 feet of the soil surface cannot reasonably be recovered, "brown sandstone taken from below 10 feet of the soil from anywhere in the permit area may be substituted." This appears to mean that the upper 10 feet of material together with the topsoil may not be saved, and material below the 10-foot level from anywhere on the permit area could be substituted for it. This still renders the provision less effective than the Federal regulations at 30 CFR 816.22 concerning topsoil and subsoil, because the substitution of other material for topsoil may be based upon criteria other than quality of the substitute material.

We are also concerned with the language at CSR 38–2–7.5.j.3.B that would exempt "other areas from which the applicant affirmatively demonstrates and the Secretary finds that soil cannot reasonably be recovered." This language also appears to render the provision less effective than the Federal requirements. When approving the 50-percent slope provision for Commercial Forestry, we recognized concern about the safety of trying to separately recover soil from other material within the top 10 feet on such steep slopes. The safety issue does not seem applicable to the "other areas" provision for Homesteading. In addition, the phrase "cannot reasonably be recovered" is not in the approved Commercial Forestry rules. Therefore, as noted above at Finding 3, we are approving the State's deletion of the language that concerns the exception for 50-percent slopes and other areas where soil cannot reasonably be recovered.

3. Erosion Protection Zone CSR 38–2–14.14.g.2.A.6. The WVCA stated that it supports the WVDEP's position that OSM should reconsider its initial disapproval of language regarding the Erosion Protection Zone (EPZ) related to durable rock fills. The WVCA stated that it believes that the information supplied by WVDEP should be sufficient to address the concerns of both OSM and EPA. The WVCA also stated that it also maintains that the ability to leave the EPZ in place after fill construction is essential to overall regulatory success of the revised valley fill construction rules. The WVCA also stated that OSM's decision to review and approve provisions of State regulations that have no parallel in the Federal program has jeopardized the overall success of new State regulations.

As discussed above under Finding 5, EPA reconsidered its earlier decision regarding EPZs. EPA stated that recent discussions with WVDEP and OSM provided it additional information which lessened its concern about EPZs. EPA noted that EPZs would be left in place only where environmental/public benefits would outweigh any anticipated impacts and that EPZ construction would be subject to CWA section 404 under the jurisdiction of the U.S. Army Corps of Engineers and EPA. Because these requirements were reiterated in the State's submission to OSM, EPA agreed to remove its condition for concurrence with CSR 38–2–14.14.g.2.A.6.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1427). We received comments from the U.S. Department of Labor, Mine Safety and Health

Administration (MSHA) (Administrative Record Number WV–1435). MSHA stated that its review of the State's amendments revealed that only those amendments which addressed impoundment design/construction and blasting practices were relevant to miners' health and safety. MSHA stated that it had determined that there was no inconsistency in those areas of the State's amendment with MSHA's regulations.

The Department of the Interior, National Park Service (NPS) responded with comments (Administrative Record Number WV–1434). The NPS commented on the amendment to CSR 38–2–7.4.b.1.A.3(b), and the phrase "an approved geologist shall create a certified geology map showing * * *." We note that this language is currently part of the approved West Virginia program, was not amended, and we did not request comment on that language. Therefore, we will not address that comment.

The NPS commented on CSR 38–2–7.4.b.1.B.1, and the phrase "* * * that a professional soil scientist employed by the Secretary * * *" and again at CSR 38–2–7.4.b.1.I.1, and the phrase "* * * a professional soil scientist shall certify * * *." The NPS stated that soils scientists also come with national or State certifications. Though West Virginia does not have a certification program for soils scientists, the West Virginia Association of Professional Soils Scientists (WVAPSS) does have a registry of certified "Professional Soils Scientists." The NPS recommended changing the language to specifically reflect a certified professional status for performing soils analysis. The NPS also stated that the proposed revisions call for the use of registered professional foresters or registered professional engineers. By requiring certified soils scientists and geologists, the NPS stated, the State would be creating a coherent and professional image throughout the WVDEP regulatory program.

In response, we note that there is no specific Federal counterpart to the language at CSR 38–2–7.4.b.1.B.1. The intent of this provision is to require that a professional soil scientist employed by the Secretary of the WVDEP review and field verify the soil slope and sandstone mapping information provided in a commercial forestry and forestry reclamation plan. The amendment merely deletes the word "certified" because West Virginia does not have a State certification system for soil scientists. As we noted above in Finding 2.o, we find that as amended, CSR 38–2–7.4.b.1.B.1 is not inconsistent with the requirements of SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c) concerning mountaintop removal mining operations. However, as suggested by NPS, and though not mandatory, we did encourage the State to require the use of a registry such as the WVAPSS or a similar one.

The U.S. Department of Agriculture, Forest Service responded with comments (Administrative Record Number WV–1430). The U.S. Forest Service urged that the amendment contain stronger language to restrict using any seed or mulch that is not certified as weed free. In response, the U.S. Forest Service's comments concern provisions that were not amended by the State. Therefore, we will not address those comments here.

The U.S. Forest Service also encouraged the involvement of the West Virginia Division of Forestry to provide the WVDEP evidence of meeting the various standards of success when pertaining to forestry-related items. For example, the U.S. Forest Service stated that CSR 38–2–9.3.e, concerning final inspection for final bond release, could be re-written to require that, "[u]pon receipt of such request, the WV Division of Forestry shall conduct an inspection to verify the final vegetative evaluation for the Secretary." The U.S. Forest Service stated that involving the WV Division of Forestry for final inspections and certification for the Secretary of the WVDEP assures that an impartial entity with both the expertise and the public trust carries out that assignment rather than continuing to rely on a forestry consultant. In response, while this recommendation by the U.S. Forest Service has merit, the requirement at CSR 38–2–9.3.e that the Secretary of the WVDEP conduct the inspection for final bond release is no less effective than the Phase III bond release requirements in the Federal regulations at 30 CFR 800.40(c)(3). In addition, WVDEP has already solicited and received approval from the WV Division of Forestry and the Wildlife Resources Section of the Division of Natural Resources with regard to the State's stocking rates and planting arrangements as required by 30 CFR 816.116(b)(3)(i).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11) (ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

By letter dated August 2, 2005, we requested comments and the concurrence from EPA on the State's program amendments (Administrative Record Number WV–1426). EPA responded by letter dated November 22, 2005 (Administrative Record Number WV–1449) and further clarified its response on December 13, 2005 (Administrative Record Number WV–1452).

On November 22, 2005, EPA advised us that it had reviewed the State's proposed revisions that we had submitted, and it had not identified any apparent inconsistencies with CWA, Clean Air Act, or other statutes and regulations under EPA's jurisdiction. EPA, therefore, concurred with the proposed State revisions pertaining to environmental standards.

EPA also provided the following comments on the proposed revisions.

1. Environmental Protection Zones—CSR 38–2–14.14.g.2.A.6

According to EPA, this proposed revision allows placement of erosion protection zones (EPZs) between valley fills and sedimentation ponds. EPZs consist of low, wide fills up to a few hundred feet long depending on the heights of the valley fills. Their purpose would be to slow down storm runoff from valley fills, prior to completion of reclamation and revegetation, in order to prevent scouring of sedimentation ponds.

EPA stated that on June 13, 2003, it provided conditional concurrence with this same proposed revision. Its concern was that the stream fills associated with EPZs would remain permanently. EPA's condition for concurrence required that the stream fills would be removed and stream channel reconstructed after completion of mining and reclamation.

According to EPA, since then, information received during its discussions with WVDEP and OSM lessened its concern about EPZs. EPA acknowledged that EPZs would be left in place only where environmental/public benefits would outweigh any anticipated impacts and that EPZ construction would be subject to CWA section 404 under the jurisdiction of the U.S. Army Corps of Engineers and EPA. According to EPA, these requirements were reiterated in a June 13, 2005, letter from WVDEP to OSM, a copy of which was included in documents submitted to EPA on August 2, 2005. It was with this understanding that EPA removed its condition for concurrence with CSR 38–2–14.14.g.2.A.6.

As discussed above under Finding 5, OSM is now approving, with EPA's concurrence, the provision at CSR 38–

2–14.14.g.2.A.6 which provides, "Unless otherwise approved in the reclamation plan." In the future, EPZs will be left in place only where environmental/public benefits will outweigh any anticipated impacts, and EPZ construction will be subject to CWA section 404 under the jurisdiction of EPA and the U.S. Army Corps of Engineers. WVDEP's draft EPZ policy identified under Finding 5 further describes the type of benefits that must be demonstrated before an EPZ can become a permanent structure.

2. Alternative Bonding Requirements—House Bill 3033

EPA acknowledged that House Bill 3033 proposes feasibility studies for alternative bonding approaches, including a possible separate funding mechanism for water treatment. EPA said that it supports all efforts toward finding the most effective approaches for preventing drainage problems after mine closure. To prevent perpetual postmining drainage problems, EPA stated that it is important to have a well funded bonding program to provide for postmining contingencies. Also important, is an effective permit review program which identifies acid-producing potentials of proposed mining sites and denies permits where it is determined that treatment of postmine drainage would likely be necessary.

OSM agrees that an alternative bonding system must provide sufficient revenue to complete the reclamation plans for any sites that may be in default at any time as required by 30 CFR 800.11(e). As discussed above, we concluded that the requirement for the State to pursue cost effective alternative water treatment strategies does not represent a substantive change to the State program, and it has no immediate effect on its implementation. Furthermore, we concluded that if the State does identify any needed regulatory revisions, such changes will be subject to further review and approval. Therefore, OSM determined that the proposed State revision at W.Va. Code 22–3–11(h)(2)(A) regarding alternative water treatment strategies does not require our approval.

3. Good Samaritan Act—House Bill 2333

EPA stated that the intent of House Bill 2333 is to increase incentives for non-profit volunteer groups to reclaim abandoned mines and abate mine drainage. According to EPA, the bill is intended to provide immunity from civil liability, under the laws of West Virginia, for injury or pollution problems which may result from these activities. EPA said that to avoid projects which have the potentials for creating additional pollution, the bill requires WVDEP's review and approval and a determination that the completed project would likely result in improved water quality. EPA stated that it supports volunteer programs for abating abandoned mine drainage and certainly does not want liability concerns to dissuade good faith efforts. EPA noted that its non-point source program under CWA section 319 is very active in providing funds to citizen watershed organizations for addressing these situations throughout the coal-mining states. However, to assure that this State legislation is clearly understood to accomplish its intended purpose and not to limit EPA's jurisdiction or authority in any way, EPA requested that that following text be included in House Bill 2333, "Nothing herein is intended to abrogate the jurisdiction or authority of the United States Environmental Protection Agency."

In response, we notified EPA Region III, that apparently there was some concern about the intended purpose of the State's legislation and that it could limit EPA's jurisdiction or authority. We noted that the State's statutory provisions cannot be amended without further legislative action. EPA responded on December 13, 2005, and stated that it was not their intention that their recommendation should be interpreted as a condition of concurrence. EPA acknowledged that it did not wish to delay implementation of this provision and rather than requiring a statutory change, it concurred with OSM's alternative approach (Administrative Record Number WV–1452).

As discussed above under Finding 1, EPA has launched a Good Samaritan Initiative, but it does not have these requirements under either the CWA or its implementing regulations. Although EPA supports the proposed State requirements, it needed assurance that the State provisions would not limit its authority. Therefore, as acknowledged in Finding 1, OSM approved the State's Environmental Good Samaritan Act at W.Va. Code 22–27–1 *et seq.* with the understanding that none of the provisions therein can be interpreted now or in the future as abrogating the authority or jurisdiction of the EPA under the CWA.

V. OSM's Decision

Based on the above findings, we are approving, except as noted below, the program amendment that West Virginia sent us on June 13, 2005, and that was modified on August 23, 2005. In addition, the following required program amendments are satisfied and can be removed: 30 CFR 948.16(a), (sss), (wwww), (fffff), (iiiii), (jjjjj), (kkkkk), (lllll), (ooooo), (ppppp), and (rrrrr).

W.Va. Code 22–27–1 *et seq.* (the State's Environmental Good Samaritan Act) is only approved to the extent that none of the provisions therein can be interpreted as abrogating the authority or jurisdiction of the EPA.

CSR 38–2–3.29.a is approved with the understanding that the State will insert a period after "IBR" and delete the words, "or where it has been demonstrated to the satisfaction of the Secretary that limited coal removal on areas immediately adjacent to the existing permit."

CSR 38–2–5.4.b.10 is approved with the understanding that it provides for a 1.3 minimum static safety factor for all other impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or are not impoundments that meet the Class B or C criteria for dams in TR–60, and are not coal mine waste impounding structures.

CSR 38–2–5.4.b.12 is approved with the understanding that the reference to CSR 38–2–5.4.b.10 in the proposed provision means that foundation investigations and any necessary laboratory testing of foundation materials must be performed for impoundments that meet the Class B or C criteria for dams at TR–60, the size or other criteria of MSHA at 30 CFR 77.216(a), or the West Virginia Dam Control Act.

CSR 38–2–5.4.c remains approved with the understanding that stability analyses will be conducted for all structures that meet the Class B or C criteria for dams in TR–60 as required by 30 CFR 780.25(f).

CSR 38–2–5.4.d.4 is approved with the understanding that design plans for impoundments that meet the Class B or C criteria for dams in TR–60 and meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a) will be prepared by, or under the direction of, and certified by a registered professional engineer as provided by 30 CFR 780.25(a)(2). Also, CSR 38–2–5.4.d.3 is approved with the understanding that the design plans for all other structures not included in Subsections 3.6.h.5 or 5.4.d.4 will be prepared by, or under the direction of, and certified by a registered professional engineer or licensed land surveyor as provided by 30 CFR 780.25(a)(3). Subsection 38–2–5.4 is approved with the understanding that the design plan requirements at Subsection 3.6.h apply to those impoundments that meet the Class B or

C criteria for dams in TR–60 or meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a) as provided by 30 CFR 780.25(a)(2). Subsection 5.4 to the extent that the design plan requirements at Subsection 3.6.h apply to all other impoundments not identified above as provided by 30 CFR 780.25(a)(3).

At CSR 38–2–5.4.e.1, the words "Impoundments meeting" are not approved.

CSR 38–2–7.4.b.1.D.11 is approved with the understanding that sufficient forestry mine soil shall be placed on valley fill faces to sustain vegetation and support the approved postmining land use.

At CSR 38–2–7.4.b.1.J.1(c), the deletion of the following words is not approved: "surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D."

CSR 38–2–9.3.d and 9.3.e are approved with the understanding that the statistically valid sampling technique to be used must receive the approval of the regulatory authority, and it will be a part of the approved permit application.

At CSR 38–2–14.14.g.2.A.6, the language which provides "Unless otherwise approved in the reclamation plan," is approved and the disapproval codified at 30 CFR 948.12(g) has been fully resolved.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that a portion of the provisions in 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 they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations 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.*). This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 12, 2006.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.12 is amended by removing and reserving paragraph (g) and adding new paragraph (i) to read as follows.

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(i) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on June 13, 2005, and modified on August 23, 2005:

(1) At CSR 38–2–5.4.e.1, the words "Impoundments meeting."

(2) At CSR 38–2–7.4.b.1.J.1(c), the deletion of the words "surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D."

■ 3. Section 948.15 is amended by adding a new entry to the table in chronological order by "Date of publication of final rule" to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description
* *	* *	* *
June 13, 2005, and modified on August 23, 2005.	March 2, 2006	W.Va. Code 22–3–11(h)(2)(B); 11a; 32a; 22–27–1 through 12. CSR 38–2–2.92; 3.29.a; 5.4.a, b.9, b.10, b.12, c.7, d.3, d.4, e.1, f; 7.4.b.1.A.1, A.3, A.3(b), A.4, B.1, C.1, C.2, C.3, C.4, C.5, D.6, D.8, D.9, D.11, H.1, H.2, H.6, I.1, I.2, I.3, I.4, J.1; 7.5.a, b.3, i.10, j.3.A, j.3.B, j.3.E, I.4.A, o.2; 9.3.d, 9.3.e; 14.5.h, 14.14.g.2.A.6; 14.15.c.3; 20.6.d, 20.6.j. CSR 199–1–2.36a, 2.36b, 2.37; 3.3.b, 3.7; 4.8, 4.8.c, 4.8.f, 4.8.g, 4.9; Water Rights and Replacement Policy (August 1995); September 2003 MOA between WVDEP, DMR and WVDNR, Wild Resources Section; Permittee's Request for Release form, Item 11, dated March 2005.

§ 948.16 [Amended]

■ 4. Section 948.16 is amended by removing and reserving paragraphs (a), (sss), (wwww), (fffff), (iiiii), (jjjjj), (kkkkk), (lllll), (ooooo), (ppppp), and (rrrrr).

[FR Doc. 06–1901 Filed 3–1–06; 8:45 am]

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Federal Register

Thursday,
March 2, 2006

Part III

The President

Proclamation 7984—Establishment of the African Burial Ground National Monument

Federal Register
Vol. 71, No. 41
Thursday, March 2, 2006

Presidential Documents

Title 3—

The President

Proclamation 7984 of February 27, 2006

Establishment of the African Burial Ground National Monument

By the President of the United States of America

A Proclamation

In Lower Manhattan, at the corners of Duane and Elk Streets, lies an undeveloped parcel of approximately 15,000 square feet that constitutes a remaining portion of New York City's early African Burial Ground. The site is part of an approximately 7-acre National Historic Landmark established on April 19, 1993. From the 1690s to the 1790s, the African Burial Ground served as the final resting place of enslaved and free Africans in New York City, New York. It contains the remains of those interred, as well as the archeological resources and artifacts associated with their burials. Prior to the date of this proclamation, the site was administered by the General Services Administration (GSA), and it will be the location of a memorial, to be constructed soon according to a design selected on April 29, 2005, through a competition conducted by the GSA with the participation of the National Park Service (NPS) and other interested parties.

Whereas the African Burial Ground National Monument will promote understanding of related resources, encourage continuing research, and present interpretive opportunities and programs for visitors to better understand and honor the culture and vital contributions of generations of Africans and Americans of African descent to our Nation;

Whereas section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the "Antiquities Act") authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

Whereas it would be in the public interest to preserve the portion of the African Burial Ground at the corner of Duane and Elk Streets in New York City, and certain lands as necessary for the care and management of the historic and scientific objects therein, as the African Burial Ground National Monument;

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the African Burial Ground National Monument for the purpose of protecting the objects described above, all lands and interests in lands owned or controlled by the Government of the United States with the boundaries described on the accompanying land description, which is attached and forms a part of this proclamation. The Federal land and interests in land reserved consist of approximately 15,000 square feet, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests of lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

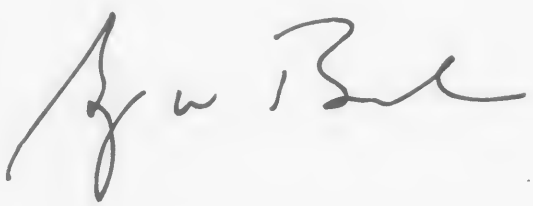
The Secretary of the Interior (Secretary), acting through the NPS, shall administer the national monument consistent with the purposes and provisions of this proclamation and applicable laws and regulations governing management of units of the national park system. For the purposes of preserving, interpreting, and enhancing public understanding and appreciation of the national monument and its meaning to society, the Secretary, acting through the NPS, shall develop an interagency agreement with the Administrator of General Services and, within 3 years of the date of this proclamation, prepare a management plan for the national monument. The management plan shall, among other provisions, set forth the desired relationship of the national monument to other related resources, programs, and organizations in New York City and other locations, provide for maximum public involvement in its development, and identify steps to be taken to provide interpretive opportunities for the entirety of the National Historic Landmark and related sites in New York City. Further, to the extent authorized by law, the Secretary, acting through the NPS, shall promulgate any additional regulations needed for the proper care and management of the objects identified above.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



Billing code 3195–01–P

DESCRIPTION OF LANDS CONSTITUTING THE
AFRICAN BURIAL GROUND NATIONAL MONUMENT

This document describes the lands that are set apart and reserved as the African Burial Ground National Monument pursuant to the accompanying proclamation. A legal description of the tract is set out below. The tract also appears on the map entitled "African Burial Ground National Monument," dated December 2005, Map Number 762/80,000, which is attached to this document for reference purposes. The United States owns this tract in fee simple.

The national monument will also include all rights, hereditaments, easements, and appurtenances to property owned by the United States, belonging or otherwise appertaining, as well as any associated Federally owned property of historical interest.

All that certain tract or parcel of land lying and being situated in the Borough of Manhattan, City of New York, State of New York, and being more particularly described as follows:

BEGINNING at a point of intersection of the southerly line of Duane Street with the westerly line of Elk Street, said point having coordinates based on Sheet 5 of the Borough of Manhattan, Borough Survey of N 6,782.392, W 8,295.507, said point of beginning being South 03° 29' 30" West, 5.00 feet from an X-cut set in the concrete sidewalk and North 87° 14' 32" West, 5.00 feet from a cap set in the concrete sidewalk, running, thence;

1. Along the westerly line of Elk Street, South 03° 29' 30" West, 97.09 feet to a point where the same is intersected by the southerly right-of-way line of Republican Alley, thence;

2. Along said southerly line of Republican Alley, North 87° 32' 52" West, 151.90 feet to a point where the same is intersected by the northerly prolongation of the westerly wall of an existing five story block and brick building, thence;

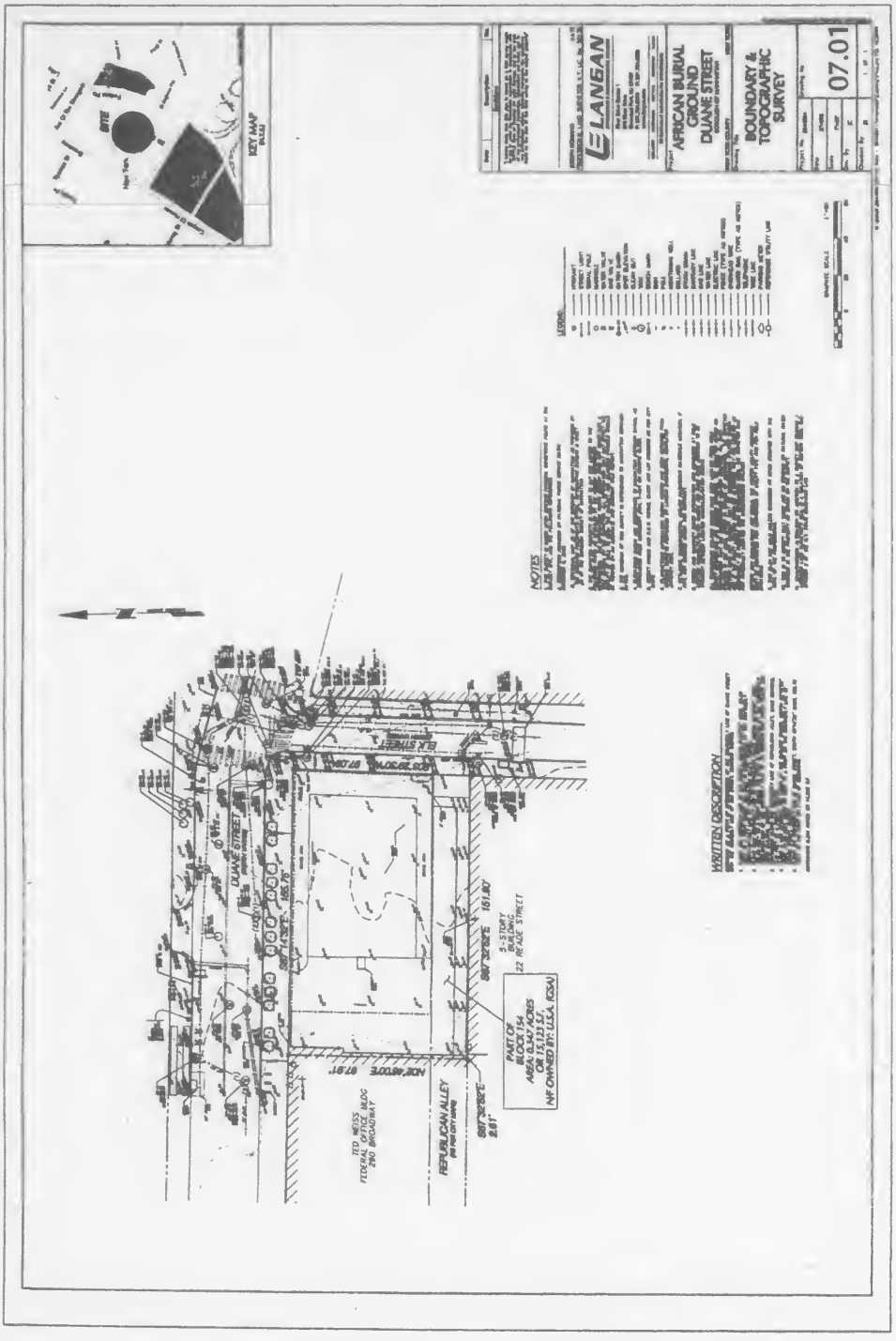
3. Continuing along the southerly line of Republican Alley, same bearing, 2.61 feet to a point, thence;

4. Along a line severing the lands of the subject owner, North 02° 46' East, 97 feet, more or less to a point on the southerly line of Duane Street, thence;

5. Along the southerly line of Duane Street, South 87° 14' 32" East, 155.75 feet to the point or place of BEGINNING.

Containing 0.35 of an acre, more or less.

Being a portion of a parcel called "Government Office Building Site" acquired by the United States of America included in a Final Judgment of Condemnation, 90 Civ. (HGM), dated December 13, 1990.



[FR Doc. 06–2023

Filed 3–1–06; 8:45 am]

Billing code 3195–01–C

Federal Register

Thursday,
March 2, 2006

Part IV

Department of Labor

Employment and Training Administration

Older Americans Act—Solicitation for Grant Applications; Senior Community Service Employment Program National Grants for Program Year 2006; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Older Americans Act—Solicitation for Grant Applications; Senior Community Service Employment Program National Grants for Program Year 2006

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and solicitation for grant applications for the national grants portion of the Senior Community Service Employment Program.

Announcement Type: New.
Funding Opportunity Number: SGA/DFA–PY 05–06.

Catalog of Federal Domestic Assistance Number: 17.235.

DATES: The closing date for receipt of applications is April 17, 2006.

SUMMARY: The U.S. Department of Labor (the Department), Employment and Training Administration (ETA) announces a grant competition for national grantee funding under the Senior Community Service Employment Program (SCSEP) authorized under title V of the Older Americans Act Amendments of 2000 (OAA Amendments), Pub. L. 106–501, 42 U.S.C. 3056 and implemented under 20 CFR part 641 (April 9, 2004).

These projects will promote part-time work-based training opportunities in local communities for unemployed, low-income individuals who are age 55 and over, and will foster increased prospects for their economic self-sufficiency. SCSEP is the only nationwide Federal program that focuses on training and placing older individuals into community work-based training and unsubsidized employment.

The total amount of funds available for this SGA is approximately $341,000,000, or 78 percent of the total appropriation for Program Year (PY) 2006 (July 1, 2006 through June 30, 2007). It is anticipated that no more than 20 awards will be made under this SGA, including at least one award to an Indian and Native American organization and at least one award to an Asian Pacific Islander organization, as required by section 506(a)(3) of the OAA Amendments. Eligible entities include any non-profit organization, Federal public agency, or Tribal organization that has the ability to operate in more than one state and that meets the eligibility and responsibility requirements outlined in 20 CFR part 641 subpart D. The remaining 22 percent of the appropriation is reserved for state formula-funded programs and therefore, is not included in this SGA.

The Department is holding a full and open competition in order to provide better services to SCSEP participants, employers, and the communities served by the national grant program. Open competition is not only the preferred vehicle for obtaining new grantees, but in most cases, it is the required vehicle for obtaining new grantees. The Department favors full and open competition because it provides an opportunity to ensure that the best applicants are awarded grants and that the program is administered effectively.

The Department held the first competition for national grant funding in PY 2003. As a result of that competition, the Department selected four new national grantees, and made extensive changes to the areas served by the incumbent grantees. These grantees provide diversity in services, including expertise in serving individuals with disabilities and minority populations as well as close connections with One-Stop Career Centers. The Department deems it important to maintain diversity among qualified service providers to the extent possible. The Department is especially interested in organizations that demonstrate a partnership with local One-Stop Career Centers and community colleges and that promote employment through high growth job opportunities.

Under this SGA, the Department will be consolidating grantee service areas to increase program effectiveness and achieve economies of scale. Therefore, applicants are required to apply for contiguous locations within a state. Applicants applying as Asian and Pacific Islander and/or Indian organizations, pursuant to section 506(a)(3) of title V of the OAA, are exempt from this contiguousness requirement. The Department reserves the right to negotiate with successful applicants on the final service areas.

SUPPLEMENTARY INFORMATION: This SGA consists of eight (8) sections:

- Section I provides background information about the program.
- Section II describes the size and nature of the anticipated awards.
- Section III describes applicant eligibility criteria.
- Section IV outlines the application submission and withdrawal requirements.
- Section V describes the application review process and rating criteria.
- Section VI outlines additional award administration information.
- Section VII contains DOL agency contact information.
- Section VIII describes the notice to state and incumbent national grantees, bidders' conference information, and procedures for asking questions about this SGA. This section also lists appendices for other supplemental information, including a list of resources.

I. Funding Opportunity Description

The SCSEP was originally authorized in 1965 by the Economic Opportunity Act, Public Law 89–73. In 1973 the SCSEP was authorized under the Older Americans Act (OAA). As authorized by title V of the OAA of 2000 (42 U.S.C. 3056 *et seq.*), the SCSEP fosters and promotes useful part-time work-based training opportunities in community organizations for persons with low incomes who are 55 years of age or older. Program participants receive on-the-job training at local public or non-profit agencies and are paid the higher of the Federal, state, or local minimum wage or the comparable wage for approximately 20 hours per week while in job training (OAA Amendments § 502(b)(1)(J); 20 CFR 641.565(a)). The ultimate goal is to assist the transition of older individuals into unsubsidized employment that leads to self-sufficiency.

The Fiscal Year 2005 total appropriation was $438,678,400 and applied to the Program Year that began on July 1, 2005. This funding supported over 61,300 positions and will result in approximately 93,000 people being served during the program year that ends on June 30, 2006.

The following information describes key aspects of the program. For a more in-depth understanding, applicants should read the resources listed in Section VIII of this SGA.

Eligible Participant. An individual is eligible for the program if he or she is unemployed at the time of enrollment, is age 55 or older, and has an income of no more than 125 percent of the Federal poverty guidelines.

Services for Individuals with Multiple Barriers to Employment. SCSEP is a focused program that seeks to serve those most in need as provided at 20 CFR 641.525. These individuals are age 60 or over and who have the greatest economic need, or greatest social need, or poor employment history or prospects.

Individual Employment Plans (IEP). As required at 20 CFR 641.535, each SCSEP participant must be assessed to determine his or her skills and employment-related needs and a plan must be developed to improve the participant's employability. The IEP generally includes a goal of

unsubsidized employment and an appropriate sequence of services and training for that participant based on the assessment. (Other employment and training programs sometimes refer to this type of plan as an Individual Development Plan or Individual Training Plan). Grantees should monitor IEP progress regularly and are required to update an IEP (if necessary) for each participant at least twice during a 12-month period.

Unsubsidized Employment. An important goal of the program is to help participants achieve self-sufficiency. Grantees provide training opportunities that enable participants to obtain employment. In addition, grantees provide regular follow-up communication with the participant and employer to ensure that the participant is retained in the job. Grantees may also provide supportive services to successfully placed participants for up to 6 months to enable them to remain employed. Successful employment and retention in a job should result from quality training efforts and good employer relationships.

Community Service Work-Based Training. Providing subsidized work-based training through community service is an important aspect of SCSEP. Participants obtain the confidence needed to become employable and the organizations that "host" the participants receive volunteer work. As provided at 20 CFR 641.140, community service may include, but is not limited to, such activities as social, health, welfare and educational services, counseling services, including tax counseling, environmental efforts, weatherization efforts and economic development. The training provided at these host agencies must be consistent with the participant's IEP. Participants receive wages paid by the grantee while they are in work-based training.

Host Agencies. Host agencies provide the worksites for program participants and may be public or private 501(c)(3) organizations, including community-based and faith-based organizations, authorized Federal agencies, state agencies, or local public agencies. Host agencies are an important component of the program because they provide training and work experience for participants. Grantees must work with host agencies to identify appropriate training that does not lead to maintenance of effort violations. Therefore, the grantee's communication with and training for the host agency directly affects the value of the work-based training experience for the participants, and the participants' ability to obtain unsubsidized employment.

Other Permissible Training. Training other than work-based training is an important tool to improve the skills and talents of participants, to help them succeed in their community service assignments, and to facilitate placement of participants in unsubsidized employment. How much training, and what types of training are necessary are based on each individual participant's IEP, but may include classroom training, general skills training, or specialized training.

Coordination With One-Stop Career Centers, State and Local Workforce Investment Boards, State Agencies on Aging, Area Agencies on Aging, Other Grantees and SCSEP 502(e) Program Grantees. As a required partner, all SCSEP grantees are required to coordinate activities with local One-Stop Career Centers administered by Local Workforce Investment Boards under the Workforce Investment Act (WIA), Pub. L. 105–220, through a Memorandum of Understanding (MOU). For instance, as provided at 20 CFR 641.230, participant determinations of eligibility and needs assessments completed by the SCSEP satisfy any condition for an assessment under WIA and vice-versa.

Coordination with state agencies on aging and area agencies on aging is required to ensure seamless support of aging individuals, which also helps participants achieve self-sufficiency. These organizations often operate local SCSEP programs but also offer supportive benefits to seniors. Grantees are also encouraged to coordinate efforts with other SCSEP grantees.

Participant Wages and Fringe Benefits. Grantees are required to spend a minimum of 75 percent of the Federal grant funds on participant wages and fringe benefits. Participant wages are based on the higher of the Federal, state, or local minimum wage, or at a comparable wage for time spent in approved program activities only (e.g., community service training, other permissible training). See Section II of this SGA for funding calculation information. Generally, payments are made every 2 weeks.

Although the Department discourages grantees from providing permissive fringe benefits, such as annual leave and sick leave, because they dissuade participants from obtaining unsubsidized employment, applicants will not be penalized if they elect to provide such benefits. If a grantee provides such benefits, they must be consistently applied to all participants and expire at the end of every program year. Workers' compensation is a statutorily required fringe benefit that must be provided to each participant, and falls into a different cost classification from the workers' compensation provided to the grantee's employees. Please see 20 CFR 641.565(b)(iii). Physical examinations must also be offered to every participant as required under 20 CFR 641.565(b)(ii)(A).

Equitable Distribution (ED). Section 507 of the OAA Amendments requires the Department to ensure that services are provided equitably within each state. The calculation is based on census data by county and state and annual program appropriations, and results in the number of authorized positions or "slots" that are allocated to each county. The number of authorized positions is proportional to the number of eligible people in the county compared to the state total. For every slot, one or more individuals can receive services through the program year. For instance, when a participant exits the program for employment, a new individual may be enrolled based on remaining program funds.

Right of First Refusal. Under this solicitation, all successful applicants must allow the current participants to remain in the program under the same conditions in which they are found in order to minimize disruptions to the program. Therefore, while participants may not elect to remain under a former grantee, they must be able to continue community service work-based training with the same host agency for a minimum of 90 days after July 1, 2006.

Administrative Costs. The administrative allowance for the program is 13.5 percent of the Federal share. Administrative costs are defined in the OAA Amendments at section 502(c)(4) and 20 CFR 641.856. This administrative limit may be extended to 15 percent as permitted under section 502(c)(3) of the OAA Amendments and 20 CFR 641.867.

Non-Federal Share Requirement. Section 502(c)(1)–(2) limits the Department's cost of operating the program to 90 percent. Therefore, each grantee must contribute a minimum of 10 percent to the program through cash or in-kind contributions. This requirement also applies to Federal agencies unless a statutory exemption is demonstrated. Grantees are prohibited from requiring local projects or subgrantees from providing match as a condition of receiving funds. For more information on non-Federal share requirements, please see 20 CFR 641.809 and 29 CFR 95.23.

Subgrantee. This is defined as any organization that provides program services on behalf of the grantee. There are no statutory restrictions on the type of entity that may be a subgrantee; however, all subgrantees are required to follow all applicable Department rules, regulations, and policy advisories. Some examples of entities that may be subgrantees include, but are not limited to, community and faith-based organizations, community colleges, state agencies, One-Stop Career Centers, for-profit organizations, and tribal organizations.

Extension of Funding. At the request of a grantee, the Department may permit a grantee to extend the use of any remaining program year grant funds beyond the program year. The Department discourages such practice and will grant an extension only under extenuating circumstances.

Performance Measures. The performance measures for the program are outlined in 20 CFR part 641 subpart G and Appendix I. These goals are designed to ensure that grantees are enrolling those individuals who need the most training assistance to obtain employment. They also ensure that participants are placed into and retained in jobs and that they continue to improve their skills and employability. The Department expects continuous performance improvement from the program overall, which is measured under the Government Performance and Results Act (GPRA) of 1993 through established program goals. The ability of a grantee to meet the performance measures depends largely on how successful the grantee is at recruiting, conducting outreach, identifying job openings, training participants, and successfully matching participants with jobs.

II. Award Information

Type of Assistance Instrument. This is an initial one year grant unless extended by the Department under extenuating circumstances as described in Section II–C. The grant may be extended for an additional two years, contingent upon the grantee meeting or exceeding the minimum negotiated performance measures as required by section 514(a) of the OAA Amendments and 20 CFR 641.700.

A. Service Locations

The applicable service locations are listed by state and county in Section VIII, Appendix F of this SGA. Please note that national grant funds are not allocated for the states of Alaska, Delaware, and Hawaii, and for the territories of American Samoa, Guam, Northern Marianas Islands, and the U.S. Virgin Islands.

B. Funding Levels

(1) *Funding Amount and Total Awards.* The total amount of funds available for this SGA is approximately $341,000,000. It is anticipated that no more than 20 awards will be made under this SGA, including at least one award to an Indian organization and at least one to an Asian Pacific Islander organization that serve older individuals.

(2) *Mininum Request for Funding.* In order to deliver services more efficiently and to reduce duplicative administrative costs, the Department seeks to reduce the number of national grantees serving individual local areas through this SGA. To that end, certain requirements have been placed on the size of requests for funding.

Applicants must apply for at least 10 percent of the state allocation or $1,600,000 (approximately 224 slots) in each state, whichever is greater. (*See* examples 1 and 2 below.) This requirement does not preclude an applicant from applying for more than 10 percent of the allocated amount in a state. In fact, the Department encourages applicants to apply for 20–25 percent for maximum efficiencies of operation.

Applicants must also apply for all of the positions allocated in a county, except in large counties that exceed the 10 percent or $1.6 million state minimum. The Department may award two or more grants in large counties that have more than 224 positions (or more than $1.6 million). For those large counties, the applicant may apply for a portion of the county; but if that does not meet the 10 percent or $1.6 million state minimum, the applicant must also apply for surrounding contiguous counties.

In addition, requests for multiple counties in a state must be contiguously located to receive consideration. An applicant may apply for more than one cluster of counties in a state, such as in larger states, but each cluster must meet the minimum state funding requirements.

Applicants must list their requests for locations and number of positions by county and state in a chart format. This chart is available in Excel format with accompanying instructions at *http://www.doleta.gov/seniors/*. Applicants are required to submit this file electronically as part of the application packet.

Example 1: Organization A submits an application to provide services in Wyoming, which has 230 available slots. Organization A must apply for all of the available slots in Wyoming.

Example 2: Organization B submits an application to provide services in California, which has 4,080 available slots but only wants to operate in the Oakland area, which is in Alameda County. In order to be considered for an application, Organization B must meet the minimum funding requirements, which in this case is 10 percent or $2,918,424 (408 slots) in California. Organization B must apply for the 158 slots in Alameda County or $1,130,174, and the slots in any contiguous counties to meet the minimum state funding request. In this example, Contra Costa, Santa Clara, and Stanislaus Counties are contiguously located. Therefore, Organization B could also apply for 81 slots in Contra Costa or $579,606; 131 slots in Santa Clara County or $937,043; and 61 slots in Stanislaus County or $436,333 for a total request of $3,082,943, or other contiguous counties to meet the minimum funding requirements.

(3) *The Calculation Formula.* Applicants can calculate the estimated amount of funds allocated to a state by county using the "cost per authorized position" formula in section 506(g)(1) of the OAA Amendments. The unit cost is roughly $7,153 per authorized position based on the Federal minimum wage. This amount represents the total funding allocated for each authorized position, including administrative costs. Applicants should multiply this amount by the number of positions in the county as listed in Section VIII, Appendix F of this SGA.

Example: Stanislaus County, California has 61 available positions in the county. Therefore, the amount of funding would be $7,153 × 61 = $436,333. Although this is only an estimate of cost per authorized position, it is a useful tool for applicants to determine their funding request under this proposal.

Note: A higher state minimum wage does not impact the slot funding calculation, but is a factor that is considered for performance measure calculations.

(4) *Calculation Requirements.* Calculations must be based on the number of authorized positions as a result of equitable distribution rather than the actual number of positions that currently exist in the county. This requirement encourages equitable distribution of positions. Therefore, under-served areas will be funded to provide services to more needy individuals in those counties. However, those counties that are over-served will not be funded to provide for all current participants. It will be the successful applicant's responsibility to move these eligible participants into unsubsidized employment or to fund the positions as part of a non-Federal share contribution. In exceptional circumstances, the transition period may exceed one year.

(See Appendix F for the number of authorized positions in each county.)

Example 1: Alameda County, California should receive 158 positions according to the equitable distribution formula. However, this county is currently over-served by 20 positions. An organization applying for this county will only be funded for the 158 positions or $1,130,174. The successful applicant will be responsible for either placing 20 participants in unsubsidized employment or funding the positions using grant or non-Federal share (match) funds. (See Appendix F for the number of authorized positions and the current level of filled positions.)

Example 2: San Joaquin County, California should receive 85 positions according to the equitable distribution formula. However, this county is currently under-served by 7 positions. An organization applying for this county will be funded for 85 positions or $608,005 and will be able to enroll additional participants in the program in the county.

(5) *Disqualification Statement.* A failure in the application to adhere to these requirements will result in the disqualification of the applicant to compete for the area(s) impacted.

Note: The Department reserves the right to make final decisions on the service providers in an area and may take into consideration special local conditions and otherwise unforeseen circumstances including combining metropolitan areas across state borders.

C. Period of Performance

Successful applicants under this SGA are expected to commence program operations on July 1, 2006. The period of performance will initially be for one (1) year (unless extended by the Department under extenuating circumstances) with an option to be funded for an additional two (2) years at the Department's discretion. However, the Department's option to refund the initial grant is contingent upon the grantee meeting or exceeding the minimum negotiated performance measures as required by section 514(a) of the OAA Amendments and 20 CFR 641.700.

III. Eligibility Information

A. Eligible Applicants

In order to be eligible to compete for funds under this SGA, the applicant must demonstrate that it is capable of operating in more than one state as required at 20 CFR 641.140. This requirement does not preclude an organization from applying for areas in only one state as long as the other requirements are met. Note, however, that the Department reserves the right to award only one applicant per state.

Applicants must also meet the responsibility and eligibility tests under section 514(b)–(d) of the OAA Amendments and 20 CFR 641.430—641.440 and the funding requirements in Section II above.

Applicants may apply to receive a grant under one or more of the following three (3) categories:

(1) *General National Grant Funds.* Applications for general SCSEP national grant funds will be accepted from public and private nonprofit agencies and organizations, including faith-based and community-based organizations, and tribal organizations consistent with section 502(b)(1) of the OAA Amendments and 20 CFR 641.400(a), that are familiar with the areas and populations to be served and that can administer an effective program in more than one state.

"Nonprofit" is defined as an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual (OAA Amendments § 101(4)).

"Public agency" is defined as a Federal public agency with the statutory authority to receive other Federal grant funds (also known as gift authority) (20 CFR 641.400).

"Tribal organizations" is defined as the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body (OAA Amendments § 101(7) and 20 CFR 641.140). In any case in which a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe is a prerequisite to the letting or making of such contract or grant.

Applicants must mark a "G" on the application and state specifically in the application that they are applying for general SCSEP national grant funds.

(2) *Indian Grant Funds.* Applications will be accepted from public or nonprofit national Indian aging organizations with the ability to provide employment services to older Indians as required by section 506(a)(3) of the OAA Amendments.

"Indian" means a person who is a member of an Indian tribe (OAA Amendments § 101(5) and 20 CFR 641.140).

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or state reservation (OAA Amendments § 101(6) and 20 CFR 641.140).

Applicants must mark an "I" on the application and state specifically in the application that they are applying for Indian SCSEP national grant funds. The Department may take local needs and population characteristics into consideration when making funding decisions.

(3) *Pacific Islander and Asian American National Grant Funds.* Applications for Pacific Islander and Asian American national grant funds will be accepted from national public or nonprofit Pacific Islander and Asian American aging organizations with the ability to provide employment to older Pacific Islanders and Asian Americans, as required by section 506(a)(3) of the OAA Amendments.

"Pacific Islander and Asian American" means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands (OAA Amendments § 516(3)).

Applicants must mark an "AP" on the application and state specifically in the application that they are applying for Pacific Islander and Asian American SCSEP national grant funds. The Department may take local needs and population characteristics into consideration when making funding decisions.

(4) *Other Useful Information.* Applicants applying for more than one category above must submit separate applications for each category for which they are applying. Please note, however, that regardless of the category selected, all successful applicants are required to serve any eligible individual within the awarded counties and states. Consideration of ethnic or racial status is only a factor for tracking services provided to individuals with multiple barriers to employment as defined in Section I of this SGA.

Entities may apply as a consortium, but each member of the consortium must meet all eligibility and responsibility tests. Entities applying as a consortium are also jointly and severally liable for meeting all requirements for administering this Federally-funded program.

In the context of this SGA, a consortium is two or more eligible entities that enter into a legal agreement to apply for SCSEP funds as if they were applying as a single organization. For grant administration purposes, the

consortium must identify one organization as the lead contact.

B. Veterans Priority

This program is subject to the priority provisions of the Jobs for Veterans Act, 38 U.S.C. 4215 *et seq.* In cases where providers of services must choose between two or more candidates with similar backgrounds and skill sets, the Jobs for Veterans Act requires that veterans and spouses of certain specified veterans be given priority. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. The advisory providing policy guidance on veterans' priority is at *http://www.doleta.gov/programs/VETs/.* Veterans priority for SCSEP is described at 20 CFR 641.520.

Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance. The government is generally prohibited from providing direct Federal financial assistance for inherently religious activities. Grants under the solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

C. Ineligible Applicants

Proposals will not be accepted from the following applicants:

(1) Organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying are prohibited from receiving Federal awards under Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65.

(2) Organizations that fail to provide any of the required information described in this SGA, or fail to clearly identify the number and location by county of slots requested.

(3) Organizations that fail to demonstrate that they are capable of operating in more than one state, as required by 20 CFR 641.400(a).

(4) Organizations that apply to serve Alaska, Delaware, and/or Hawaii only.

(5) With the exception of Federal public agencies, other public agencies, such as state agencies or local governments, are not eligible to apply.

D. Cost Sharing or Matching

All applicants, including Federal agencies, must demonstrate a minimum of 10 percent non-Federal contribution to the program and the source of such non-Federal share. Federal agencies that have a statutory exemption to the non-Federal share requirement must attach a copy of the exemption language. The source of such documentation must be easily determined. Please see 20 CFR 641.809 for further information.

IV. Application and Submission Information

A. Address To Request Application Package

All application materials will be made available on the following Web sites: *http://www.doleta.gov/sga/; http://www.grants.gov;* and *http://www.doleta.gov/seniors/.* Please note that this announcement includes all information and forms needed to apply for this funding opportunity.

B. Content and Form of Application

Each application must include the original signed application and two hard copies. The proposal must consist of two separate and distinct parts: Part A—Financial Proposal and Part B—Technical Proposal. Both parts must be included in each copy of a complete application. Applications that fail to adhere to the instructions in this section will be deemed non-responsive and will not be considered for funding.

1. Requirements for the Technical Proposal

Page Limit. Maximum forty-five (45) page narrative, including all optional attachments, single-side only on 8½" x 11" paper. Pages must be numbered. Only those attachments listed below as "Required Attachments" will be excluded from the page limit. Optional attachments must be limited to meaningful information that contributes to and/or verifies the proposed activities, such as letters of commitment.

Spacing. Double-spaced with the exception of optional and required attachments. Major sections and sub-sections of the application should be divided and clearly identified.

Font Size and Typeface. Minimum 12 points in Times New Roman typeface.

Margins. Must be a minimum of one inch on all sides.

Required Attachments. The following attachments must be affixed as separate, clearly identified appendices to the application and will not count against the page limit:

(a) An organizational chart, resumes of key personnel, and complete staffing plans. Resumes of all key staff (*e.g.*, Executive Director, Project Director, etc.) must include a description of each individual's roles and responsibilities, his/her current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Staffing plans must identify all key tasks, the person(s) or days required to complete each task, and the percentage of time allocated to the program by individuals assigned to the task, including sub-contractors and consultants;

(b) A list of all government grants and contracts the applicant and its affiliates have had in the past 3 years, including grant officer contact name, telephone number and e-mail address, amount of award, summary of the work performed, period of performance, and performance record and/or accomplishments. For purposes of this SGA, the term "affiliate" refers to the applicant's subsidiaries, divisions, predecessors, and successors;

(c) Chart listing the number of positions for which the applicant is applying to serve by county and state. (See Section VIII, Appendix K of this SGA);

(d) Consortium agreement, if applicable; and

(e) Federal agencies must submit a clearly identifiable copy of the statutory provision that permits it to receive other Federal funds and a clearly identifiable copy of any applicable exemptions from the non-Federal share requirements.

Note: Applicants receiving awards will be expected to show audit reports for the past 3 years for the applicant and its affiliates before final awards are made.

2. Requirements for the Cost Proposal

Application for Federal Assistance SF–424. The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement on behalf of the applicant. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall represent the responsible entity. All applications for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. Applicants must supply their DUNS number in item #8 of SF–424. The DUNS number is easy to obtain and there is no charge. To obtain a DUNS number, access *http://www.dnb.com* or call 1–866–705–5711.

Budget Information for SF–424A. Standard Form 424A must contain a detailed cost break out on each of the expenditures under Section B of the form, including Federal and non-Federal funds. Copies of all required forms along with the instructions for completing the forms are provided at the appendices of this SGA.

Note: The Application for Federal Assistance (SF424) and the Budget Information Form (SF–424A) are available at *http://www.grants.gov/GovtWideForms.*

Indirect Cost Rate. An indirect cost rate is required when an organization operates under more than one grant or other activity whether Federally-assisted or not. Organizations must use the indirect cost rate supplied by the cognizant Federal agency. If an organization requires a new indirect cost rate or has a pending indirect cost rate, the Department's Grant Officer will award a billing rate for 90 days until a provisional rate can be issued.

Cost Categories. Expenditures must fall under one of two cost categories: Administrative, which is to be divided between headquarters and local, and Program Costs, which includes wages, fringe benefits, and other participant costs.

Sufficient Local Funding. The OAA, at section 502(b)(1)(R) requires each grantee to allocate funding for administrative costs incurred at subrecipient levels for program administrative activities. In addition, grantees may not require a subgrantee to contribute financial resources to program operations as a condition of operating the program. Please see 20 CFR 641.861 and 641.809(e) for further information.

Transition and Training Costs. Applicants are required to provide a line item for transition costs (i.e., start-up [costs], participant transfers, year-end closeout), as well as for sufficient training costs for local staff that may be required by the Department throughout the program year. Procurement procedures must comply with OMB Circular A–122.

Required Attachments. Assurances, Certifications, Signature page and Disclosure of Lobbying Activities form are required.

Note: The cost proposal must be prepared to cover program costs for one (1) year of operation only.

C. Submission Dates, Times, and Addresses

Applications may be submitted in either method described below but must be received no later than 4:45 p.m., Eastern Time on the closing date. The application will not be considered if an applicant fails to adhere to the submission instructions below.

Electronic Submissions. The Department requests that applicants apply online at *http://www.grants.gov.* The Department strongly recommends that applicants initiate and complete the "Get Started" steps to register with grants.gov at *http://www.grants.gov/GetStarted.* Please note that these steps could take several days to complete, which should factor into an applicant's submission timing to avoid the rejection of an application due to potential delays. Documents should be saved as .doc or .pdf prior to electronic submission through grants.gov.

U.S. Postal Mail and Overnight Submissions. Submit one (1) blue-ink signed, typewritten original of the application, and two signed photocopies in one package to: U.S. Department of Labor, Employment and Training Administration, Attention: James Stockton, Mail Stop N–4716, 200 Constitution Avenue, NW., Washington, DC 20210.

Other Methods of Submission. Applications submitted by e-mail, telegram, or facsimile will not be accepted.

Late Applications. Any application received after the closing date will not be considered, unless it is received before awards are made and:

(a) It was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date (*e.g.*, an application required by the 20th of the month must be postmarked by the 15th of that month); or

(b) It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 4:45 pm at the place of mailing, two (2) working days (excluding weekends and Federal holidays and days when the Federal Government is closed), prior to the closing date; or

(c) It is determined by the Government that the late receipt was due solely to the mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

Acceptable Evidence for Late Applications. The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the closing date and time shall be considered as if mailed late.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the "Express Mail/Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service.

"Postmarked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, with further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

Mail Advisory in the DC Area. All applicants are advised that U.S. mail delivery in the Washington, DC area is erratic. Packages addressed to the U.S. Department of Labor are subject to radiation before delivery. All applicants must take this into consideration when preparing to meet the application closing date, as each applicant assumes the risk for ensuring a timely submission of its application. The Department recommends that applicants confirm receipt of their applications by contacting James Stockton, U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, telephone (202) 693–3335 before the closing date. [This is not a toll-free number.]

Applications may be withdrawn by written notice or telegram (including mailgram) at any time before the Department makes an award. An applicant may withdraw its submissions in person by the applicant or through an authorized representative of the applicant if the applicant makes the representative's identity known to the Grant Officer and the representative signs a receipt when he or she receives the withdrawn application.

D. Intergovernmental Review

This program is subject to Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs." Each applicant must contact the office or official designated as the Single Point of Contact (SPOC) in each applicable state for information on the process the state requires to be followed in applying for assistance. In some cases the SPOC may not have selected the SCSEP for review. Names and addresses for the SPOCs are listed in the Office of Management and Budget (OMB) at *http://www.whitehouse.gov/omb/grants/spoc.html.* Additional information on Executive Order 12372 can be found at *http://www.fws.gov/policy/library/rgeo12372.pdf.*

E. Funding Restrictions

The minimum funding requirement must be at least 10 percent of the state

allocation or $1,600,000 (approximately 224 slots), whichever is greater. Applicants are also required to apply for contiguously located counties within a state, unless an applicant can meet the greater of $1,600,000 or 10 percent state allocation, within a single county. Applicants should follow the minimum request for funding guidance found in Section II.B.

F. Other Submission Requirements

Each applicant must submit a copy of the technical proposal (including the chart of service areas but no other attachment requirements) and the SF–424 to the Governor in each state that it proposes to serve before submitting an application to the Department as required by section 503(a)(5) of the OAA Amendments and 20 CFR 641.410. Under this provision, the Governor of each state may submit a recommendation to the Secretary relating to the anticipated effect of an applicant's proposal on the overall distribution of positions within the state; recommendations for redistribution of positions to under-served areas (*i.e.*, Equitable Distribution); and recommendations for distribution of any newly available positions. The Department will not consider comments that are outside the scope of this provision.

Please note that Governors are not required to provide comments to applicants. Therefore, applicants should not wait for communication from the Governor before submitting the application to the Department.

Applicants submitting as an Indian ("I") grant are not required to submit copies of their applications to the Governors under this section, but are encouraged to voluntarily comply with this provision.

V. Application Review Information

A. Evaluation Criteria

All applicants are required to use the Rating Criteria format when developing their proposals. The technical panel will review grant applications against the criteria listed below on the basis of 100 maximum points. In order to receive full credit, applicants must provide quality information that does more than reiterate the requirement statement or merely state how it will be accomplished. Therefore, responses must be thoughtful and reflect a strategic vision for how these requirements will be achieved. In addition, an applicant that describes only what has been accomplished in the past but lacks a full description of what it will do during the grant period will not receive credit for that response.

Points Summary:

1. Design and Governance—15 points.
2. Program and Grant Management Systems—10 points.
3. Financial Management System—10 points.
4. Program Service Delivery—40 points.
5. Performance Accountability—25 points.

Total—100 points.

1. Design and Governance: (15 Points)

Strategic Planning. The applicant must demonstrate how it will develop and implement a strategic approach to meeting business and industry needs for a prepared and competitive workforce through a demand-driven approach.

Applicants may wish to consider the following when formulating a response:

- Strategies for consulting with business leaders from the state and local area in forming and managing demand-driven approaches and strategies.
- Strategies for functioning as a partner with the public workforce system, business and industry, economic development agencies, and education and training providers, including community colleges.
- Strategies for identifying high-growth business and industries, the workforce needs, and the skills and competencies needed to perform jobs in these key business areas.

Service Design. The applicant must describe its service delivery system design that will accomplish its strategic objectives for helping older workers.

Applicants may wish to consider the following when formulating a response:

- Resources within the organization including services, skills, expertise and monetary resources, or through partners, contributors, or vendors that will enhance the program.
- Services to targeted industry employers and host agencies, including any strategies to prevent maintenance of effort violations.
- Process for determining the needs of employers that assist employers in training and retaining older workers to meet that need.
- Strategies for leveraging the workforce system's resources over the grant period to create human resource solutions for employers.

Program Integration. Applicants must describe how integration will be supported, codified in policy, measures, and demonstrated at the leadership level of the organization.

Applicants may wish to consider the following when formulating a response:

- Strategies for engaging senior level leadership (including board members, if applicable) in support of program integration into the larger workforce investment system.
- Strategies for coordinating with the public workforce system, SCSEP State Coordinators, area agencies on aging, 502(e) grantees, as applicable and other SCSEP grantees that also serve in the state.
- Strategies for ensuring negotiated MOUs that improve the delivery of services to low-income older workers in every local area of operation and that resolve impasse situations prior to seeking Federal assistance.

2. Program and Grant Management Systems: (10 Points)

Administrative Controls. The applicant must demonstrate that its administrative controls are sufficient to ensure grant integrity.

Applicants may wish to consider the following when formulating a response:

- The policies and procedures that are in place or will be in place to manage core functions and program operations.
- The monitoring tools and procedures that will be used to track grant operations against performance objectives and compliance with uniform administrative requirements. Consideration may also be given to how often monitoring will occur, and under what circumstances.

Personnel. The applicant must describe how the management structure and staffing of the organization are aligned with the grant requirements, vision, and goals, and how the structure and staffing are designed to assure responsible general management of the organization.

Non-Federal Share. The applicant must describe its policies and procedures to meet non-Federal share requirements, including the use of leveraged resources.

Procurement. The applicant must demonstrate that its procurement actions are conducted according to Federal requirements.

The following must be included in the response:

- Applicants must describe written procurement policies and procedures and the extent to which they provide for "full and open competition."
- Applicants must describe the procedures for the competition and selection of subrecipients, if applicable.

Reporting Systems. The applicant must describe how Enterprise Business Support System (EBSS, formerly EIMS) will be used to fulfill financial and programmatic requirements and how data collection and the SCSEP Performance and Results QPR (SPARQ)

system will be implemented and populated to meet reporting requirements and track program performance. For information on SPARQ, go to *http://charteroakgroup.org/resources/scsep.shtml.*

Applicants may wish to consider the following when formulating a response:

• How financial data will be used to drive program performance, including tracking the minimum 75 percent wages and fringe benefits expenditure requirement, the remaining 13.5 percent administrative expenditure requirement, the use of the remaining funds for other participant costs, and the enrollment of participants.

3. Financial Management System: (10 Points)

Budget Controls. The applicant must describe its method for tracking planned expenditures that will allow it to compare actual expenditures or outlays to planned or estimated expenditures. The following information must be included in the response:

• Applicants must describe the process that will be in place to compare planned and actual expenditures on a regular basis, including whether the applicant has a formalized process for comparing and analyzing planned and actual costs.

• Applicants must also describe the strategies to ensure that obligations do not exceed available funds.

Internal Controls. The applicant must describe how it will ensure effective control, integrity and accountability for all grant and subrecipient grant assets.

4. Program Service Delivery: (40 Points)

Participant Recruitment. The applicant must describe how it will broaden local awareness of the program in order to recruit eligible individuals to the program.

The following must be included in the response:

• Applicants must describe the outreach efforts that will be made in local communities to raise awareness of the program. Please include a description of the various methods of outreach that will be utilized.

• Applicants must describe how outreach efforts will be designed to encourage low-income older individuals age 55 or over to enroll in the program. Please include a description of how the outreach efforts will be specifically designed to attract priority individuals age 60 and over, and those individuals who should be given special consideration—*e.g.*, those with multiple barriers to employment, and individuals with poor or no employment history or prospects consistent with the regulations at 20 CFR 641.520 and 641.525.

• Applicants must describe how recruitment goals for the target population will be consistently met. Applicants must also include a description of how they will ensure that all vacant positions remain filled as program participants exit for unsubsidized employment.

Participant Eligibility. The applicant must describe how it will ensure that individuals applying to be program participants and continuing program participants meet the eligibility criteria to enroll or remain in the program.

The following must be included in the response:

• Applicants must describe their procedures to ensure the accuracy of the individual's income and age eligibility. Applicants must include a description of how often eligibility will be certified.

• Applicants must describe their procedures to ensure that the individual is unemployed at the time of enrollment and while enrolled in the program.

• Applicants must describe how ineligible individuals will be notified of their ineligibility and any other action that the applicant may implement. This response must describe both pre-enrollment and post-enrollment situations.

• Applicants must describe their plans for ensuring that the veterans' priority and SCSEP priorities are properly implemented when there is a wait list for services.

Assessments and IEPs. The applicant must describe how it will continuously assess program participants using the IEP and other assessment tools to ensure participants are trained for viable employment opportunities.

The following must be included in the response:

• Applicants must describe how often assessments and IEPs will be completed.

• Applicants must describe how the training and services reflected on the IEP will enhance and improve the participant's skills and lead to higher level skills that will enhance employability.

• Applicants must describe any procedures that will be in place to ensure that the participant acknowledges and agrees with the training plan.

• Applicants must describe how assessments will capture the assistance that participants may need, including those services that will be acquired through other programs, such as disability programs, veteran programs, aging programs, transportation programs or services, etc.

• Applicants must describe policies that will be implemented to assure that local projects consistently document activities and execute the plans established by the assessments and IEPs.

• Applicants must identify whether felony background checks will be required for all participants and if so, how this requirement will be applied consistently to all participants, and where the information will be maintained.

Orientation. The applicant must describe how it will introduce program participants and host agencies to program requirements, roles and responsibilities, and permissible and impermissible activities. Please include general timeframes for when orientation will occur and how often.

Community Service Work-Based Training. The applicant must describe how participants will be trained through community service organizations, how it will ensure that the work-based training is of high quality, and how this training will lead to unsubsidized employment.

The following must be included in the response:

• Applicants must describe how host agency organizations will be recruited and selected, including the factors that will be used to determine whether the host agency will provide quality job training.

• Applicants must describe how assignments to community service work-based training will be made to ensure that the training is consistent with the participant's IEP, including a description of the contractual relationship that will exist between the applicant and the host agency.

• Applicants must describe plans for ensuring that participants are only placed in work-based training assignments that are in addition to employment opportunities that would be available without assistance under the OAA. Please include a description of the action steps that will take place if a maintenance of effort violation is discovered.

• Applicants must describe plans for ensuring appropriate community service work-based training assignments for ex-offenders.

• Applicants must describe how local projects will ensure that participants receive adequate supervision during training hours.

• Applicant must describe procedures for rotating participants to other host agency assignments, if the applicant intends to implement a participant rotational requirement.

• Applicants must describe plans and procedures for documenting and

ensuring that host agencies are either public agencies or have 501(c)(3) designation, and how such records will be maintained.

• Applicants must describe procedures for terminating host agency relationships and the circumstances that would create cause for termination—*e.g.*, maintenance of effort violations, inaccurate timekeeping, poor training opportunities, failing to fulfill contractual responsibilities, etc.

Other Training. The applicant must describe any training that will be offered, required, and/or provided to program participants and host agencies.

The following should be included in the response:

• Applicants should describe plans for ensuring regular training of staff on program operations, new initiatives, and innovative ideas.

• Applicants should describe the types of permissible training that will be offered to participants. Please include a description on how training will be paid from other sources to leverage program training opportunities, and how often the training will be offered.

• Applicants should describe how computer training will be provided to participants, and how community colleges will be utilized for computer and other training opportunities.

• Applicants should describe how the training identified will lead to employment opportunities that would not have otherwise been available to the participant.

Fringe Benefits. The applicant must describe any permissible and/or required fringe benefits that will be offered to participants and how it will terminate ("zero-out") any permissible fringe benefits at the end of each program year. If no permissible fringe benefits will be offered, the applicant must provide a statement to that effect.

Supportive Services. The applicant must describe any supportive services that will be offered to participants and the additional resources the applicant will use to support those services. The applicant must also address those supportive services that will be offered to participants once they are placed in an unsubsidized job in order to help retain them in those positions.

Unsubsidized Employment. The applicant must describe how it plans to place participants in high growth jobs according to local labor market data. In addition, the applicant must describe how the targeted jobs will enable participants to become self-sufficient in positions for which they would not have otherwise had the necessary skill training provided by the program. Applicants should include in this description the types of jobs it will seek for participants. A chart may be attached if necessary.

Termination. The applicant must describe the circumstances under which a participant may be terminated from the program, including its maximum duration policy (if any), for cause, or other reasons. Please include description of the criteria that will be used for "for cause" terminations.

Transition to Minimize Disruptions. The applicant must describe how participants will be transitioned to and from a service provider if the grant is terminated for any reason, including loss of funds through a competitive process, in a manner that is least disruptive to program participants.

The following must be included in the response:

• Applicants must address how participant files will be transferred to a new provider.

• Applicants must address how new offices will be established within short timeframes, if necessary, to ensure seamless services. A short timeframe is defined as 2 weeks to 1 month.

• Applicants must address how participants will continue to be paid during the transition from the incumbent provider to the new provider.

• Applicants must address how complete cooperation of local staff will be ensured to complete a smooth transition.

• Applicants must describe how the transition of participants to and from service providers will occur to ensure a smooth transition. Please include a description of how and when participants will receive notification and/or other communication informing them of the transition.

Confidentiality of Files. The applicant must describe how participant files will be kept confidential from personnel not affiliated with the project. If the applicant plans on enlisting volunteer assistance, the applicant must describe how it will ensure volunteer compliance with the confidentiality requirements.

Complaint Resolution Process. The applicant must describe the complaint resolution process that will be in place for program applicants, participants and/or host agency complaints or grievances without Federal intervention. For complaints involving illegal acts or discrimination, the applicant must describe the complaint resolution process that will be in place for participants and/or host agencies prior to Federal appeal.

5. Performance Accountability: (25 Points)

Performance Management. The applicant must describe how it will monitor funding and program activities to achieve the performance measures.

Applicants may wish to consider the following when formulating a response:

• Implementation of plans that guide the daily work of staff and that identify project goals, activity levels, spending targets and timeframes to achieve grant goals.

• Ensuring that spending will occur at a rate consistent with the amounts budgeted through the most recent quarter being reviewed.

• Strategies for ensuring that performance measures are met or exceeded.

• Procedures that will be in place to communicate high or low performance to staff and local projects or subrecipients.

• Actions that will be taken to improve low performance.

• Strategies for ensuring that subrecipient performance goals are met and actions that will be taken to address poor performance.

B. Review and Selection Process

Selection Process. The Grant Officer will organize several panels that include three individuals per panel to review the applications. The panels will use the point scoring system and the Rating Criteria format specified in Section A above to evaluate each application. The Grant Officer will rank applications based on the score assigned by the panels through the evaluation process. The ranking will be the primary basis used to identify applicants as potential grantees; however, the panel's conclusions are advisory in nature and are not binding on the Grant Officer.

Other Evaluation Factors. The Department may establish a range, based upon the application evaluation, for the purpose of selecting qualified applicants and to ensure that the best applicants are awarded grants.

The Grant Officer may take into account an applicant's demonstration of past program, financial and administrative capability in administering Federal grants or contracts during the past three (3) years. The Grant Officer may also take into account the applicant's key personnel and staffing plans. The lack of prior SCSEP experience will not disadvantage applicants.

The Department further reserves the right to select applicants out of rank order if such a selection would result in the most effective and appropriate

combination of funding; administrative costs (*e.g.*, cost per enrollment and placement); program goals (*e.g.*, serving the needs of minorities, limited English speakers, Indian eligible individuals, and those of greatest economic need); service coverage; and statutory requirements.

VI. Award Administration Information

A. Award Notices

The Department anticipates completing its review and ranking proposals by mid-May 2006. The Grant Officer expects to announce the results of this competition in mid- to late-May 2006. Applicants may appeal a Grant Officer decision according to the provisions outlined at 20 CFR 641.900.

B. Administrative and National Policy Requirements

All grants will be subject to the following administrative standards and provisions, as applicable to the particular grantee and/or sub-awardee:

- 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.
- 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training.
- 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.
- 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance.
- 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs of Activities Conducted by the Department of Labor.
- 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance from the Department of Labor.
- 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Assistance.
- 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)
- 29 CFR part 93—New Restrictions on Lobbying.
- 29 CFR part 94—Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- 29 CFR part 95—Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, and with Commercial Organizations.
- 29 CFR part 96—Audit Requirements for Grants, Contracts, and Other Agreements.
- 29 CFR part 99—Audit of States, Local Governments, and Non-Profit Organizations.
- Applicable cost principles and audit requirements under OMB Circulars A–21, A–87, A–110, A–122, A–133, and 48 CFR part 31.

C. Reporting

Data Collection System. All selected grantees must collect and report all SCSEP data requirements according to specified time schedules. Each grantee will be required to use the new OMB approved SCSEP Data Collection System (SPARQ) unless the grantee has a method for uploading information into SPARQ that, for all intents and purposes, provides the seamless population of data in SPARQ as if it were entered directly into the system. SPARQ tracks participant records beginning at the time of enrollment. SPARQ has other case management capabilities, although the primary use of SPARQ is to track participant training and employment, generate Quarterly Progress Reports (QPR), alert grantees when follow-ups are required, and lead grantees to program improvement. Applicants must ensure that all local providers will have high-speed Internet access and the ability to use SPARQ. For a preview of the SPARQ system, applicants may visit *http://dol.saic-solutions.com/sparq2prototype/index.html.*

For financial data, grantees are required to use the EBSS. Grantees must submit quarterly financial reports using the SF–269.

Negotiated Performance Measures. In PY 2006, each grantee will be subject to negotiated performance measures. All national grantees must meet the state goals in each state in which they operate. Please see Appendix I for the list of state goals established for PY 2005.

Incumbent grantees that are successful in this competition will have performance measures that reflect prior performance and previously established goals. Adjustments may be negotiated based on factors such as populations with barriers to employment and poverty and unemployment in the new areas served. Incumbents' PY 2006 performance measures will continue into the second year of the three-year sanction and incentive cycle.

For new grantees, PY 2006 will be a baseline year for establishing goals at the national grantee level. They will be assigned national grantee goals that are the proportional aggregation of the state goals where they operate. New grantees will be subject to the incentives and sanctions cycle beginning in PY 2007, if the initial one-year grant period is extended.

The performance measures that apply to the program are listed below. Please note that the program also collects information on the common performance measures that apply to all ETA programs.

The performance measures that apply to the program are as follows:

Placement into Unsubsidized Employment: Grantees must place a minimum of 20 percent of the individuals in authorized slots into employment. The national goal is 30 percent.

Retention in Unsubsidized Employment: The national goal for retention is currently 55 percent. Retention is measured by determining the number of placed participants that remain employed 6 months after the first quarter they exit the program.

Participation Service Rate: The national service rate goal for Program Year 2005 is 160 percent. This represents the number of participants served beyond the number of authorized slots. For example, using the current program goal, a grantee that has 100 slots will be required to serve at least 160 people during the program year.

Service to the Most in Need: Grantees are required to give special consideration to enrolling individuals who qualify as having the greatest need. The current national goal is 67 percent.

Community Services: This measure represents the number of hours a participant spends in community service work-based training assignments. This measure does not currently have a goal and is not subject to sanctions.

Customer Satisfaction: The satisfaction of participants, employers and host agencies is a required performance measure and is measured using the American Customer Satisfaction Index (ACSI) questions in addition to other questions that are designed to provide useful feedback on program operations. Only the 3 ACSI scores are used in the performance measures to ease the burden on grantees. The Department currently utilizes a mail house with grantee letterhead and electronic signature to organize survey samples from participant and host agencies. Grantees must meet a minimum sample size and response rate to have a valid sample.

Earnings: The Department plans to establish an average earnings measure.

VII. Agency Contacts

James Stockton, Grant Officer of the Division of Federal Assistance, at (202) 693–3335.
[This is not a toll-free number.]

VIII. Other Information

A. Notice to Incumbent National Grantees and State Grantees

With the publication of this SGA, incumbent national grantees and state grantees are notified that no slot movements due to Equitable Distribution or for other reasons will be approved until the completion of the competition.

B. Bidders' Conference

The Department is planning on holding a webinar in lieu of the traditional bidders' conference format in order to reach more interested organizations and to reduce costs. Bidders will be able to access information on the date and time of the bidders' conference at *http://www.doleta.gov/Seniors.*

C. Questions about the Program or SGA.

Individuals may submit questions about the program or information in this SGA to the Department by faxing the question(s) to: James Stockton, Grant Officer. Facsimile Number: 202–693–2879.

Please note the SGA number on all submitted questions (SGA/DFA PY 05–06). Please also include your name, facsimile number and contact number on your submission.

Responses will be posted on the Employment and Training Administration Web site at *http://www.doleta.gov/seniors.* Questions will be received for one month after publication only. The Department will not respond to duplicate questions or questions that are not within the scope of this SGA. Please do not direct questions to the Division of Older Worker Programs.

D. Post-Selection Negotiations and Requirements

A successful applicant may be required to negotiate with the Department on the geographic areas it will serve to ensure that grantees serve contiguous counties within a state and that all geographic areas continue to be served. Therefore, a successful applicant may not be awarded all areas that it proposes to serve, and may be required to serve one or more counties not identified in its application. The Department will assure that all areas currently served continue to be served through the selection and negotiation processes. The Grant Officer expects to negotiate the final assignments of slots by the end of May.

In addition, all successful applicants will be required to produce verification of workers' compensation coverage for the participants, and will negotiate performance goals with the Department that will be included in the grant agreement. Successful applicants may want to consider grouping resources under an umbrella insurance plan to minimize the costs to any one organization of workers compensation costs.

In order to receive a grant, successful applicants must make any mandatory changes to the application requested by the Grant Officer before the Department makes an official grant award.

E. Transition of Participants

The Department expects the transition period from incumbent grantees to new providers to take place from June 1–June 30, 2006. Currently, participants occupy nearly all SCSEP positions. If transitions are made from one grantee to another as a result of this competition, the enrolled participants must be given the opportunity to continue in the program. Therefore, by applying for funds under this SGA, selected applicants agree to offer incumbent SCSEP participants the first opportunity to continue in the SCSEP authorized position in the grantee's program (*i.e.*, "right of first refusal"). As such, selected grantees must offer incumbent SCSEP participants the opportunity to continue in the SCSEP in the same geographic area, and in the same host agency for up to 90 days. At the end of the 90-day period, selected grantees may choose to move participants into new host agencies, or they may continue to utilize the current host agencies. Participants may not remain with an incumbent grantee that is no longer serving in that area.

The Department is committed to minimizing disruptions to the extent possible, and the requirements that applicants and grantees must meet reflect this commitment. The Department will work with grantees to promote a seamless transition if there is a new grantee in an area. The Department will support the transition by providing technical assistance, participant and host agency data, and pre-award cost approval, in accordance with 29 CFR part 95 and the applicable cost principles in OMB Circular A–122, prior to the start of the grant period.

Successful applicants and incumbent grantees will be required to ensure minimum disruptions to participants, including continuous payments during the transition. Therefore, the Department expects new grantees to assume payroll responsibilities on July 1, 2006. Successful applicants must plan to make the first payment to participants in the first or second week of July 2006.

F. Transition Roles and Responsibilities

The Department

In addition to the responsibilities described throughout this SGA, the Department will be responsible for:

- Convening a national SCSEP Program Year 2006 Orientation and Training conference to inform all national grantees about program administration and management. (The estimated date of this conference is mid-June.);
- Institution of regularly scheduled conference calls that include national and regional Department staff and national grantees; and
- Provision of an appropriate script for Customer Service Representatives at the Toll-Free Help Line national call center to respond to questions from participants and other interested parties about the transition.

State Grantees

State grantees have coordination responsibilities to ensure that services are adequately provided across the state. This opportunity is the Department's attempt to include state coordinators in this process, which also facilitates the working relationship the state coordinators will have with any providers in the state. In addition, this process will assist the state coordinators with their Equitable Distribution report requirements as well as local board MOU negotiation responsibilities.

Therefore, the Department will expect state coordinators to assist with the transition of national grantees to ensure a smooth transition for participants. Specifically, state coordinators should:

- Hold a meeting (by conference call if necessary) with the incumbent and new national grantee(s) to discuss the transition process and timelines;
- Ensure that positive communications are presented to participants regarding the transition;
- Alert the responsible national grantee organization when a complaint is made to the state office regarding the transition;
- Reassure participants who are concerned about the transition process;
- Assist with turnover of records to the new national grantee, if necessary; and

• Report issues that cannot be resolved to the Department.

National Grantees

The national grantees will be responsible for:

• Maintaining open lines of communication with the states and attending any state or Federally scheduled conference calls;

• Ensuring that all participants have the right of first refusal regarding new work-based community service assignments for up to 90 days;

• Ensuring that check payments to participants are made in a timely manner;

• Determining how and when participants will be notified of changes;

• Establishing procedures to transfer records, as applicable;

• Maintaining privacy of individual records; and

• Establishing a mechanism for the PY 2006 national grantees to communicate among themselves.

G. Appendices

Appendix A: Application for Federal Assistance, Standard Form 424
Appendix B: Budget Information Sheet, Standard Form 424A
Appendix C: Standard Form 424A Clarifying Instructions
Appendix D: Assurances and Certifications Signature Page
Appendix E: Standard Form LLL, Disclosure of Lobbying Activities
Appendix F: Current County and State Authorized Positions
Appendix G: States that Require 10 Percent Minimum Bid
Appendix H: PY 2005 Levels of Funding for Current National Grantees
Appendix I: List of State Performance Measures in PY 2005
Appendix J: List of Resources
Appendix K: Positions Bid Form

Signed at Washington, DC, this 22nd day of February, 2006.

Emily DeRocco,

Assistant Secretary, Employment and Training Administration.

BILLING CODE 4510–30–P

Appendix A: Application for Federal Assistance, Standard Form 424

APPLICATION FOR FEDERAL ASSISTANCE Version 7/03

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:		Organizational Unit:	
		Department:	
Organizational DUNS:		Division:	
Address:		Name and telephone number of person to be contacted on matters involving this application (give area code)	
Street:		Prefix:	First Name:
City:		Middle Name	
County:		Last Name	
State:	Zip Code	Suffix:	
Country:		Email:	
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐-☐☐☐☐☐☐☐		Phone Number (give area code)	Fax Number (give area code)

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	7. TYPE OF APPLICANT: (See back of form for Application Types) Other (specify) 9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:	
13. PROPOSED PROJECT Start Date: Ending Date:	14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
b. Applicant	$ .00	DATE:
c. State	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
d. Local	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal Identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State Intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Admin	17.235	$	$	$ 0.00	$	$ 0.00
2. EWFB	17.235			0.00	0.00	0.00
3. OPC	17.235			0.00		0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1) Admin	(2) EWFB	(3) OPC		(5)
a. Personnel	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
b. Fringe Benefits	0.00	0.00	0.00		0.00
c. Travel	0.00		0.00		0.00
d. Equipment					0.00
e. Supplies	0.00		0.00		0.00
f. Contractual					0.00
g. Construction					0.00
h. Other	0.00		0.00		0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. Senior Community Service Employment Program	$	$	$ 0.00	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. Senior Community Service Employment Program	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Appendix C: Standard Form 424A Clarifying Instructions

Budget Information Instructions

Part 2 of the proposal should be titled "PART II—PROPOSED PROJECT BUDGET." The applicant must prepare the proposed budget using Standard Form (SF) 424A (available in Adobe Acrobat format at *http://www.doleta.gov/seniors/other_docs/SF424a.pdf.*) or a comparable format.

Sections A, B, C, and D of the Budget Information Form should include budget estimate for the entire grant Period. Sections A and B require information on the four basic grant functional areas: (1) Administration; (2) Local Administration; (3) Participant Wages and Fringe Benefits; and (4) Other Participant Costs. Costs attributable to these function areas are described in the regulations. (See also 20 CFR 641.847–641.873). Applicants must ensure that the proportional distribution of the Federal funds among these functional areas meets the program requirements.

The following instructions are intended to clarify the process of completing the SF–424 grant application and the SF–424A budget form. The current regulations should be reviewed as well as OW Bulletin No. 00–20, Allocation of Indirect Costs, and OAA Amendments sections 502(b)(3)–(b)(4). Local Administration includes estimated sums associated with the administration of state and Local SCSEP project activities including subgrantees, subcontractors, or other affiliates (OAA Amendments section 502(b)(1)(R)). Sufficient funding for administrative costs must go to the local levels of program operation.

Clarifying Instructions for Standard Form 424

If additional space is needed to complete an item, insert an asterisk and use an extra sheet of paper. For the most part, this form is self-explanatory. *Complete all applicable items.*

Item 12. List the counties with the number of authorized positions to be placed in each one. *If the space on the form is not sufficient, please continue on a separate page.* This list must be consistent with the appropriate current individual State Equitable Distribution plans.

Item 15. The Federal funding for Program Year 2005 for all State applicants is listed in Attachment V or may be obtained by calling your primary contact.

Clarifying Instructions for Standard Form 424–A

Section A—Budget Summary

Lines 1–4, Columns (a) and (b). Under Column (a), enter the following:

Line 1—"Administration"
Line 2—"Local Administration"
Line 3—"Participant Wages and Fringe Benefits (PW/FB)"
Line 4—"Other Participant Costs (OPC)"

Under Column (b) on Line 1, enter "17.235".

Lines 1–4, Column (c) through (g). Leave Columns (c) and (d) blank. For each line entry under Column (a), enter in Columns (e) (Federal), (f), (Non-Federal) and (g) the appropriate amounts of funds needed to support the project for the grant period.

Line 5. Show totals for all columns of the non-Federal funds. The non-Federal share must be no less than 10 percent of the total cost of the project. The legislative requirement is found in section 502(c)(1) of the OAA Amendments. Rules regarding States and non-Federal funds are found in the administrative regulations, 29 CFR Part 97. Please indicate as a remark (on Line 23) the specific source(s) and amounts (if known) of any non-Federal funds and include this information in the detailed cost breakout.

Section B—Budget Categories

In the column headings at Line 6 titled "Object Class Categories" (1) through (4), enter the titles of the grant functional areas (Administration, Local Administration, PW/FB, and OEC) shown on Lines 1–4, Column (a), Section A. For each functional area fill in the total funds needed (Federal plus non-Federal) by object class categories. The object class categories are those listed in lines 6(a) through 6(k) including totals.

Lines 6a through 6h. Show the estimated amount (include the combined Federal and non-Federal share) for each direct object class category under each column used. All costs to be incurred under contracts or subgrants should be reflected in line 6f (Contractual). The costs to be incurred under individual contracts or sub-grants must be properly attributed among the three basic functional areas (i.e., Administration, Local Administration, PW/FB, and OPC). Under the PW/FB column (Participant Wages and Fringe Benefits), entries may be made in three object class categories: "Personnel" (Participant Wages), "Fringe Benefits" (Participant Fringe Benefits), or "Contractual" (when funds for participant wages and fringe benefits are to be included in contracts or subgrants).

Line 6i. Show the total of entries made for lines 6a through 6h in each column.

Line 6j. Show the amount of indirect costs. *A copy of the current indirect cost rate agreement must be sent with the application.* If it is not available please provide an explanation and an estimate as to when it will be available.

Line 6k. Enter the totals of the amounts indicated on lines 6i and 6j. For all applications, the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5.

Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Under the project narrative statement describe the nature and source of such income. Note: Income generated by SCSEP projects must be used for SCSEP activities.

Section C—Source of Non-Federal Resources

Line 8. Enter amounts of non-Federal resources that will be used in the grant.

Column (a). On Line (8) Column (a) only, enter "SCSEP" (Senior Community Service Employment Program). A breakdown by functional areas is not necessary. Use Line (8) for entries under all columns.

Column (b). Enter the amount of applicant cash and/or in-kind contributions to be made.

Column (c). Enter the State(s) contribution. This requirement does not apply to State grantees.

Column (d). Enter the amount of cash and/or in-kind contributions to be made from all other sources.

Column (e). Enter totals of Columns (b), (c), and (d). The amount under Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Line 12. Under each column enter the same figure entered in Line (8).

Section D—Forecasted Cash Needs

Make no entries.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

Make no entries.

Section F—Other Budget Information

Line 21—Direct Charges. In the space provided type "A Detailed Cost Breakout is Attached."

A Detailed Cost Breakout is required with the Grant Application Package. All applicants should prepare this and have available for inspection the basis for their estimated costs by line item (including the detail for the "Other" line item). The cost breakout should reflect the SF–424A so that totals match for both the form and the detailed breakout. Information should be presented by line item and category. Applicants are encouraged to describe any extraordinary item such as planned conferences, travel, and unusual expenses.

It is important that the cost breakout demonstrate how costs are distributed vertically as well as horizontally, showing costs that occur at the local levels. The detailed cost breakout should also indicate the specific kind of non-Federal resources; for instance, the provision of office space or the salaries of project staff.

The applicant may consult with the Federal Project Officer regarding the needed level of detail. In categorizing costs and their applicability, all sponsors must follow OAA 2000 Section 502(c) and the Regulations at 20 CFR Part 641 Subpart D, sections 641.847–641.876. Please also see the discussion of administrative costs in the One-Stop Comprehensive Financial Management Guide at *http://wdsc.doleta.gov/sga/pdf/FinalTAG_August_02.pdf*, pages II–5–3 to II–5–6.

Other considerations: Successful applicants may be expected to attend Department-sponsored training and should prepare their budgets accordingly. It will also be useful to budget amounts for training, software and new computers (including Internet access) related to new reporting requirements. *NOTE:* Applicants must have current computer technology and ensure that their organizations have the capability to link to the Internet. Reporting will be done via the Internet.

When applicants divide costs between the "Administration" and "Other Participant Costs" Categories for the same cost item (such as a local project director), they should describe the basis for that division and

include mention of any surveys used to determine the allocations. The Department of Labor reserves the right to require additional information on any budget line item or cost category.

Line 22—Indirect Charges. Enter the type of indirect rate (provisional, predetermined, final, or fixed) that will be in effect during the grant period, and the nature and the amount of the base to which the rate is applied, and the total indirect charges. Include a copy of your agency's approved indirect cost rate agreement. It should cover the entire grant period. If not, state that a new one will be provided when available.

Applicants that have not previously used an indirect cost rate but wish to do so must contact the Grant Officer, who will advise the grant applicant of the documents and materials that must accompany the grant application in support of the request. Where indirect charges are approved, the terms and conditions relating to the payment of indirect costs, which are subject to negotiation by the Department, will be specified in the grant document.

Line 23—Remarks. Provide any other explanations or comments deemed necessary, such as specific sources of non-Federal funds. It is also suggested that the words "See Attached Detailed Cost Breakout" be entered in this section.

Appendix D: Assurances and Certifications Signature Page

THE GRANT CONDITIONS AND CLAUSES WILL BE PROVIDED TO GRANTEES BY THE DIVISION OF FEDERAL ASSISTANCE (GRANT OFFICER) ALONG WITH A GRANT SIGNATURE SHEET AND PACKAGE FOR THE GRANTEE'S SIGNATORY OFFICIAL. SHOULD THERE BE ANY INCONSISTENCY BETWEEN THE CONDITIONS AND THE GRANTEE'S PROPOSAL, THE CONDITIONS SHALL GOVERN. FURTHER, IF THERE SHOULD BE SUCH INCONSISTENCY BETWEEN THE CONDITIONS AND THE SPECIAL CLAUSES, THE SPECIAL CLAUSES SHALL GOVERN.

BILLING CODE 4510–30–P

Appendix E: Standard Form LLL, Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLLA, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLLA, if necessary)

15. Continuation Sheet(s) SF-LLLA attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

BILLING CODE 4910-30-C

Appendix F: County and State Authorized Positions

Note: The following text is the instructions for reviewing Appendix F, which is located at *http://www.doleta.gov/Seniors/SGA/SGA.cfm.*

In making decisions about areas to be served, applicants should be mindful of the number of "authorized positions" in each county as compared to the number of "actual positions."

Funding will be based on the number of "authorized positions," which is the first column of the state charts in this Appendix. The actual number of participants in each county is shown in the second column. In many counties the two numbers are different.

In counties in which the actual positions are greater than the authorized positions, grantees will have to manage their state-wide allocation to accommodate actual on-board participants in the over-served areas even though their funding allocation is based on the authorized position level, which may be less. Generally, in most counties that are over-served, the difference is small and can be adjusted by normal attrition or targeted efforts to place more participants into unsubsidized employment. It is expected that these imbalances will be resolved by the end of the grant period.

In a few states, there is one or more *significantly* over-served counties. In these states, applicants that wish to serve these counties may consider proposing to also serve enough contiguous under-served counties to compensate for the over-service in the other counties. In addition to temporarily utilizing allocations from the under served areas, attrition, and concentrated efforts to make additional unsubsidized placements, the grantee can use other local, non-Federal resources. In a few extreme cases in which the number of actual participants is far out of proportion to the number of available contiguous counties, the Department, in consultation with the state grantee, will intervene to alleviate the situation.

Other Resources

For additional information regarding which grantees are currently in a county and where the state SCSEP grantee's service areas are located, applicants may consult the Equitable Distribution Report which is found at the SCSEP Web site *http://www.doleta.gov/seniors* and the maps found at the SGA item under "What's New."

Appendix G.—States That Require 10 Percent Minimum Bid

	Funding amount	Slots
California	$29,193,091	4,079
Florida	20,122,897	2,813
New York	22,540,759	3,151
Pennsylvania	18,297,675	2,558
Texas	18,928,589	2,646

Appendix H.—PY 2005 Levels of Funding for Current National Grantees

AARP Foundation	73,454,709
Asociacion Nacional Pro Personas Mayores	7,689,923
Easter Seals, Inc.	16,077,169
Experience Works	85,790,315
Mature Services, Inc.	5,514,963
National Able Network, Inc.	5,435,364
National Asian Pacific Center on Aging	5,978,047
National Caucus & Center on Black Aged	15,228,375
National Council on the Aging	21,838,654
National Indian Council on Aging	6,027,252
Senior Service America, Inc.	50,970,214
SER—Jobs for Progress, Inc.	26,168,160
USDA Forest Service	20,369,239

Appendix I: State Performance Measures in PY 2005

Note: These values may be slightly higher (1–2 percent) in PY 2006 in order to promote continuous improvement in program performance and to reflect actual performance.

	Placement (percent)	Retention (percent)	Service level (percent)	Most in need (percent)
Alabama	23	55	162	70
Alaska	40	54	162	64
Arizona	29	54	162	67
Arkansas	25	54	151	67
California	26	67	162	71
Colorado	29	54	162	67
Connecticut	36	55	162	67
Delaware	30	67	162	67
District of Columbia	20	50	162	81
Florida	33	82	162	73
Georgia	35	88	162	67
Hawaii	30	55	162	67
Idaho	29	54	151	67
Illinois	30	55	160	67
Indiana	30	55	151	67
Iowa	30	55	162	67
Kansas	21	53	151	73
Kentucky	30	55	162	67
Louisiana	28	53	162	67
Maine	29	54	162	67
Maryland	30	55	162	67
Massachusetts	30	55	162	67
Michigan	22	54	151	67
Minnesota	23	55	151	67
Mississippi	30	55	162	67
Missouri	30	55	162	67
Montana	31	55	151	67
Nebraska	28	53	162	67
Nevada	66	54	162	79
New Hampshire	21	53	151	64
New Jersey	25	50	162	67
New Mexico	25	54	151	67
New York	30	55	162	67
North Carolina	29	55	162	67
North Dakota	21	53	151	77

	Placement (percent)	Retention (percent)	Service level (percent)	Most in need (percent)
Ohio	30	58	160	67
Oklahoma	30	55	160	71
Oregon	27	52	162	67
Pennsylvania	30	55	162	67
Puerto Rico	25	52	162	67
Rhode Island	20	52	162	67
South Carolina	29	54	151	67
South Dakota	30	55	151	67
Tennessee	23	55	151	70
Texas	29	54	162	67
Utah	27	52	162	67
Vermont	34	53	162	64
Virginia	30	82	160	70
Virgin Islands	20	52	162	67
Washington	30	55	162	67
West Virginia	22	54	151	73
Wisconsin	29	54	162	67
Wyoming	41	54	162	67

Appendix J: Resource List

1. Program Legislation, Regulations, and Policies

• Older Americans Act Amendments of 2000, Pub. L. 106-501 *http://www.doleta.gov/Seniors/other_docs/owp-106-501.pdf*

• SCSEP Final Rule, 20 CFR part 641 *http://www.doleta.gov/Seniors/other_docs/etaOAreg.pdf*

641.440–460, Responsibility Review of Applicants
641.500, Participant Eligibility
641.700–715, Grantee Performance Measures
641.750–770, Sanctions for Failure to Meet Negotiated Levels of Performance
641.844, Maintenance of Effort Requirements
641.856, Administrative Costs
641.864, Program Costs

• Older Worker Bulletins and Training and Employment Guidance Letters

TEGL No. 29–04, PY 2005 Fringe Benefit Guidelines

http://166.97.5.198/Seniors/other_docs/TEGL29-04.pdf

TEGL No. 21–04, Revised Federal Poverty Guidelines for SCSEP

http://166.97.5.198/Seniors/other_docs/teig_21-04.pdf

TEGL No. 13–04, Revised Income Definitions and Income Inclusions and Exclusions for Determining SCSEP Eligibility and Attachments

http://166.97.5.198/Seniors/other_docs/teig_13-04.pdf
http://166.97.5.198/Seniors/other_docs/TEGL_PopSurvey.pdf
http://166.97.5.198/Seniors/other_docs/TEGL_ComputeIncome.pdf

2. Applicable Forms

Routine Program Forms

http://166.97.5.198/Seniors/html_docs/Forms.cfm

SGA Forms

http://www.doleta.gov/sga/forms.cfm

3. Financial Resources

• OMB Circulars

http://www.whitehouse.gov/omb/circulars.html

• Allowable and Unallowable Cost Requirements 20 CFR 641.850

http://www.doleta.gov/Seniors/other_docs/etaOAreg.pdf

• Allocation of Indirect Costs Under the SCSEP

http://www.doleta.gov/Seniors/html_docs/docs/00-20.cfm

• One-Stop Comprehensive Financial Management Assistance Guide, Administrative Costs and Limitations, Chapter II–5–3 through II–5–6

http://www.doleta.gov/sga/pdf/FinalTAG_August_02.pdf

4. Other Applicable Laws

• Civil Rights Laws

Title IX, Education Amendments of 1972—49 CFR part 25 (gender)
Americans with Disabilities Act—28 CFR part 35 (Disability)
Rehabilitation Act—29 CFR part 32 Section 504 (Disability)
Civil Rights Act of 1964—29 CFR part 31 Title VI (Race, color, national origin, sex)
Workforce Investment Act—29 CFR part 37, Section 188 (race, color, national origin, sex, religion, disability, political affiliation or belief, and age).
Age Discrimination Act of 1975—29 CFR part 35 (any age)
U.S. Department of Labor Civil Right Center contact information: Office of Compliance Assistance and Planning (202) 693–6501

http://www.dol.gov/oasam/programs/crc/crcwelcome.htm

• Jobs for Veterans Act

http://www.doleta.gov/seniors/htnil_docs/regs.cfm

• Workforce Investment Act, Pub. L. 105–220

http://www.doleta.gov/seniors/html_docs/regs.cfm

• Workforce Investment Act Final Rules, 20 CFR part 652

http://www.doleta.gov/seniors/html_docs/regs.cfm

5. ETA Initiatives

• High Growth Job Training Initiative

http://www.doleta.gov/BRG/JobTrainInitiative/

• Community College Initiative

http://www.doleta.gov/business/Community-BasedJobTrainingGrants.cfm

• Hispanic Initiative

http://www.doleta.gov/reports/HWI_brief.cfm and
http://www.doleta.gov/reports/DPLD.cfm

6. SCSEP Data Collection System (DCS)/SPARQ

• DCS/SPARQ Forms and Management Reports Handbook

http://www.doleta.gov/Seniors/html_docs/GranteePerf.cfm

• DCS/SPARQ 2 Prototype

http://dol.saic-solutions.com/sparq2prototype/index.html

7. Grantee Contact Information

• Current National Grantees

http://166.97.5.198/Seniors/html_docs/docs/NationalGrantees.cfm

• State Grantees

http://166.97.5.198/Seniors/html_docs/docs/statecontacts04.cfm

8. Other Contact Information

• One-Stop Career Centers
• State Units on Aging
• National Association of Area Agencies on Aging
http://www.n4a.org/

• 502(e) Grantees and PY 2005 Service Areas

Appendix K: Positions Bid Form

Note: Appendix K is located at *http://www.doleta.gov/Seniors/SGA/SGA.cfm.*

[FR Doc. 06–1959 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Thursday,
March 2, 2006

Part V

The President

Federal Register
Vol. 71, No. 41
Thursday, March 2, 2006

Presidential Documents

Title 3—

The President

Proclamation 7985 of February 27, 2006

Women's History Month, 2006

By the President of the United States of America

A Proclamation

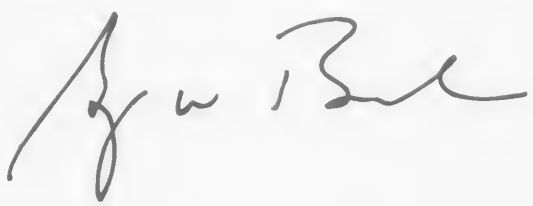
For generations, women across our great land have helped make our country stronger and better. They have improved our communities and played a vital role in achieving justice and equal rights for all our citizens. During Women's History Month, we celebrate the many contributions women make to our society.

At the end of the 19th century, pioneers Jane Addams and Ellen Starr opened the doors of Hull House to serve impoverished and immigrant families in the Chicago community. Presidential Medal of Freedom winner Annie Dodge Wauneka worked to educate her native Navajo community about preventing and treating disease. In 1955, Rosa Parks refused to give up her seat on a city bus in Montgomery, Alabama, helping to inspire a nationwide movement for equal justice under the law. Recently, our Nation said goodbye to another remarkable American woman and courageous civil rights leader, Coretta Scott King, who helped call America to its founding ideals.

Today, the United States of America remains a country that offers the greatest freedom on Earth and believes in the promise of all individuals. Women continue to strengthen our Nation and the world by excelling as leaders in all walks of life, including business, law, politics, family life, education, community service, science, medicine, and the arts. The brave women who wear the uniform of the United States Armed Forces are helping to lay the foundations of peace and freedom for generations to come. This month, I encourage all Americans to join me in celebrating the extraordinary achievements and contributions of American women.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2006 as Women's History Month. I call upon all Americans to observe this month with appropriate ceremonies and activities to honor the history, accomplishments, and contributions of all American women.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–2082
Filed 3–1–06; 12:05 pm]
Billing code 3195–01–P

Federal Register
Vol. 71, No. 41
Thursday, March 2, 2006

Presidential Documents

Proclamation 7986 of February 27, 2006

Save Your Vision Week, 2006

By the President of the United States of America

A Proclamation

Many Americans suffer from diseases and disorders of the eye that can affect their vision and quality of life. During Save Your Vision Week, we highlight how basic eye care and protection can help citizens maintain and enjoy healthy eyesight.

An important part of ensuring physical well-being includes making healthy choices and adopting habits that can prevent disease and injury. Many of the problems that lead to blindness each year can be avoided with simple steps to protect the eyes, such as wearing sunglasses and using protective eyewear while working in hazardous environments or participating in sports.

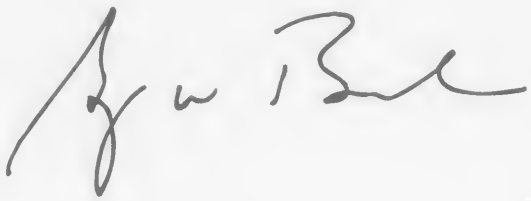
Because the first noticeable symptom of many eye diseases is often vision loss, early detection is vital. As a result of the Medicare Modernization Act, diabetes screenings and glaucoma tests for eligible beneficiaries are now covered by Medicare as a part of an initial physical exam for new Medicare beneficiaries. Medicare also covers glaucoma screenings for beneficiaries with diabetes who are at high risk or have a family history of the disease. I encourage America's seniors to act to preserve their vision by taking advantage of this health care benefit. And I urge all Americans to have regular eye examinations as part of their health care routines.

By raising awareness about the importance of preventing eye problems and the measures citizens can take to protect their vision and by providing greater access for the detection and treatment of eye diseases, we can continue to work toward a healthier Nation where more Americans enjoy the gift of healthy vision.

The Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 5 through March 11, 2006, as Save Your Vision Week. I encourage all Americans to make eye care and eye safety an important part of their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



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Presidential Documents

Proclamation 7987 of February 28, 2006

To Implement the Dominican Republic-Central America-United States Free Trade Agreement

By the President of the United States of America

A Proclamation

1. On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement (the "Agreement") with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (the "Agreement countries"). The Agreement was approved by the Congress in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the "Act")(Public Law 109–53, 119 Stat. 462)(19 U.S.C. 4001 note).

2. Section 105(a) of the Act authorizes the President to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under Chapter Twenty of the Agreement.

3. Section 201 of the Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3 (including the schedule of United States duty reductions with respect to originating goods), 3.27, and 3.28 of the Agreement.

4. Consistent with section 201(a)(2) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP) on the date the Agreement enters into force with respect to that country.

5. Consistent with section 201(a)(3) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA)(19 U.S.C. 2701 *et seq.*) on the date the Agreement enters into force with respect to that country, subject to the exceptions set out in section 201(a)(3)(B) of the Act.

6. Consistent with section 213(b)(5)(D) of the CBERA, as amended by the United States-Caribbean Basin Trade Partnership Act (CBTPA)(Public Law 106–200), each Agreement country is to be removed from the enumeration of designated CBTPA beneficiary countries on the date the Agreement enters into force with respect to that country.

7. Section 203 of the Act provides certain rules for determining whether a good is an originating good for the purpose of implementing preferential tariff treatment under the Agreement. I have decided that it is necessary to include these rules of origin, together with particular rules applicable to certain other goods, in the Harmonized Tariff Schedule of the United States (HTS).

8. Section 203(o) of the Act authorizes the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the United States and those Agreement countries for which the

Agreement has entered into force, and to add any such fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted or unrestricted quantity; to eliminate a restriction on the quantity of a fabric, yarn, or fiber within 6 months after adding the fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted quantity; and to restrict the quantity of, or remove from the list in Annex 3.25 of the Agreement, certain fabrics, yarns, or fibers.

9. Section 209 of the Act authorizes the President to take certain enforcement actions relating to trade with the Agreement countries in textile or apparel goods.

10. Sections 321–328 of the Act authorize the President to take certain actions in response to a request by an interested party for relief from serious damage or actual threat thereof to a domestic industry producing certain textile or apparel articles.

11. Executive Order 11651 of March 3, 1972, as amended, established the Committee for the Implementation of Textile Agreements (CITA) to supervise the implementation of textile trade agreements.

12. Section 604 of the Trade Act of 1974 (the "1974 Act") (19 U.S.C. 2483), as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 105(a), 201, 203, 209, and 321–328 of the Act, section 301 of title 3, United States Code, and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide generally for the preferential tariff treatment being accorded under the Agreement to El Salvador, to set forth rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the Agreement, to provide certain other treatment to originating goods for the purposes of the Agreement, to provide tariff-rate quotas with respect to certain goods, to reflect the removal of El Salvador from the enumeration of designated beneficiary developing countries for purposes of the GSP, to reflect the removal of El Salvador from the enumeration of designated beneficiary countries for purposes of the CBERA and the CBTPA, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in Annex I of Publication No. 3829 of the United States International Trade Commission, entitled "*Modifications to the Harmonized Tariff Schedule of the United States to Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to El Salvador*" ("Publication 3829"), which is incorporated by reference into this proclamation.

(2) In order to implement the initial stage of duty elimination provided for in the Agreement, to provide tariff-rate quotas with respect to certain goods, and to provide for future staged reductions in duties for originating goods for purposes of the Agreement, the HTS is modified as provided in Annex II of Publication 3829, effective on the dates specified in the relevant sections of such publication and on any subsequent dates set forth for such duty reductions in that publication.

(3) The Secretary of Commerce is authorized to exercise my authority under section 105(a) of the Act to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section.

(4) The CITA is authorized to exercise my authority under section 203(o) of the Act to determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the United States and those Agreement countries for which the Agreement has entered into force, and to add any such fabric, yarn, or fiber to the list in Annex 3.25 of the

Agreement in a restricted or unrestricted quantity; to eliminate a restriction on the quantity of a fabric, yarn, or fiber within 6 months after adding the fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted quantity; to restrict the quantity of, or remove from the list in Annex 3.25 of the Agreement, certain fabrics, yarns, or fibers; and to establish procedures governing the submission of a request for any such determination and to ensure appropriate public participation in any such determination.

(5) The CITA is authorized to exercise my authority under section 209 of the Act to suspend or deny preferential tariff treatment to textile or apparel goods; to detain textile or apparel goods; and to deny entry to textile or apparel goods.

(6) The CITA is authorized to exercise my authority under sections 321–328 of the Act to review requests and to determine whether to commence consideration of such requests; to cause to be published in the **Federal Register** a notice of commencement of consideration of a request and notice seeking public comment; and to determine whether imports of a textile or apparel article of an Agreement country are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(7) The CITA, after consultation with the Commissioner of Customs (the "Commissioner"), is authorized to consult with representatives of an Agreement country for the purpose of identifying particular textile or apparel goods of that country that are mutually agreed to be handloomed, handmade, or folklore articles as provided in Article 3.21 of the Agreement. The Commissioner shall take actions as directed by the CITA to carry out any such determination.

(8) The United States Trade Representative is authorized to exercise my authority under section 104 of the Act to obtain advice from the appropriate advisory committees and the United States International Trade Commission on the proposed implementation of an action by presidential proclamation; to submit a report on such proposed action to the appropriate congressional committees; and to consult with those congressional committees regarding the proposed action.

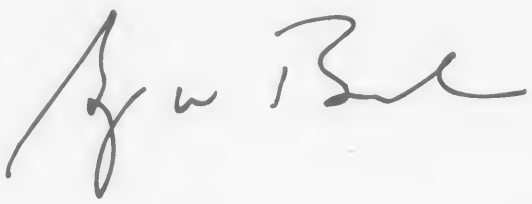
(9) The United States Trade Representative is authorized to modify U.S. note 20 to subchapter XXII of chapter 98 of the HTS in a notice published in the **Federal Register** to reflect modifications pursuant to paragraph (4) of this proclamation by the CITA to the list of fabrics, yarns, or fibers in Annex 3.25 of the Agreement.

(10)(a) The amendments to the HTS made by paragraphs (1) and (2) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in Annex II to Publication 3829.

(b) Except as provided in paragraph (10)(a) of this proclamation, this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2006.

(11) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand six, and of the Independence of the United States of America the two.hundred and thirtieth.



[FR Doc. 06–2084
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Federal Register

Vol. 71, No. 41

Thursday, March 2, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 2, 2006

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant protection and quarantine:

Phytosanitary treatments; correction; published 3-2-06

INTERIOR DEPARTMENT

Fish and Wildlife Service

Importation, exportation, and transportation of wildlife:

Captive Wildlife Safety Act; implementation; published 2-22-06

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

West Virginia; published 3-2-06

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Preconstruction procedures; project authorizations and agreements; published 1-31-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Fruits and vegetables importation; comments due by 3-10-06; published 3-3-06 [FR E6-03037]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:

Commodities procurement for foreign donation; comments due by 3-9-06; published 1-23-06 [FR E6-00683]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Child and Adult Care Food Program—

Children receiving meals in emergency shelters; age limits; comments due by 3-6-06; published 1-3-06 [FR 05-24683]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System timber; sale and disposal:

Free use to individuals; authority delegation; comments due by 3-6-06; published 1-4-06 [FR 06-00036]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Horses; ante-mortem inspection; comments due by 3-10-06; published 2-8-06 [FR 06-01101]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Commercial shark management measures; comments due by 3-6-06; published 2-17-06 [FR 06-01505]

Northeastern United States fisheries—

Northeast multispecies; comments due by 3-6-06; published 3-3-06 [FR 06-01911]

Marine mammals:

Taking and importation—

Beluga whales; Cook Island, AK, stock; comments due by 3-8-06; published 2-16-06 [FR E6-02196]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Commercial information technology; Buy American Act exception; comments due by 3-6-06; published 1-3-06 [FR 05-24552]

Common identification standard for contractors; comments due by 3-6-06; published 1-3-06 [FR 05-24547]

Trade agreements; thresholds; comments due by 3-6-06; published 1-5-06 [FR 06-00054]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; comments due by 3-10-06; published 2-8-06 [FR 06-01174]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; comments due by 3-10-06; published 2-8-06 [FR 06-01173]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 3-10-06; published 2-8-06 [FR 06-01172]

Maryland; comments due by 3-8-06; published 2-6-06 [FR E6-01596]

Solid wastes:

Land disposal restrictions—

Deepwater, NJ; 1,3-phenylenediamine; site-specific variance; comments due by 3-9-06; published 2-7-06 [FR 06-01072]

Deepwater, NJ; 1,3-phenylenediamine; site-specific variance; comments due by 3-9-06; published 2-7-06 [FR 06-01073]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Commercial information technology; Buy American Act exception; comments due by 3-6-06; published 1-3-06 [FR 05-24552]

Common identification standard for contractors; comments due by 3-6-06; published 1-3-06 [FR 05-24547]

Trade agreements; thresholds; comments due by 3-6-06; published 1-5-06 [FR 06-00054]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Soluble dietary fiber and coronary heart disease; health claims; comments due by 3-8-06; published 12-23-05 [FR 05-24387]

Human drugs:

Dandruff, seborrheic dermatitis, and psoriasis drug products (OTC); final monograph amendment; comments due by 3-9-06; published 12-9-05 [FR 05-23839]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Virginia; comments due by 3-10-06; published 1-13-06 [FR 06-00333]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Findings on petitions, etc.—

Northern Mexican gartersnake; comments due by 3-6-06; published 1-4-06 [FR 06-00001]

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office

Acquisition regulations:

Cost Accounting Standards Board—

Commercial items; exemption for time-and-materials and labor-hour contracts; comments due by 3-6-06; published 1-4-06 [FR E5-08237]

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

Procedural rules, etc.; revisions; comments due by 3-6-06; published 1-5-06 [FR 06-00064]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Commercial information technology; Buy American Act exception; comments due by 3-6-06; published 1-3-06 [FR 05-24552]

Common identification standard for contractors; comments due by 3-6-06; published 1-3-06 [FR 05-24547]

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S. 1989/P.L. 109–175

To desginate the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the "Holly A. Charette Post Office". (Feb. 27, 2006; 120 Stat. 190)

Last List February 22, 2006

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109th Congress

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