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WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WHEN: Tuesday, March 14, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

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

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

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2005–0116]

Mediterranean Fruit Fly; Add Portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States. We are also amending the regulations to provide for the use of spinosad bait spray as an alternative treatment for premises. This new treatment option will provide an alternative to the use of malathion bait spray for premises that produce regulated articles within the quarantined area but outside the infested core area.

DATES: This interim rule was effective February 7, 2006. We will consider all comments that we receive on or before April 14, 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–2005–0116 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–2005–0116, 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–2005–0116.

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: Mr. Wayne D. Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world's most destructive pests of numerous fruits and vegetables. The Medfly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations, contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations), were established to prevent the spread of Medfly into noninfested areas of the United States. Section 301.78–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which Medfly has been found by an inspector, in which the Administrator has reason to believe that Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which Medfly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.78–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of Medfly.

Recent trapping surveys by inspectors of California State and county agencies have revealed that portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, are infested with Medfly.

State agencies in California have begun an intensive Medfly eradication program in the quarantined areas in Los Angeles, San Bernardino, and Santa Clara Counties. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined areas.

Accordingly, to prevent the spread of Medfly into noninfested areas of the United States, we are amending the regulations in § 301.78–3(c) by designating portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, as quarantined areas.

Treatments

Section 301.78–10 of the regulations lists treatments for regulated articles. Regulated articles treated in accordance with this section may be moved interstate from a quarantined area to any destination. Section 301.78–10 contains treatments for specified fruits and vegetables, treatments for citrus fruit that has been harvested, treatments for soil within the drip area of plants that are producing or have produced specified berries, fruits, nuts, and vegetables, and treatments for premises (fields, groves, or areas) that are within a quarantined area but outside the infested core area.

Under § 301.78–10(d), premises that are located within the quarantined area but outside the infested core area, and that produce regulated articles, must receive regular treatments with malathion bait spray. We are amending § 301.78–10(d) to include a new alternative chemical treatment for premises. The new chemical treatment is a spinosad bait spray. Without spinosad bait spray, the only treatment made available by the regulations for premises has been malathion bait spray. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage. The spinosad bait spray provisions we are adding to the regulations in § 301.78–10(d) are the same as those currently found in the Mexican fruit fly regulations in § 301.64–10(c), the West Indian fruit fly regulations in § 301.98–10(b), the sapote fruit fly regulations in § 301.99–10(c), and the Oriental fruit fly regulations in § 301.93–10(b).

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Medfly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule restricts the interstate movement of regulated articles from those portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, that have been designated as quarantined areas. Within the quarantined areas there are approximately 297 small entities that may be affected by this rule. These include 127 yard maintenance firms, 110 fruit sellers, 22 nurseries, 15 growers, 4 distributors, 4 haulers, 3 certified farmers' market, 3 processors, 2 harvesters, 2 packers, 2 recyclers, 1 food bank, 1 producer, and 1 swapmeet. These 297 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, few of these small entities move regulated articles interstate during the normal course of their business, nor do consumers of products purchased from those entities generally move those products interstate.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

We have prepared two environmental assessments for this interim rule. The site-specific environmental assessments and the programmatic Medfly environmental impact statement provide a basis for our conclusion that the implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health or the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessments and findings of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessments and findings of no significant impact may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessments and findings of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) The following areas are designated as quarantined areas: California

Los Angeles/San Bernardino Counties. Rancho Cucamonga area: That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of the southern border of the Angeles National Forest and the southern border of the San Bernardino National Forest; then northeast along the southern border of the San Bernardino National Forest to East

Etiwanda Creek; then southeast along East Etiwanda Creek to Wilson Avenue; then east on Wilson Avenue to Summit Avenue; then east on Summit Avenue to Cherry Avenue; then south on Cherry Avenue to U.S. Interstate 15; then southwest on U.S. Interstate 15 to East Avenue; then south on East Avenue to State Highway 66; then east on State Highway 66 to Cherry Avenue; then south on Cherry Avenue to Slover Avenue; then west on Slover Avenue to South Mulberry Avenue; then south on South Mulberry Avenue to Jurupa Avenue; then southwest on Jurupa Avenue to North Etiwanda Avenue; then south on North Etiwanda Avenue to Philadelphia Street; then west on Philadelphia Street to South Milliken Avenue; then south on South Milliken Avenue to East Riverside Drive; then west on East Riverside Drive to South Haven Avenue; then south on South Haven Avenue to East Edison Avenue; then west on East Edison Avenue to Edison Avenue: then west on Edison Avenue to Cucamonga Creek; then south on Cucamonga Creek to Eucalyptus Avenue; then northwest on Eucalyptus Avenue to San Antonio Avenue; then north on San Antonio Avenue to Edison Avenue; then west on Edison Avenue to Grand Avenue; then northwest on Grand Avenue to South Grand Avenue; then north on South Grand Avenue to East Badillo Street; then northeast on East Badillo Street to Badillo Street; then northeast on Badillo Street to West Covina Street; then east on West Covina Street to State Highway 57; then north on State Highway 57 to State Highway 210; then east on State Highway 210 to North Towne Avenue; then north on North Towne Avenue to its intersection with the shoreline of Thompson Creek; then east along an imaginary line from the intersection of North Towne Avenue and the shoreline of Thompson Creek to its intersection with Miller Ranch Road and the eastern border of Marshall Canyon County Park; then northeast along the eastern border of Marshall Canyon County Park to the southern border of the Angeles National Forest; then east along the southern border of the Angeles National Forest to the point of beginning.

Santa Clara County. San Jose area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Camden Avenue and Hillside Avenue; then northeast on Hillside Avenue to Meridian Avenue; the northwest on Meridian Avenue to Dry Creek Road; then northeast on Dry Creek Road to Hicks Avenue; then northwest on Hicks Avenue to Robsheal Drive; then northeast on Robsheal Drive to Simpson Way; then southeast on Simpson Way to Clark Way; then northeast on Clark Way to Lincoln Avenue; then northwest on Lincoln Avenue to Byerley Street; then northeast on Byerley Street to Byerley Avenue; then northeast on Byerley Avenue to Bird Avenue; then southeast on Bird Avenue to Malone Road; then northeast on Malone Road to Almaden Road; then northeast on Almaden Road to San Jose Avenue; then northeast on San Jose Avenue to Monterey Highway; then southeast on Monterey Highway to Tully Road; then northeast on Tully Road to South King Road; then southeast on South King Road to Aborn Road; then northeast on Aborn Road to San Felipe Road; then southeast on San Felipe Road to Silver Creek Road; then south along an imaginary line from the intersection of San Felipe Road and Silver Creek Road to the intersection of U.S. Highway 101 and Metcalf Road; then southwest on Metcalf Road to Monterey Highway; then southeast on Monterey Highway to Bailey Avenue; then southwest on Bailey Avenue to McKean Road; then southwest along an imaginary line from the intersection of Bailey Avenue and McKean Road to the intersection of Mine Hill Road and Alamitos Road; then southwest on Alamitos Road to Hicks Road; then northwest and northeast on Hicks Road to Camden Avenue; then northwest on Camden Avenue to the point of beginning.

■ 3. In § 301.78–10, paragraph (d) is revised to read as follows:

§ 301.78–10 Treatments.

* * * * *

(d) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6 to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mediterranean fruit fly. Determination of the time period must be based on day degrees. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied at a rate of 1.2 fluid ounces of technical grade malathion (1.4 ounces by weight) and 10.8 fluid ounces of protein hydrolysate (13.2 ounces by weight) per acre, for a total of 12 fluid ounces per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

* * * * *

Done in Washington, DC, this 7th day of February 2006 .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–1302 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–610 REVIEW]

Dried Prunes Produced in California; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 993, regulating the handling of dried prunes produced in California.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5902; Fax: (559) 487–5906; E-mail: *Terry.Vawter@usda.gov*; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; E-mail: *George.Kelhart@usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order No. 993, as amended (7 CFR Part 993), regulates the handling of dried prunes produced in California. The marketing order is effective under the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act".

The marketing order establishes the Prune Marketing Committee (Committee), consisting of 22 members and their respective alternates. Fourteen members represent producers, 7 represent handlers, and one member represents the public. Of the 14 producer members, 7 represent the cooperative marketing association and 7 are independent. Of the 7 handler members, 3 represent the cooperative marketing association, and 4 represent independents. Members and alternates serve two-year terms of office ending May 31 of even numbered years. Independent producers are nominated to the Committee through a mail balloting process. Independent producers represent 7 production districts. Independent handlers represent large, medium, and small-sized handlers, and nominees are submitted by each of these respective groups. The cooperative marketing association submits its nominees for members and alternate members for appointment through its board of directors.

Currently, there are approximately 1,100 producers and 22 handlers of California dried prunes. Marketing Order No. 993, originally established in 1949, authorizes grade, size, pack, market allocation, reserve pool, as well as inspection requirements. The order also authorizes the Committee, with the approval of the Secretary, to establish projects including marketing research and development projects, designed to assist, improve, or promote the marketing, distribution, and consumption of dried prunes.

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 993, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA: 5 U.S.C. 601–612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525) and August 14, 2003 (68 FR 48574). Accordingly, AMS published a notice of review and request for written comments on the California dried prune marketing order in the July 15, 2002, issue of the **Federal Register** (67 FR 46423). The period for comments ended September 13, 2002. During the comment period, two written comments were received. Both comments were submitted by prune handlers who expressed their opinions in opposition to the use of reserve pooling under the order.

The review was undertaken to determine whether the California dried prune marketing order should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

The marketing order has been used effectively in the areas of quality control and marketing research and development. The establishment of a quality control program that includes minimum grades and standards and mandatory inspections, and container pack requirements has helped improve the quality of product moving from the farm to market. These order requirements have helped ensure that only quality product reaches the consumer. This has helped increase and maintain demand for prunes from this marketing order area over the years. The compilation and dissemination of statistical information has helped producers and handlers make production and marketing decisions.

More recently, the industry was considering changes to the order. However, in 2003, the prune reserve and the voluntary producer prune plum diversion provisions in the order and related volume control regulations were suspended for a five-year period and the outgoing prune inspection and quality provisions of the order and regulations also were suspended for a three-year period. Further, as published in the **Federal Register** on May 27, 2005 (70 FR 30610), all handling and reporting requirements under the marketing order were suspended indefinitely. The suspension action also extended indefinitely the temporary suspension of the outgoing inspection and quality provisions of the order and regulations as well as the prune reserve and the voluntary producer plum diversion provisions in the order and related volume control regulations. The suspension action allows producers and handlers time to consider which provisions in the marketing order would continue to meet their future needs.

Based on the potential benefits of the marketing order to producers, handlers, and consumers, AMS has determined that the order should continue without change, while the industry continues to evaluate the provisions of the order and regulations currently under suspension.

In regard to complaints or comments received from the public regarding the marketing order, during this review, USDA received two comments from prune handlers in opposition to the use of reserve pooling under the order.

One handler expressed the belief that reserve pooling by the California prune industry would place the industry at a competitive disadvantage with other producing countries. Costs of reserve pooling would be incurred by the California prune industry, while other producing countries would not experience such costs. In addition, the handler claimed that reserve maintenance costs such as storage bins, etc. would be unfair to smaller handlers who would not normally incur such costs in the absence of a reserve.

Another handler commented that reserve pooling would be unfair to grower/packers as opposed to packers who do not produce prunes but purchase only the supply they need from growers. This handler also expressed the belief that prune supplies should come more into line with demand as a result of the tree-pull program implemented during the 2001–2002 crop year. (This was a government-funded program that essentially paid prune producers to pull trees out of production to reduce burdensome supplies.)

USDA believes that supply control programs such as reserve pooling can be a valuable tool for an industry for the orderly marketing of its commodity. Such orderly marketing benefits the industry and consumers. The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) authorizes a number of supply control programs, including reserve pooling to achieve orderly marketing of a commodity. Such programs are authorized under a number of marketing orders and have been utilized successfully to the benefit of the respective commodity industries. Costs of such programs and impacts on industry members both small and large are taken into account.

The reserve pool provisions of the prune marketing order have not been used for a number of years. These provisions are currently under suspension for an indefinite period while the industry continues to evaluate the provisions of the order and regulations. The program concerns such as the commenters raised can be addressed in the continuing dialogue

concerning the suspended order and regulation provisions.

Further, marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision-making process by the Committee and USDA before programs are implemented.

In considering the order's complexity, AMS has determined that the marketing order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing order for dried prunes produced in California.

As stated previously, the order was established in 1949. During this time, AMS and the California dried prune industry have continuously monitored marketing operations. Changes in regulations are implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of these evaluations is to assure that the marketing order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

Accordingly, AMS has determined that the marketing order should be continued without further change, as the industry continues to evaluate the provisions of the order and regulations currently under suspension. AMS will continue to work with the California dried prune industry in maintaining an effective marketing order program.

Dated: February 7, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Section 610 Review of the Marketing Order for Dried Prunes Produced in California Marketing Order No. 993

Introduction and Background

This review is being conducted under section 610 of the Regulatory Flexibility Act (RFA). The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing agreements and orders (orders) issued under the Agricultural Marketing Agreement Act of 1937 (Act) are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Small agricultural service firms, which include handlers and shippers of the commodity, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $750,000.

In January of 1997, Fruit and Vegetable Programs (FV) of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA) made a policy decision to include initial and final RFA analyses in all of its informal and formal rulemaking documents. Prior to that, FV had been certifying that the specific rulemaking actions did not have a significant economic impact on a substantial number of small entities. The decision to include these analyses was made to ensure that the impact of regulations on small entities was more thoroughly reviewed, especially because FV orders have small entity orientation. Most rulemaking decision makers and drafters have found the RFA analysis tools useful in ensuring that all reasonable alternatives are considered in minimizing the economic burden or increasing the benefits for small entities, and for assessing the overall impact on industries, while achieving the objectives of the Act.

Consistent with this policy decision, AMS published in the **Federal Register** on February 18, 1999, a plan to review all regulations that warrant periodic review. An updated plan was published in the **Federal Register** on January 4, 2002, and again on August 14, 2003. The reviews are being conducted over the next 10 years under section 610 of the RFA. Of the program reviews being conducted, approximately 17 are FV orders. These FV orders are being reviewed for the purpose of determining whether they should be continued without change, or should be amended, rescinded, or terminated (consistent with the objectives of applicable statutes) to minimize the impacts on small entities.

In reviewing each of its orders, FV is considering the following factors:

(1) The continued need for the order;

(2) The nature of complaints or comments from the public concerning the order;

(3) The complexity of the order;

(4) The extent to which the rules of the order overlap, duplicate, or conflict with other Federal rules and, to the extent feasible, with state and local regulations; and

(5) The length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

USDA is required to terminate an order if it finds that the provisions no longer tend to effectuate the declared policy of the Act. Termination is also required whenever it is favored by a majority of producers who during a crop year have been engaged in the production of prunes for market, and that such majority produced for market more than 50 percent of the volume of prunes produced during that crop year.

Review of Marketing Order No. 993 for Dried Prunes Produced In California

Marketing Order No. 993 (order) regulates the handling of dried prunes produced in the State of California. The order authorizes grade and size regulation, including mandatory inspection, container pack requirements, volume control, reporting requirements, and marketing research and development. The order was initially promulgated in 1949, with surplus control and grade and size (quality) regulation being its primary function. It has been amended eight times to include additional authorities and make changes to existing authorities to meet the changing needs of the industry. The most recent amendments occurred in 1980. More recently, the industry was considering additional changes to the order. However, in 2003, the prune reserve and voluntary producer prune plum diversion provisions in the order and related volume control regulations were suspended for a five-year period, and the outgoing prune inspection and quality provisions in the order and regulations were suspended for a three-year period. Further, as published in the **Federal Register** on May 27, 2005, (70 FR 30610), all handling and reporting requirements under the marketing order were suspended indefinitely. The suspension action also extended indefinitely the temporary suspension of the outgoing inspection and quality provisions of the order and regulations as well as the prune reserve and the voluntary producer plum diversion provisions in the order and related volume control regulations. The suspension action allows producers and handlers time to consider which provisions in the marketing order would continue to meet their future needs.

The order establishes the Prune Marketing Committee (Committee) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Committee consists of 22 members and 22 alternate members. Fourteen

members represent producers, seven represent handlers, and one represents the public. Currently, three of the handler members represent cooperative marketing associations and four members represent independents (those not affiliated with a cooperative). Producer membership is divided evenly between independents and cooperatives with seven members each. Each member and alternate serves a two-year term of office ending on May 31 of even numbered years. Independent producers nominate independent producer members, while independent handlers, through a mail balloting process, nominate independent handler members. Cooperative representatives are nominated by the cooperative marketing organizations.

Currently, there are approximately 1,100 producers and 22 handlers of California dried prunes. The majority of these producers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly to small and large entities, are designed to benefit all industry entities regardless of size, and do not have differential impacts based on size.

The Committee's activities include administering a quality control program that includes minimum grades and standards and mandatory inspections, container pack requirements, and compiling and disseminating statistical information to the industry. Portions of the quality control program are now under suspension. Two forms of volume control exist under the order, an undersized regulation and a reserve pool, which are under suspension. Although reserves have been used in the past, this form of volume control has not been implemented since 1971. In recent seasons, volume control has been implemented through elimination of the smallest undersized prunes from the market. One of the primary reasons for the use of this form of volume control is that the industry has had large inventories, consisting mainly of small-sized prunes. This form of volume control has reduced the marketable production by about 2 percent, and was proposed to be implemented for the 2004–05 season. However, dried prune production during that season was the smallest since the early 1900's and the proposal was withdrawn. While the order contains authority for marketing research and development, the research, marketing and advertising activities are conducted under a companion State program. The Committee is also responsible for recommending needed regulatory actions to USDA and recommending changes to the marketing order and its rules and regulations. USDA must approve activities undertaken by the Committee before they can be implemented. Activities of the Committee are funded with assessment monies collected from handlers.

A notice of review and request for comments regarding the California prune marketing order was published in the **Federal Register** on July 15, 2002. During the comment period that ended on September 13, 2002, two written comments were received. Both comments were submitted by prune handlers who expressed their opinions in opposition to the use of reserve pooling under the order.

The Continued Need for the Marketing Order

The order was established in 1949 to help the California dried prune industry work with USDA to solve marketing problems that were characterized by an oversupply situation and relatively low producer returns. During the pre-World War II period from 1934–38, California prune production averaged 235,300 tons, according to a Recommended Decision published by USDA in the **Federal Register** on July 1, 1949. Sales to commercial domestic markets averaged 102,000 tons, 20,000 tons were utilized in relief programs, and exports (primarily to Europe) averaged 97,400 tons, for a total of 220,015 tons. After World War II, the situation changed dramatically. During the 1947–48 season, domestic sales were 93,000 tons and exports were reduced to 16,100 tons. Based on data available at the time and the prevailing growing conditions, it was expected that annual production would average around 185,000 tons in the subsequent seasons. Producer prices during the 1947–48 season averaged $148.00 per ton, which was 62 percent of the parity price at that time. In addition, the Commodity Credit Corporation purchased 123,000 tons of California prunes during that season; thus, producer prices would have undoubtedly been even lower absent those purchases. In order to address this situation, the California prune marketing order was promulgated. Its primary feature at that time was a supply control program, which helped the industry manage the oversupply situation.

USDA routinely monitors the operations of this order, as does the industry and Committee, to ensure that the regulations issued address current market and industry conditions, and that the regulations and administrative procedures are appropriate for current practices within the industry. This helps ensure the marketing of a high quality product. Prior to its suspension, the prune import regulation required imported dried prunes to meet quality and size requirements comparable to those applied to California dried prunes.

Although modified numerous times since its inception, the order still maintains authority for volume control. There are two methods of volume control authorized under the order. One involves a reserve program which is currently under suspension. Under this program, if USDA established a reserve recommended by the Committee based on oversupply conditions, handlers would be required to withhold from selling a certain percentage of product in normal market outlets. This "reserve" product could be disposed of into normal domestic or export market outlets, or into other noncompetitive outlets. Also, if a reserve were in effect, the order authorizes a diversion program whereby producers may divert prune plum production, and each handler's reserve obligations would be reduced according to the quantity of prune plums diverted from production. The industry used these volume control programs, or a variation of the programs, periodically from the 1950's into the 1970's to manage supplies in large crop years. However, salable and reserve volume control programs have not been implemented in more than 30 years in the California prune industry. Supplies were in relative balance with demand until the late 1990's. As mentioned previously, the authority for this program is under suspension.

Another form of volume control under the order involves eliminating the smallest, most undesirable sizes of prunes from human consumption channels. The "undersize regulation" recently has been used for five seasons beginning with the 1998–99 prune crop through the 2002–03 prune crop. This tool is effective in making relatively small adjustments to the supply rather than large adjustments. An "undersize regulation" for the 2004–05 season was recommended by the Committee and proposed by USDA. However, the production turned out to be the smallest since the early 1900's and the proposed rule was withdrawn. This provision also is under suspension for an indefinite period.

Due to a long-run surplus situation realized in recent seasons, the Committee recommended establishing a reserve program for the 2001–02 season. However, the program was not implemented. There was a smaller crop than initially estimated. In addition, the USDA implemented a program (67 FR 11384; March 14, 2002) pursuant to

Section 32 of the Act of August 24, 1935, as amended, to allow prune producers to remove trees from production.

Authority for grade and size regulations has also been included in the order since its inception in 1949. When the order was promulgated, it was determined that producer prices and total returns to producers could be augmented by making available in trade channels only the better sizes and qualities of fruit (Recommended Decision, July 1, 1949). Over the years, the industry has found that providing higher quality and more desirable sizes of prunes to the marketplace has increased consumer satisfaction and resulted in more repeat purchases of the product. Keeping the lower priced, lower quality and less desirable sizes off the market has helped to prevent such product from depressing overall price levels, thus improving grower returns and fostering orderly marketing conditions. However, in 2003, taking into account cost considerations, the Committee recommended suspension of the outgoing inspection and outgoing prune quality requirements. The Committee also recommended relaxation of the disposition and verification requirements on undersized prunes. The USDA implemented these recommendations in 2003.

In 1960, the order was amended to include authority for marketing research and development projects. However, this authority has been used in a limited fashion. Since July 1980, production research, market research, market development, and promotion, including paid advertising, have been conducted under a State marketing order. In a Giannini Foundation March 1998 report, the California Dried Plum Board's (CDPB; formerly known as the California Prune Board) promotion program was evaluated. The report was paid for with CDPB assessment funds, and concluded that the promotion of California prunes by the CDPB has increased the demand for prunes and returns to producers of prunes. Over the four-year period analyzed in the monthly model, spending by prune growers for promotion yielded marginal returns of at least $2.65 for every dollar spent. Moreover, marginal benefit-cost ratios of 2.7 to 1 and greater indicate that the industry could have profitably invested even more in promotion this period.

Also in 1960, the order was amended to include authority to establish size categories, size nomenclature designations, and labeling requirements for natural condition and processed whole prunes. These authorities were implemented through rulemaking during 1961, 1981, and 1984. This was an important feature in informing buyers of the type and size of whole prunes marketed.

Prior to the most recent suspension action, the Committee collected statistical information from handlers on a routine basis. The Committee staff compiled aggregate statistical reports that were distributed to the industry and used in planting, harvesting, and sales decisions. This information was also used by the industry in making marketing policy decisions, including whether to implement volume control and/or undersize volume control. It was also used in recommending changes to the marketing order pertaining to grade and size.

The industry has changed marketing practices over the years and now pitted prunes dominate the market. In 1986, 61 percent of the prunes were marketed as whole prunes. In earlier years, this percentage was even higher. During the 2003–04 crop year, only 35 percent of the crop was marketed as whole prunes.

The industry has conducted studies to determine if the marketing order grade and size regulations can be improved. One such study was initiated to see if the industry could tighten its pit fragment tolerance. One of the most frequent consumer complaints has been a pit or pit fragment(s) in prunes. The industry enlisted the services of the Dried Fruit Association of California to conduct the pit fragment study. The results of the study showed that the industry could tighten the prune pit and pit fragment tolerance standard. The industry decided to improve its product by tightening the pit and pit fragment tolerance standard effective November 30, 1992, from a U.S Food and Drug Administration requirement that allowed no more than 2 percent, by count, of prunes with whole pits and/or pit fragments 2 mm or longer to a marketing order tolerance not to exceed an average of 0.5 percent, by count, of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten sub samples examined having no more than 0.5 percent, by count, of prunes with whole pits and/or pit fragments 2 mm or longer. Over the past 12 years, this change has helped reduce the incidence of pit and/or pit fragments in pitted prunes. Currently, the industry is conducting a study to determine whether the 0.5 percent pit/pit tolerance can be reduced to 0.25 percent.

USDA reviews industry recommendations and programs for consistency with the regulatory authorities provided in the order, the prevailing and prospective market situation, and the impact upon small businesses. An assessment is also made as to whether regulatory recommendations or programs are practical for those who would be regulated, and whether the recommendations are consistent with USDA policy.

The California prune marketing order has proven to be an effective tool used by the industry for more than 50 years in managing and marketing its crop. The order should help the industry to face the challenges of the future. Based on the potential benefits of the marketing order to producers, handlers, and consumers, AMS has determined that the order should be continued without further change as the industry continues to evaluate the provisions of the order and regulations currently under suspension.

The Nature of Complaints or Comments From the Public Concerning the Marketing Order

As previously mentioned, USDA received two comments regarding the order or the regulations issued under the order in response to the published notice of review. Both comments expressed opposition to reserve pooling under the order. No comments from non-industry entities were received.

One handler expressed the belief that reserve pooling by the California prune industry would place the California industry at a competitive disadvantage with other producing countries. Costs of reserve pooling would be incurred by the California prune industry, while other producing countries would not experience such costs. In addition, the handler claimed that reserve maintenance costs for storage bins would be unfair to smaller handlers who would not normally incur such costs in the absence of a reserve.

Another handler commented that reserve pooling would be unfair to grower/packers as opposed to packers who do not produce prunes but purchase only the supply they need from growers. This handler also expressed the belief that prune supplies should come more into line with demand as a result of the tree-pull program implemented during the 2001–02 crop year. This was a government-funded program that allowed prune producers to pull trees out of production to reduce burdensome long-run supplies.

USDA believes that supply control programs such as reserve pooling can be a valuable tool for an industry for the orderly marketing of its commodity. Such orderly marketing benefits the industry and consumers. The

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) authorizes a number of supply control programs, including reserve pooling to achieve orderly marketing of a commodity. Such programs are authorized under a number of marketing orders and have been utilized successfully to the benefit of the respective commodity industries. Costs of such programs and impacts on industry members both small and large are taken into account.

The reserve pool provisions of the prune marketing order have not been used for a number of years. These provisions are currently under suspension for an indefinite period while the industry continues to evaluate the provisions of the order and regulations. The program concerns raised by the commenters can be addressed in the continuing dialogue concerning the suspended order and regulation provisions.

Further, marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and USDA before recommendations and programs are implemented.

The Complexity of the Marketing Order

The prune marketing order itself is not unduly complex. The implementing rules and regulations under the order have a degree of complexity; however, efforts are undertaken to ensure that the regulations are no more complex than necessary to achieve the desired objectives. The Committee and its subcommittees review the regulations periodically and make recommendations for change. Their goal is to keep the regulations as easy to understand as possible. In addition, USDA reviews the recommendations to help assure this goal. Finally, Committee staff provides materials to growers and handlers explaining the programs and regulations, and periodically conducts educational workshops to help growers and handlers better understand the programs and regulations.

The Extent to Which the Marketing Order Overlaps, Duplicates, or Conflicts With Other Federal Rules, and to the Extent Feasible, With State and Local Regulations

USDA has not identified any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with this order's requirements. However, there is a companion California State marketing order that also applies to the prune industry. This program works cooperatively with the Federal marketing order to ensure there is no duplication of efforts. The programs share staff and office space, and many of the Federal marketing order committee members are also members of the State marketing order committee. This arrangement helps assure that the programs complement each other rather than conflict, duplicate efforts, or overlap. Activities under the Federal marketing order were discussed in detail in an earlier section of this review. The State marketing order engages in those activities not undertaken under the Federal order including production research, marketing research, and market promotion. Both programs operate in concert with each other to benefit the prune industry.

The Length of Time Since the Marketing Order Has Been Evaluated or the Degree to Which Technology, Economic Conditions, or Other Factors Have Changed in the Area Affected by the Marketing Order

The USDA and the California prune industry monitor the production and marketing of prunes on a continuing basis. Changes in regulations are implemented to reflect current industry operating practices, and to solve marketing problems. The goal of these evaluations is to assure that the order and the regulations issued under it fit the needs of the industry and are consistent with the Act and USDA policies.

The USDA routinely monitors the operations of this order, as does the industry, to ensure that the regulations issued address current market and industry conditions, and that the regulations and administrative procedures are appropriate for current practices within the industry. The producers and handlers of California prunes support activities that help ensure the marketing of a high quality product, and believe that this order has been effectively used for that purpose.

Since its inception in 1949, Marketing Order 993 has gone through numerous changes. These changes were made, in part, because of changing technological and economic conditions affecting the production, handling, and marketing of prunes. This industry is continuing to evaluate the provisions of the order and regulations currently under suspension in determining which provisions in the marketing order would continue to meet its future needs.

Records indicate that the order has been formally amended eight times since its promulgation. Amendments have varied in their nature and scope, ranging from procedural issues such as changing voting requirements to adding entirely new regulatory authorities to the order. For example, Committee membership and voting requirements were revised in a 1954 amendment proceeding (January 1, 1954, **Federal Register**). In 1957, authority for consumer pack regulations was added to the order (August 15, 1957, **Federal Register**), and in 1960 authority for market research and development was added to the order (November 29, 1960, **Federal Register**). The order was most recently amended in 1981. Those amendments included changing the Committee name, adding a public member and alternate member to the Committee, changing the quorum requirements. and establishing a continuous undersize regulation (September 28, 1981, **Federal Register**).

The Committee decided to review the order for needed changes and formed an Amendment Subcommittee during the middle of 2001 to review the order and put together amendment proposals for the Committee to review and ultimately forward to USDA with a request for an amendment hearing. The order's rules and regulations also have been modified numerous times over the years to ensure they meet the needs of the industry. While several amendment proposals were considered, the Committee, in 2005, ultimately decided to recommend an indefinite suspension of the order's handling, reporting, quality, inspection, and volume control provisions. The industry is continuing its dialogue concerning its future needs. Ultimately, the Committee will decide whether the provisions should be modified, terminated, or remain unchanged.

The numerous formal order amendments, the many changes to the rules and regulations over the years, and the Committee's continuing review and adjustments to its programs, show that the order is constantly changing to meet industry needs. The USDA will continue to work with the California prune industry in maintaining an effective program.

[FR Doc. E6–1910 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2006–0010]

Add Kazakhstan, Romania, Russia, Turkey, and Ukraine to List of Regions in Which Highly Pathogenic Avian Influenza Subtype H5N1 Is Considered To Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Kazakhstan, Romania, Russia, Turkey, and Ukraine to the list of regions in which highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist. We are taking this action because there have been outbreaks of HPAI subtype H5N1 in those countries. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

DATES: This interim rule was effective on February 7, 2006. This interim rule was applicable on July 18, 2005, with respect to Russia; on July 22, 2005, with respect to Kazakhstan; on October 1, 2005, with respect to Turkey; on October 4, 2005, with respect to Romania; and on November 25, 2005, with respect to Ukraine. We will consider all comments that we receive on or before April 14, 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–2006–0010 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–2006–0010, 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–2006–0010.

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. Julie Garnier, Staff Veterinarian, Technical Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–5677.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including avian influenza (AI).

There are many strains of AI virus that can cause varying degrees of clinical illness in poultry such as chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds. AI viruses can be classified into low pathogenic (LPAI) and highly pathogenic (HPAI) forms based on the severity of the illness they cause. Most AI virus strains are LPAI and typically cause little or no clinical signs in infected birds. However, some LPAI virus strains are capable of mutating under field conditions into HPAI viruses.

HPAI is an extremely infectious and fatal form of the disease for chickens. HPAI can strike poultry quickly without any infection warning signs and, once established, the disease can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. One gram of contaminated manure can contain enough virus to infect 1 million birds.

In some instances, strains of HPAI viruses can be infectious to people. Human infections with AI viruses under natural conditions have been documented in recent years. Since December 2003, a growing number of countries have reported outbreaks of HPAI, H5N1, Asian strain, responsible for the deaths of millions of birds and at least 79 humans.

The rapid spread of the H5N1, Asian strain of HPAI, with outbreaks occurring at the same time in a number of regions, is historically unprecedented and of growing concern for human and animal health. The current H5N1, Asian strain of HPAI has caused significant concern among health authorities worldwide because of the potential for this virus to mutate into a form that is easily transmitted from human to human.

On July 23, 2005, Russia alerted the World Organization for Animal Health and the United States that an outbreak of HPAI subtype H5N1 had been identified in that country on July 18, 2005. On August 2, 2005, Kazakhstan also reported an outbreak of HPAI subtype H5N1 that began on July 22, 2005. Similar notifications were made by Turkey on October 6, 2005, regarding an October 1, 2005, outbreak; by Romania on October 7, 2005, regarding an October 4, 2005, outbreak; and by Ukraine on December 2, 2005, regarding a November 25, 2005, outbreak.

Therefore, in order to prevent the introduction of HPAI subtype H5N1 into the United States, we are amending the regulations by adding Kazakhstan, Romania, Russia, Turkey, and Ukraine to the list in § 94.6(d) of regions where HPAI subtype H5N1 exists. We are making this action effective retroactively to July 18, 2005, for Russia, which is the date that Russian veterinary authorities estimate to be the date of primary infection. Similarly, we are making this action effective retroactively for Kazakhstan, Turkey, Romania, and Ukraine to July 22, 2005; October 1, 2005; October 4, 2005; and November 25, 2005, respectively. As a result of this action, the importation into the United States of birds, poultry, and unprocessed bird and poultry products from Kazakhstan, Romania, Russia, Turkey, and Ukraine is restricted, and U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States from Kazakhstan, Romania, Russia,

Turkey, and Ukraine will be subject to additional permit and quarantine requirements.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of HPAI subtype H5N1 into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations concerning the importation of animals and animal products by adding Kazakhstan, Romania, Russia, Turkey, and Ukraine to the list of regions in which HPAI subtype H5N1 is considered to exist. We are taking this action because there have been outbreaks of HPAI subtype H5N1 in those countries. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

Poultry production in Kazakhstan, Romania, Russia, Turkey, and Ukraine represents a small portion of world production. Imports of poultry and poultry products from these five countries into the United States are not large. In fact, from 2004 to 2005, of the five, Russia and Ukraine were the only countries exporting poultry and poultry products to the United States (table 1). In 2004, the United States imported a total of over $2.3 million worth of live birds and over $204 million worth of down feathers from all countries. Imports of poultry and poultry products from Russia and Ukraine comprised less than 1 percent of all imports to the United States annually.

TABLE 1.—VALUE OF U.S. IMPORTS OF LIVE BIRDS AND POULTRY PRODUCTS FROM RUSSIA AND UKRAINE

Product	2004	2005 (January–October)
Live birds	$158,000	$28,000
Feathers and down for stuffing, clean	786,235	991,549

Source: World Trade Atlas.

Adding Kazakhstan, Romania, Russia, Turkey, and Ukraine to the list of regions in which HPAI subtype H5N1 is considered to exist is not likely to have a measurable economic impact on the agricultural economy as a whole or on small entities.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has retroactive effect to July 18, 2005, with respect to Russia; to July 22, 2005, with respect to Kazakhstan; to October 1, 2005, with respect to Turkey; to October 4, 2005, with respect to Romania; and to November 25, 2005, with respect to Ukraine; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

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

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

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 94.6, paragraph (d) is revised to read as follows:

§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1 is considered to exist.

* * * * *

(d) Highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist in the following regions: Cambodia, China, Indonesia, Japan, Kazakhstan, Laos, Malaysia, Romania, Russia, South Korea, Thailand, Turkey, Ukraine, and Vietnam.

* * * * *

Done in Washington, DC, this 7th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–1303 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1412

RIN 3055–AA08

Golden Parachute and Indemnification Payments

AGENCY: Farm Credit System Insurance Corporation (FCSIC or Corporation).

ACTION: Final rule.

SUMMARY: The FCSIC is issuing a final rule limiting golden parachute and indemnification payments to institution-related parties (IRPs) by Farm Credit System institutions, including their subsidiaries, service corporations and affiliates. The purpose of the rule is to prevent abuses in golden parachute and indemnity payments and to protect the assets of the institution and the Farm Credit System Insurance Fund.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dorothy L. Nichols, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive,

McLean, VA, 22102, 703–883–4211, TTY 703–883–4390, Fax 703–790–9088.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have significant impact on a substantial number of small entities.

Background

Section 218 of the Farm Credit System Reform Act of 1996 ("Reform Act") amended the Farm Credit Act of 1971 by adding a new section 5.61B. *See* Pub. L. 104–105, Feb. 10, 1996. This section authorizes the Corporation to prohibit or limit, by regulation or order, golden parachute and indemnification payments. *See* 12 U.S.C. 2277a–10b. Section 5.61B is similar to legislative authorities given to the other Federal financial institution regulators. *See e.g.* 12 U.S.C. 1828(k).

The terms golden parachute and indemnification payment are defined in the statute at 12 U.S.C. 2277a–10b(a)(1) and (2). In general, golden parachutes are employment contracts that offer substantial payments when employment is terminated. Indemnification payments are often used to reimburse officers or directors for personal losses due to judgments or litigation costs incurred while exercising official duties. The golden parachute portion of the rule applies to any Farm Credit System institution seeking to make golden parachute payments only when the institution is in a "troubled condition." The indemnification part of the rule applies to Farm Credit System institutions regardless of their financial condition. Its primary purpose is to prohibit reimbursements that benefit wrongdoers. For example, an institution could not indemnify officers or directors for legal expenses or liabilities that result from a successful Farm Credit Administration (FCA) administrative action. However, if the officer or director is cleared of the charges, legal fees and costs can be reimbursed.

Golden Parachute Prohibition

The regulation follows the statutory definition of a golden parachute payment. It is a payment (or an agreement to make a payment) that:

- Is in the nature of compensation by any System institution for the benefit of any current or former institution-related party;
- Is based on an obligation that is contingent on termination; and
- Is received on or after, or is made in contemplation of certain events that signify the System institution is in a troubled condition.

Following the criteria set out in section 5.61B(a)(1) of the Reform Act, the rule prohibits golden parachute payments by institutions that are insolvent, in conservatorship or receivership, or rated a "4" or "5" in the FCA Financial Institution Rating System. Section 5.61B(a)(1)(A) also authorizes the Corporation to define by regulation other circumstances that warrant a determination that an institution is in a troubled condition.

The rule defines troubled condition to include any institution: (1) Subject to a cease-and-desist order or written agreement issued by the FCA requiring it to improve its financial condition; (2) subject to an FCA proceeding that may result in an order that requires improvement in financial condition; or (3) informed in writing by the Corporation that it is in troubled condition based on its most recent report of examination or other pertinent information. For banks, troubled condition also includes a bank that is: (1) Unable to make timely payments of principal and interest on bank-insured obligations; or (2) receiving assistance from the Insurance Fund. For the Federal Agricultural Mortgage Corporation ("Farmer Mac"), troubled condition also includes inability to make timely payments of principal and interest on its debt obligations or an inability to fulfill its guarantee obligations. The definition of troubled condition in the rule is similar to the definition in rules adopted by the other Federal financial institution regulators. *See e.g.*, 12 CFR 359.1(f); 12 CFR 563.555 and 12 CFR 701.14.

Exceptions

The rule lists eight exceptions to the prohibition on golden parachute payments in § 1412.2(f)(2). Four of these are listed in the statute: ERISA [1] qualified retirement plans; nonqualified "bona fide" deferred or supplemental compensation plans; other nondiscriminatory benefit plans; and payments made by reason of death or disability. *See* 12 U.S.C. 2277a–10b(a)(1)(c).

Nondiscriminatory means a plan or arrangement that applies to all employees who meet customary eligibility requirements such as minimum length-of-service standards. We understand that many severance plans pay somewhat more generous benefits to higher ranking employees. The rule would allow a modest disparity in nondiscriminatory severance benefits linked to objective criteria like job title or length of service. The definition of nondiscriminatory specifies a maximum 20 percent in any one criteria, unless a request for a larger amount is granted by the Corporation. For example, if lower-level employees are provided 50 percent of their yearly salary and 1 week of salary for each year of service, higher level employees could receive 60 percent of their yearly salary plus 1 week of salary for each year of service. Our hope is that this permitted modest discrepancy would allow System institutions to offer severance benefits that conform to industry norms for nondiscriminatory benefit plans. The statute grants the Corporation authority to determine other permissible arrangements and four of the eight exceptions in § 1412.2(f)(2) are exceptions added by the Board for System institutions. They include payments required by state or foreign law and a safe harbor provision.

Section 1412.2(f)(2)(viii) adds an exception that can be used in lieu of paragraph (f)(2)(vii) for severance pay plans or arrangements that do not meet the regulatory definition of nondiscriminatory. We understand that at times different benefit arrangements may be made available to different employees. For example, an institution that is experiencing financial trouble may want to terminate some employees immediately while providing incentive payments to employees with critical functions so as to delay their departures. The rule limits payments or arrangements under this exception to 12-months' base salary, unless a request for a larger payment is granted by the Corporation. Minor deviations in severance benefits that involve tangible property would also be permitted. For example, an institution may want to give some departing employees their laptops but other employees would get no additional benefits. We would not treat this as a prohibited golden parachute payment, as long as the cost is reasonable and the practice customary. We hope this provision provides a workable safe harbor for institutions that want to reward more highly compensated employees that

[1] Employee Retirement Income Security Act of 1974, as amended. (29 U.S.C. 1002(1)).

have greater responsibilities without undermining the intent of the legislation.

Section 1412.5(a)(2) permits a troubled institution to hire a "white knight", an individual hired to improve the institution's condition, and agree to pay a golden parachute payment upon termination of employment, provided the institution obtains the prior written consent of the FCA and the Corporation. Such an agreement has the potential to benefit the institution and the Insurance Fund. We recognize that individuals who possess the experience and expertise necessary to reverse a troubled institution may not take the job unless they receive an agreement for a severance payment reflecting market rates, in the event that their efforts are not successful.

Section 1412.5(a)(3) contains an exception for a change in control. In the proposed rule, we allowed System institutions to pay up to 12-month's salary in the event of a change of control with the prior consent of the FCA. The Board believed 1-year's salary would provide a sufficient incentive for a senior executive to objectively consider a merger that may result in the loss of that executive's job at a troubled institution. A commenter took issue with this provision, stating that after an informal survey of practices in the financial industry generally and within the Farm Credit System, an 18-month period was more typical. The Corporation has changed § 1412.5(a)(3) to allow up to 18-month's salary. This is the only substantive change in the final rule.

Finally, the rule in § 1412.5(a)(1) sets out a procedure to allow System institutions to request authority for what would otherwise be a prohibited golden parachute payment. This provision recognizes that there may be valid business reasons to seek an agreement not covered by any of the express exceptions, which the institution believes should not be prohibited. If an institution seeks such an authorization, the statute sets out a number of factors that the FCA and the Corporation may consider. *See* 12 U.S.C. 2277a–10b(c). The rule at § 1412.5(a)(4) and (b) enumerates the factors that the FCA and the Corporation will consider, including whether the IRP committed any fraudulent acts, breached a fiduciary duty or played a substantial role in the institution's troubled condition. Under the rule, the institution making the request should address the factors specified in the rule so that the FCA and the Corporation can consider whether the requested payment would be contrary to the intent of the prohibition. The institution should include any information of which it has knowledge that indicates there is a reasonable basis to believe that the IRP satisfies any of the criteria set out in § 1412.5(a)(4) and (b). If the applicant is not aware of any such information, it shall certify that it is not. A commenter suggested that FCSIC consider the time frame in which the severance plan was adopted. For example, the commenter notes that an institution could have adopted the severance plan several years before the institution became "troubled". The comment letter suggests that it may be inappropriate to treat such plans in the same manner as severance plans adopted when an institution is either in, or near "troubled" status. We would point out that the situation described could be a factor highlighted by the institutions if it made a request for an exception under § 1412(a)(1) to pay what would otherwise be a prohibited golden parachute.

Indemnification Payments

The statute prohibits Farm Credit System institutions from making an indemnification payment for any liability or legal expense arising from an administrative or civil action brought by FCA that results in a civil money penalty, removal from office or a prohibition on participation in the System institution's business. *See* 12 U.S.C. 2277a–10b(a)(2). Institutions may purchase directors and officers insurance to cover the legal expenses even if the individual loses the legal action and pays settlement costs. *See* 12 U.S.C. 2277a–10b(e)(1). Nevertheless, the institution cannot use directors and officers insurance to pay the civil money penalty.

The rule, at § 1412.2(l), follows the definition of a prohibited indemnification payment set out in the statute. It includes any payment or agreement to pay an institution-related party for any civil money penalty or judgment resulting from an administrative or civil action brought by FCA where the person must pay a civil money penalty, is removed from office or is subject to a cease and desist action. There are two exceptions in the rule. The first allows System institutions to purchase commercial insurance to cover expenses other than judgments and penalties. Second, the rule permits a partial indemnification. If there has been a finding that clears the individual, indemnification is permitted for the legal or professional expenses attributable to these charges. In addition, § 1412.6 sets out criteria for permissible "up front" indemnification payments. The System institution's board of directors must determine that the party requesting indemnification acted in good faith. Also, the payment cannot materially adversely affect the institution's safety and soundness. Finally, the party must agree to reimburse the institution for advanced indemnification payments if they become prohibited payments later, due to an unfavorable ruling.

Farm Credit System Institutions

The prohibitions in 12 U.S.C. 2277a–10b apply to all Farm Credit System institutions. The rule at § 1412.2(b) defines Farm Credit System institutions to include all associations, banks, service corporations and their subsidiaries and affiliates, except the Farm Credit Financial Assistance Corporation. It also includes Farmer Mac and its subsidiaries and affiliates, which is described in 12 U.S.C. 2279aa–1(a)(2) as an institution of the Farm Credit System. Furthermore, 12 U.S.C. 2277a–10b(b) specifies that the prohibition on golden parachute and indemnity payments was meant to include all Farm Credit System institutions, including even a conservatorship or receivership of Farmer Mac. The legislative history of the Reform Act makes this point clear. It states: "New subsection (a) provides that FCSIC has authority to prohibit or limit golden parachutes or indemnifications, including the Federal Agricultural Mortgage Corporation (Farmer Mac)." H.R. Rep. 104–421, 104th Cong., 1st Sess. 12 (1995).

Institution-Related Party

The rule prohibits certain golden parachute and indemnification payments made to or for an institution-related party. The term institution-related party (IRP) is defined in the statute at 12 U.S.C. 2277a–10b(a)(3). It includes directors, officers, employees or agents for a Farm Credit System institution, stockholders (other than another Farm Credit System institution), consultants, joint venture partners and any one else who FCA determines has participated in the affairs of the institution. Additionally, IRPs include independent contractors, including attorneys, appraisers or accountants that knowingly or recklessly participate in an unsafe or unsound practice that caused or is likely to cause harm to the institution. We will examine very closely any attempt by a Farm Credit System institution to avoid the regulation by employing the IRP in some other capacity (*e.g.*, a consultant) and calling the arrangement consulting compensation rather than a severance payment or golden parachute.

Receivership Issues

Section 1412.8 of the rule explains that this regulation is not meant to bind any receiver of a failed Farm Credit System institution. The fact that FCSIC or FCA consents to a particular payment does not mean that the approving entity or the receiver will be responsible for making the payments in the event of a receivership or that the recipient will receive some sort of preference over other creditors from the receivership.

Enforcement

The statute at 12 U.S.C. 2277a–10b(b) grants the FCSIC authority to prohibit golden parachute and indemnity payments by regulation or order. The Board believes that a regulation proscribing limits, defining "troubled condition" and setting out procedures for seeking approval of a payment that is not specified in one of the exceptions is usually preferable to a case-by-case approach. Nevertheless, FCSIC could deal with abuses on a case-by-case basis through an enforcement proceeding.

The regulation is similar to the regulations of the other Federal financial regulators with similar statutory authority. *See, e.g.*, 12 CFR 359. Rather than prohibit all the golden parachute payments above a certain threshold, the regulation allows a Farm Credit System institution that is in a troubled condition, as defined in the regulation, to seek approval for an otherwise prohibited golden parachute payment to an IRP. Similarly, the rule on indemnity payments seeks a rational and fair approach for determining indemnification in order to avoid abuses.

The statute at 12 U.S.C. 2277a–10b(c) provides that FCSIC "shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action under subsection (b) [its authority to prohibit or limit golden parachute payments and indemnity payments]. The section also sets out a number of illustrative factors that may be considered when taking action under subsection (b): for example, whether an IRP has committed acts of fraud, breach of fiduciary duty, or insider abuse that has had a detrimental effect on the financial condition of the institution; whether there is a reasonable basis to believe that the IRP has violated the law or regulations; whether the IRP was in a position of managerial or fiduciary responsibility; and the length of time the party was related to the institution and the reasonableness of the compensation. In addition, section 2277a–10b(d) specifies that certain payments are prohibited. No Farm Credit System institution may prepay the salary or any liability or legal expense of any IRP if the payment is made in contemplation of insolvency or such payment has the result of preferring one creditor over another.

The Corporation has considered the prohibited payments and the illustrative factors in preparing its regulation. It has also reviewed the legislative history of the Reform Act and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (the Fraud Act), which added similar authority for the Federal Deposit Insurance Corporation in a new section 18(k)(1) to the Federal Deposit Insurance Act. Public Law 101–647, Sec. 2523 (1990). The Corporation is aware that the Federal financial regulators have encountered abuses with golden parachutes when institutions pay substantial sums to top executives who resign after an institution is troubled or immediately before the institution is sold. Ultimately, the Corporation has concluded that to avoid such abuses golden parachute payments should be prohibited for Farm Credit System institutions that are in a troubled condition, as defined in the regulation, except under the circumstances set forth in the proposed rule. If an institution in a troubled condition or an IRP wants to make a payment or enter into an agreement that it believes should not be prohibited and the payment or agreement is not covered by one of the exceptions specified in the regulation, it may seek approval from FCA and FCSIC. When it does, the regulation requires the institution or IRP to address some of the factors listed in the statute so that the FCA and FCSIC can consider them in determining whether the proposed payment or agreement should be allowed, limited or prohibited. The Corporation believes this rule will best protect the financial integrity of the institution and safeguard its assets as Congress intended.

In issuing the indemnification rule, the Corporation has considered the prohibited payments and the illustrative factors set out in the statute as well as the legislative history. The Corporation believes that individuals that violate the law or regulations should pay penalties out of their own pockets and not be reimbursed by a Farm Credit System institution. The Corporation believes that this regulation on indemnification payments preserves the deterrent effects of administrative enforcements and civil actions even though it does not prohibit all indemnification payments.

As noted, the rule sets forth circumstances under which indemnification payments may be made. For example, the Corporation has decided to allow indemnification "up front" for an IRP's legal or other professional expenses if: (1) Its board of directors determines that the party requesting indemnification acted in good faith, (2) the payment will not materially adversely affect the institution, and (3) the person agrees in writing to reimburse the institution if the alleged violations of law, regulation or fiduciary duty are upheld. If these criteria are met, the institution's board of directors will have concluded in good faith that the party requesting indemnification did not commit a fraudulent act, insider abuse or some other actionable offense that had a material adverse effect on the financial condition of the institution. Consideration of these factors in this regulatory requirement is what Congress intended FCSIC to do in taking action under section 5.61B(b) and (c) (12 U.S.C. 2277a–10b(b) and (c)). Also, the Corporation has decided to permit partial indemnification for that portion of the liability or legal expenses incurred where there is a determination on part of the charges in favor of the IRP. Finally, an institution may purchase insurance to cover expenses other than judgments or penalties.

FCSIC's authority to regulate golden parachutes and indemnity payments is in addition to FCA's safety and soundness enforcement authority pursuant to the Farm Credit Act of 1971, as amended. Furthermore, nothing in this regulation limits the powers, functions, or responsibilities of the FCA.

List of Subjects in 12 CFR Part 1412

Banks, banking, Golden parachute payment, Indemnification payment, Institution-related party, Penalties, Prohibitions.

■ For the reasons set out in the preamble, 12 CFR part 1412 is added as set forth below:

PART 1412—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.

Authority: 12 U.S.C. 2277a–10b.

§ 1412.1 Scope.

(a) This part limits and/or prohibits, in certain circumstances, the ability of Farm Credit System (System) institutions, their service corporations, subsidiaries and affiliates from making golden parachute and indemnification payments to institution-related parties (IRPs).

(b) This part applies to System institutions in a troubled condition that seek to make golden parachute payments to their IRPs.

(c) The limitations on indemnification payments apply to all System institutions, their service corporations, subsidiaries and affiliates regardless of their financial health.

§ 1412.2 Definitions.

(a) *Act* or *Farm Credit Act* means Farm Credit Act of 1971 (12 U.S.C. 2002(a)), as amended by the Farm Credit System Reform Act of 1996, amending 12 U.S.C. 2277a–10.

(b) *Farm Credit System institution* or *System institution* means any "institution" enumerated in section 1.2 of the Act including, but not limited to, associations, banks, service corporations, the Federal Farm Credit Banks Funding Corporation, the Farm Credit Leasing Services Corporation and their subsidiaries and affiliates, as well as, the Federal Agricultural Mortgage Corporation and its subsidiaries and affiliates, as described in 12 U.S.C. 2279aa–1(a).

(c) *Benefit plan* means any plan, contract, agreement or other arrangement which is an "employee welfare benefit plan" as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or other benefits provided under a cafeteria plan sponsored by the System institution; provided however, that such term shall not include any plan intended to be subject to paragraph (f)(2)(iii), (vii) and (viii) of this section.

(d) *Bona fide deferred compensation plan or arrangement* means any plan, contract, agreement or other arrangement whereby:

(1) An IRP voluntarily elects to defer all or a portion of the reasonable compensation, wages or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and the System institution either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of such trust may be available to satisfy claims of the System institution's creditors in the case of insolvency; or

(2) The System institution establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (d)(1) of this section:

(i) Primarily for the purpose of providing benefits for certain IRPs in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 415, 401(a)(17), 402(g)); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments described in paragraph (f)(2)(v) of this section and permissible golden parachute payments described in § 1412.5); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (d)(1) and (2) of this section, the following requirements shall apply:

(i) The plan was in effect at least 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section and in accordance with any amendments to such plan during such 1 year period that do not increase the benefits payable thereunder;

(iii) The IRP has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(iv) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(v) Any payment made pursuant to such plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(vi) The System institution has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of such trust may be available to satisfy claims of the System institution's creditors in the case of insolvency; and

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

(e) *Corporation or FCSIC* mean the Farm Credit System Insurance Corporation, in its corporate capacity.

(f) *Golden parachute payment.* (1) The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any System institution for the benefit of any current or former IRP pursuant to an obligation of such System institution that:

(i) Is contingent on the termination of such party's primary employment or relationship with the System institution; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency (or similar event) of the System institution which is making the payment or bankruptcy or insolvency (or similar event) of the service corporation, subsidiary or affiliate which is making the payment; or

(B) The System institution is assigned a composite rating of 4 or 5 by the FCA; or

(C) The appointment of any conservator or receiver for such System institution; or

(D) A determination by the Corporation, that the System institution is in a troubled condition, as defined in paragraph (m) of this section; and

(iii) Is payable to an IRP whose employment by or relationship with a System institution is terminated at a time when the System institution by which the IRP is employed or related satisfies any of the conditions enumerated in paragraphs (f)(1)(ii)(A) through (D) of this section, or in contemplation of any of these conditions.

(2) *Exceptions.* The term "golden parachute payment" shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the

Internal Revenue Code of 1986 (26 U.S.C. 401); or

(ii) Any payment made pursuant to a benefit plan as that term is defined in paragraph (c) of this section; or

(iii) Any payment made pursuant to a "bona fide" deferred compensation plan or arrangement as defined in paragraph (d) of this section; or

(iv) Any payment made by reason of death or by reason of termination caused by the disability of IRP; or

(v) Any severance or similar payment which is required to be made pursuant to a state statute or foreign law which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria); or

(vi) Any other payment which the Corporation determines to be permissible in accordance with § 1412.6, on permissible indemnification payments; or

(vii) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement that provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement. Furthermore, such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or scope of severance benefits at a time when the System institution was in a condition specified in paragraph (f)(1)(ii) of this section or in contemplation of such a condition without the prior written consent of the FCA; or in lieu of a payment made pursuant to this paragraph;

(viii) Any payment made pursuant to a severance pay plan or arrangement that provides severance benefits upon involuntary termination other than for cause, voluntary resignation, or early retirement. No employee shall receive any payment under this subpart which exceeds the base compensation paid to such employee during the 12 months (or longer period or greater benefit as the Corporation shall consent to) immediately proceeding termination of employment. Furthermore, such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or the scope of the severance benefits at a time when the System institution was in a condition specified in paragraph (f)(1)(ii) of this section or in contemplation of such a condition without the written approval of the FCA.

(g) The *FCA* means the Farm Credit Administration.

(h) *Institution-related party (IRP)* means:

(1) Any director, officer, employee, or controlling stockholder (other than another Farm Credit System institution) of, or agent for a System institution;

(2) Any stockholder (other than another Farm Credit System institution), consultant, joint venture partner, and any other person as determined by the FCA (by regulation or case-by-case) who participates in the conduct of the affairs of a System institution; and

(3) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the System institution.

(i) *Liability or legal expense* means:

(1) Any legal or other professional fees and expenses incurred in connection with any claim, proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or actions; and

(3) The amount of, any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, processing, or action.

(j) *Nondiscriminatory* means that the plan, contract or arrangement in question applies to all employees of a System institution who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract or arrangement may provide different benefits based only on objective criteria such as salary, total compensation, length of service, job grade or classification, which are applied on a proportionate basis, with a modest disparity in severance benefits relating to any one criterion of 20 percent.

(k) *Payment* means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of benefits in the nature of compensation, including but not limited to stock options and stock appreciation rights; or

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(l) *Prohibited indemnification payment.* (1) The term "prohibited indemnification payment" means any payment (or any agreement or arrangement to make any payment) by any System institution for the benefit of any person who is or was an IRP of such System institution, to pay or reimburse such person for any civil money penalty or judgment resulting from any administrative or civil action instituted by the FCA, or any other liability or legal expense with regard to any administrative proceeding or civil action instituted by the FCA which results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the institution; or

(iii) Is required to cease and desist from or take any affirmative action with respect to such institution.

(2) *Exceptions.* (i) The term "prohibited indemnification" payment shall not include any reasonable payment by a System institution which is used to purchase any commercial insurance policy or fidelity bond, provided that such insurance policy or bond shall not be used to pay or reimburse an IRP for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by the FCA, but may pay any legal or professional expenses incurred in connection with such proceeding or action or the amount of any restitution to the System institution or receiver.

(ii) The term "prohibited indemnification payment" shall not include any reasonable payment by a System institution that represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the IRP has not violated certain FCA laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative action or civil proceedings has resulted in a final prohibition order against the IRP.

(m) *Troubled condition* means a System institution that:

(1) Is subject to a cease-and-desist order or written agreement issued by the FCA that requires action to improve the financial condition of the System institution or is subject to a proceeding initiated by the FCA which contemplates the issuance of an order that requires action to improve the financial condition of the institution, unless otherwise informed in writing by the FCA; or

(2) Is unable to make a timely payment of principal or interest on any insured obligation (as defined in section 5.51(3) of the Farm Credit Act; 12 U.S.C. 2277a(3)); or

(3) Is receiving assistance as described in section 5.61 of the Farm Credit Act, 12 U.S.C. 2277a–10; or

(4) Is unable to make timely payment of principal or interest on debt obligations issued under the authority of section 8.6(e)(2) of the Farm Credit Act; 12 U.S.C. 2279aa–6(e)(2) or is unable to fulfill the guarantee obligations provided under section 8.6 of the Farm Credit Act; 12 U.S.C. 2279aa–6; or

(5) Is informed in writing by the Corporation that it is in a "troubled condition" for purposes of the requirements of this subpart on the basis of the System institution's most recent report of condition or report of examination or other information available to the Corporation.

§ 1412.3 Golden parachute payments prohibited.

No System institution shall make or agree to make any golden parachute payment, except as provided in this part.

§ 1412.4 Prohibited indemnification payments.

No System institution shall make or agree to make any prohibited indemnification payment, except as provided in this part.

§ 1412.5 Permissible golden parachute payments.

(a) A System institution may agree to make or may make a golden parachute payment if and to the extent that:

(1) The FCA, with the written concurrence of the Corporation, determines that such a payment or agreement is permissible; or

(2) Such an agreement is made in order to hire a person to become an IRP either at a time when the System institution satisfies or in an effort to prevent it from imminently satisfying any of the criteria set forth in § 1412.2(f)(1)(ii), and the FCA and the Corporation consent in writing to the amount and terms of the golden parachute payment. Such consent by the Corporation and the FCA shall not improve the IRP's position in the event of the insolvency of the institution since such consent can neither bind a receiver nor affect the provability of receivership claims. In the event that the institution is placed into receivership or conservatorship, the Corporation and/or the FCA shall not be obligated to pay the promised golden parachute and the IRP shall not be accorded preferential treatment on the basis of such prior approval; or

(3) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed 18-months' salary, to an IRP in the event of a change in control of the System institution; *provided, however,* that the System institution shall obtain the consent of the FCA prior to making such a payment and this paragraph (a)(3) shall not apply to any change in control of System institution which results from an assisted transaction as described in section 5.61 of the Farm Credit Act; 12 U.S.C. 2277a–10 or the System institution being placed into conservatorship or receivership; and

(4) A System institution or IRP making a request pursuant to paragraphs (a)(1) through (3) of this section shall demonstrate that it is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(i) The IRP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the System institution that has had or is likely to have a material adverse effect on the institution;

(ii) The IRP is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition, as defined by applicable regulations concerning the System institution;

(iii) The IRP has materially violated any applicable Federal or state law or regulation that has had or is likely to have a material effect on the System institution; and

(iv) The IRP has violated or conspired to violate section 215, 657, 1006, 1014, or 1344 of title 18 of the United States Code or section 1341 or 1343 of such title affecting a Farm Credit System institution.

(b) In making a determination under paragraphs (a)(1) through (3) of this section the FCA and the Corporation may consider:

(1) Whether, and to what degree, the IRP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IRP was affiliated with the System institution, and the degree to which the proposed payment represents reasonable compensation earned over the period of employment and reasonable payment for services rendered; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of the Act or this part.

§ 1412.6 Permissible indemnification payments.

(a) A System institution may make or agree to make reasonable indemnification payments to an IRP with respect to an administrative proceeding or civil action initiated by the FCA if:

(1) The System institution's board of directors, in good faith, determines in writing after due investigation and consideration that the IRP acted in good faith and in a manner he/she believed to be in the best interests of the institution;

(2) The System institution's board of directors, in good faith, determines in writing after due investigation and consideration that the payment of such expenses will not materially adversely affect the institution's safety and soundness;

(3) The indemnification payments do not constitute prohibited indemnification payments as that term is defined in § 1412.2(l); and

(4) The IRP agrees in writing to reimburse the System institution, to the extent not covered by payments from insurance or bonds purchased pursuant to § 1412.2(l)(2), for that portion of the advanced indemnification payments which subsequently become prohibited indemnification payments, as defined herein.

(b) An IRP requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; *provided, however,* that such IRP may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the administrative proceeding or civil action.

(c) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and

provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(d) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

§ 1412.7 Filing instructions.

Requests to make excess nondiscriminatory severance plan payments and permitted golden parachute payments shall be submitted in writing to the FCA and the Corporation. The request shall be in letter form and shall contain all relevant factual information as well as the reasons why such approval should be granted.

§ 1412.8 Application in the event of receivership.

The provisions of this part or any consent or approval granted under the provisions of this part by the Corporation (in its corporate capacity), shall not in any way bind any receiver of a failed System institution. Any consent or approval granted under the provisions of this part by the Corporation or the FCA shall not in any way obligate such agency or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when the Corporation is appointed as receiver for any System institution, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IRP contrary to 12 U.S.C. 2277a–10b(d).

Dated: February 7, 2006.

Roland E. Smith,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 06–1299 Filed 2–10–06; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22398; Airspace Docket No. 05–ASO–7]

RIN 2120–AA66

Establishment of High Altitude Area Navigation Routes; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 16 high altitude area navigation (RNAV) routes in the South Central United States in support of the High Altitude Redesign (HAR) program. The FAA is taking this action to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace.

EFFECTIVE DATE: 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On September 27, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish 16 RNAV routes in the South Central United States, within the airspace assigned to the Memphis Air Route Traffic Control Center (ARTCC) (70 FR 56391). The routes were proposed as part of the HAR program to enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) aircraft operations. Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. One comment was received in response to the NPRM. The comment supported the proposal.

High altitude area navigation routes are published in paragraph 2006 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The area navigation routes listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing 16 RNAV routes in the South Central United States, within the airspace assigned to Memphis ARTCC. The FAA is taking this action in support of the HAR program to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) operations. This rule includes several corrections to the route descriptions published in the NPRM. In route Q–26, the name of the fix "ABROC" is being changed to "DEVAC." In route Q–31, the name of the waypoint "TOROS" is changed to "JODOX," and in route Q–40, the waypoint name "SALVA" is changed to "WINAP." These changes affect only the fix or waypoint names; the latitude and longitude coordinates for these points remain the same as published in the NPRM. The name changes are necessary to avoid duplication with other fixes. Finally, the order of the points listed for routes Q–19 and Q–33 has been reversed to comply with policy that odd numbered routes be described with the points listed from South to North. This does not affect the actual alignment of routes Q–19 and Q–33. Except for these changes, the routes in this rule are the same as those proposed in the NPRM.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental

Policy Act in accordance with Paragraph 311(a) of FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This airspace action is not expected to cause any potentially significant impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 2006—Area Navigation Routes.

* * * * *

Q–19 BNA to PLESS [New]		
BNA	VORTAC	(Lat. 36°08′13″N., long. 86°41′05″W.)
PLESS	Fix	(Lat. 37°48′35″N., long. 88°57′48″W.)
* * * * * * *		
Q–21 JONEZ to RZC [New]		
JONEZ	Fix	(Lat. 34°30′57″N., long. 95°27′34″W.)
RZC	VORTAC	(Lat. 36°14′47″N., long. 94°07′17″W.)
* * * * * * *		
Q–23 FSM to RZC [New]		
FSM	VORTAC	(Lat. 35°23′18″N., long. 94°16′18″W.)
RZC	VORTAC	(Lat. 36°14′47″N., long. 94°07′17″W.)
* * * * * * *		
Q–25 MEEOW to PXV [New]		
MEEOW	Fix	(Lat. 34°19′05″N., long. 93°31′25″W.)
ARG	VORTAC	(Lat. 36°06′36″N., long. 90°57′13″W.)
WLSUN	WP	(Lat. 37°35′00″N., long. 88°08′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)
Q–26 ARG to DEVAC [New]		
ARG	VORTAC	(Lat. 36°06′36″N., long. 90°57′13″W.)
DEVAC	Fix	(Lat. 34°37′05″N., long. 87°26′07″W.)
Q–27 FSM to ZALDA [New]		
FSM	VORTAC	(Lat. 35°23′18″N., long. 94°16′18″W.)
ZALDA	WP	(Lat. 36°04′55″N., long. 93°37′37″W.)
Q–28 GRAZN to PXV [New]		
GRAZN	WP	(Lat. 34°15′00″N., long. 94°21′29″W.)
PYRMD	WP	(Lat. 34°34′00″N., long. 93°44′00″W.)
HAKAT	WP	(Lat. 36°17′00″N., long. 91°04′00″W.)
ESTEE	WP	(Lat. 37°41′00″N., long. 88°17′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)
Q–29 HARES to PXV [New]		
HARES	WP	(Lat. 33°00′00″N., long. 91°44′00″W.)
MEM	VORTAC	(Lat. 35°00′54″N., long. 89°59′00″W.)
SIDAE	WP	(Lat. 37°20′00″N., long. 87°50′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)
Q–30 SQS to VUZ [New]		
SQS	VORTAC	(Lat. 33°27′50″N., long. 90°16′38″W.)
VUZ	VORTAC	(Lat. 33°40′13″N., long. 86°53′59″W.)
Q–31 DHART to PXV [New]		
DHART	Fix	(Lat. 33°23′52″N., long. 92°25′10″W.)
JODOX	WP	(Lat. 33°40′00″N., long. 92°10′00″W.)
UJM	VOR/DME	(Lat. 34°34′30″N., long. 90°40′28″W.)
TIIDE	WP	(Lat. 37°28′00″N., long. 87°59′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)
Q–32 ELD to SWAPP [New]		
ELD	VORTAC	(Lat. 33°15′22″N., long. 92°44′38″W.)
GAGLE	WP	(Lat. 34°08′00″N., long. 90°17′00″W.)
CRAMM	Fix	(Lat. 34°38′11″N., long. 88°53′55″W.)
BNA	VORTAC	(Lat. 36°08′13″N., long. 86°41′05″W.)
SWAPP	Fix	(Lat. 36°36′50″N., long. 85°10′56″W.)
Q–33 DHART to PROWL [New]		
DHART	Fix	(Lat. 33°23′52″N., long. 92°25′10″W.)
LIT	VORTAC	(Lat. 34°40′40″N., long. 92°10′50″W.)
PROWL	WP	(Lat. 37°02′00″N., long. 91°15′00″W.)
Q–34 TXK to SWAPP [New]		
TXK	VORTAC	(Lat. 33°30′50″N., long. 94°04′24″W.)
MATIE	Fix	(Lat. 34°05′42″N., long. 92°33′02″W.)

MEM			VORTAC		(Lat. 35°00′54″N., long. 89°59′00″W.)	
SWAPP			Fix		(Lat. 36°36′50″N., long. 85°10′56″W.)	
*	*	*	*	*	*	*
Q–36 RZC to SWAPP [New]						
RZC			VORTAC		(Lat. 36°14′47″N., long. 94°07′17″W.)	
TWITS			WP		(Lat. 36°08′32″N., long. 90°54′48″W.)	
DEPEC			WP		(Lat. 36°06′00″N., long. 87°31′00″W.)	
BNA			VORTAC		(Lat. 36°08′13″N., long. 86°41′05″W.)	
SWAPP			Fix		(Lat. 36°36′50″N., long. 86°10′56″W.)	
*	*	*	*	*	*	*
Q–38 ROKIT to BESOM [New]						
ROKIT			Fix		(Lat. 30°29′50″N., long. 94°30′50″W.)	
INCIN			WP		(Lat. 31°21′09″N., long. 92°45′18″W.)	
LAREY			WP		(Lat. 32°00′12″N., long. 91°22′22″W.)	
BESOM			Fix		(Lat. 33°35′11″N., long. 87°39′23″W.)	
*	*	*	*	*	*	*
Q–40 AEX to MISLE [New]						
AEX			VORTAC		(Lat. 31°15′24″N., long. 92°30′04″W.)	
DOOMS			WP		(Lat. 31°53′08″N., long. 91°09′56″W.)	
WINAP			WP		(Lat. 32°38′00″N., long. 89°21′56″W.)	
MISLE			WP		(Lat. 33°24′00″N., long. 87°38′00″W.)	
*	*	*	*	*	*	*

Issued in Washington, DC on February 7, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–1312 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 230

[Release Nos. 33–8591A; 34–52056A; IC–26993A; FR–75A; International Series Release No. 1294A; File No. S7–38–04]

RIN 3235–AI11

Securities Offering Reform; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: We are making technical corrections to rules adopted in Release No. 33–8591 (July 19, 2005), which were published in the **Federal Register** on August 3, 2005 (70 FR 44722). The adopted rules modify and advance significantly the registration, communications, and offering processes under the Securities Act of 1933. This document corrects certain errors in the regulatory text of the adopting release and otherwise clarifies certain of the rules.

DATES: Effective February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr at (202) 551–3200, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549.

SUPPLEMENTARY INFORMATION: We are amending Item 512 [1] of Regulation S–K,[2] and Rules 139,[3] 405,[4] and 433 [5] under the Securities Act.[6]

I. Discussion of Corrections

A. Rule 139(a)(1)(i)—Issuer-specific research reports

The amendments to Rule 139 provided that the eligibility determination for purposes of a broker's or dealer's reliance on the safe harbor for issuer-specific research reports could be determined at the time an issuer filed its Form S–3 or Form F–3 and the time of each annual Securities Act Section 10(a)(3) update to such a registration statement. The amendment was intended to provide an approximately-annual evaluation of an issuer's status for purposes of Rule 139 that would provide greater certainty to brokers and dealers relying on the safe harbor for issuer specific research reports. Because it was our intent that the safe harbor continue to be available where an issuer proposes to file a registration statement, it was inconsistent for the amendment to condition the safe harbor eligibility determination on a Form S–3 or Form F–3 actually being on file. Indeed, the availability of the safe harbor even if an issuer has not yet filed its Form S–3 or Form F–3 is clear from the rule text comprising the preamble to Rule 139(a), which states:

Under the conditions of paragraph (a)(1) or (a)(2) of this section, a broker's or dealer's publication or distribution of a research report about an issuer or any of its securities shall be deemed for purposes of sections 2(a)(10) and 5(c) of the Act not to constitute an offer to sell a security that is the subject of an offering pursuant to a registration statement that the issuer *proposes to file*, or has filed, or that is effective, even if the broker dealer is participating or will participate in the registered offering of the issuer's securities.* * * (emphasis added)

Further, a filed registration statement on Form S–3 or Form F–3 was not required under the pre-amendment provisions of Rule 139. Accordingly, we are amending Rule 139(a)(1)(i)(A)(*1*) to state explicitly that if a Form S–3 or Form F–3 is not on file, the broker or dealer could rely on the safe harbor if, at the time of reliance on the rule, the issuer meets the registrant requirements of Form S–3 or Form F–3 and either:

- The issuer is eligible to register a primary offering of securities on Form S–3 or Form F–3 based on the $75 million minimum public float eligibility provision of those forms; or
- The issuer proposes to register an offering of the issuer's securities in reliance on General Instruction I.B.2 of Form S–3 or Form F–3.

In addition, the safe harbor for issuer-specific reports in Rule 139 also was meant to cover all equity and debt securities of well-known seasoned issuers, whether or not investment grade, that may be registered on an

[1] 17 CFR 229.512.
[2] 17 CFR 229.10 *et seq.*
[3] 17 CFR 230.139.
[4] 17 CFR 230.405.
[5] 17 CFR 230.433.
[6] 15 U.S.C. 77a *et seq.*

automatic shelf registration statement, consistent with our belief that well-known seasoned issuers are the most widely followed in the marketplace. However, the reference in the rule to only primary offerings meeting the transactional requirements of General Instruction I.B.1 or I.B.2 of Form S–3 or Form F–3 mistakenly excluded certain securities that may be registered by well-known seasoned issuers on Form S–3 or Form F–3 under automatic shelf registration statements pursuant to General Instruction I.D, such as non-investment grade securities. We are, therefore, amending Rule 139(a)(1) to provide that a broker or dealer can rely on the safe harbor if the issuer is a well-known seasoned issuer. The only exception to this provision is for a majority-owned subsidiary that is not eligible on its own as a well-known seasoned issuer and registers its securities on its parent well-known seasoned issuer's registration statement.

B. Rule 405—Definition of Well-Known Seasoned Issuer

In the definition of well-known seasoned issuer, paragraph (1)(i)(B)(*3*) contains a typographical error—the paragraph contains a cross reference to paragraph (1)(i)(B)(*2*) that should be a cross reference to paragraph (1)(i)(B)(*1*). We are correcting that typographical error in this release.

C. Rule 433(f)—Free Writing Prospectuses Published or Distributed By Media

New Rule 433(f) includes certain accommodations where a free writing prospectus is prepared and published or broadcast by persons in the media business that are unaffiliated with the issuer and any other offering participant, and the preparation, publication, or broadcast is not paid for by the issuer or other offering participant. Where the conditions of Rule 433(f) are met, an issuer or offering participant is not required to have a statutory prospectus precede or accompany the media communication. However, a filed registration statement including a statutory prospectus is necessary.

In adopting Rule 433, we stated that the purpose of the media free writing prospectus provision in paragraph (f) is to permit unaffiliated, uncompensated media publications to be published or distributed while an issuer is in registration, without requiring that the statutory prospectus precede or accompany the media publication, so long as the statutory prospectus is on file. Under Rule 433(f), it was our intent that the media publication accommodations be available without regard to whether the statutory prospectus in an initial public offering includes a *bona fide* price range.[7]

However, Rule 433 inadvertently can be read elsewhere to narrow the availability of the media exclusion for initial public offerings, as Rule 433(b)(2)(ii) requires that a statutory prospectus be on file, which in the context of an initial public offering requires a price range. To address this situation, we are amending paragraph (b)(2)(ii) of Rule 433 to provide that the media accommodations in Rule 433(f) do not require that the filed prospectus, in the context of an initial public offering, include a price range. This change will clarify that the media accommodations included in paragraph (f) of Rule 433 are not limited for initial public offerings.

D. Item 512(h) of Regulation S–K—Inclusion of Statement of Commission's Position on Indemnification for Liabilities in Automatic Shelf Registration Statements

Item 512(h) of Regulation S–K requires an issuer to include a statement regarding the Commission's position on indemnification for liabilities under the Securities Act in registration statements in which acceleration is requested or in registration statements filed on Form S–8. We did not intend to alter the application of Item 512(h) of Regulation S–K; however, we did not amend Item 512(h) of Regulation S–K to include a reference to immediately effective automatic shelf registration statements under amended Rule 462. Absent the corrections we are making today, the amendments to Rule 462 providing that automatic shelf registration statements go effective immediately would inadvertently allow a well-known seasoned issuer to file an automatic shelf registration statement without including a statement of the Commission's position on indemnification in its undertakings. The omission of such language was an oversight, as it would otherwise be inconsistent with our long-standing rules to include such statements.

Accordingly, we are correcting this omission under Item 512(h) of Regulation S–K with regard to automatic shelf registration statements and post-effective amendments to automatic shelf registration statements that go effective immediately pursuant to Rule 462(e) and (f). The amendments we are adopting provide for the inclusion of new language in Item 512(h) of Regulation S–K stating that the Item will apply to registration statements that go effective immediately pursuant to Rule 462(e) and (f).

II. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when an agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[8] The correcting amendments to Item 512 of Regulation S–K, and Rules 139, 405, and 433 under the Securities Act are technical changes that conform the text to the intent of the Commission and correct a cross-reference. For these reasons, the Commission finds that there is no need to publish notice of these amendments.[9]

The Administrative Procedures Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[10] For the same reasons described with respect to opportunity for notice and comment, the Commission finds there is good cause for the amendments to take effect on February 13, 2006.

III. Text of Amendments

List of Subjects in 17 CFR Parts 229 and 230

Reporting and recordkeeping requirements, Securities.

■ Accordingly, 17 CFR parts 229 and 230 are corrected by making the following amendments:

[7] Indeed, in the adopting release (Securities Offering Reform, Release No. 33–8591 [70 FR 44722] (Aug. 3, 2005)), we provided an example of a chief executive officer of a non-reporting issuer giving an interview to a financial news magazine without payment. We included this example to make clear that the accommodation for unaffiliated, uncompensated media publications was available to issuers in initial public offerings. Providing that the unaffiliated, uncompensated media accommodation for issuer and underwriter free writing prospectuses is available in an initial public offering only after the prospectus includes a *bona fide* price range would, we believe, significantly and unintentionally limit the availability of the media accommodation in initial public offerings to a potentially brief time period between the inclusion of a *bona fide* price range in the prospectus and the effective date of the registration statement.

[8] 5 U.S.C. 553(b)(3)(B).

[9] For similar reasons, the amendments do not require an analysis under the Regulatory Flexibility Act or analysis of major status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

[10] See 5 U.S.C. 553(d)(3).

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

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

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

* * * * *

■ 2. Amend § 229.512 to revise the introductory text of paragraph (h) to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(h) *Request for acceleration of effective date or filing of registration statement becoming effective upon filing.* Include the following if acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act (§ 230.461 of this chapter), if a Form S–3 or Form F–3 will become effective upon filing with the Commission pursuant to Rule 462 (e) or (f) under the Securities Act (§ 230.462 (e) or (f) of this chapter), or if the registration statement is filed on Form S–8, and:

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 4. Amend § 230.139 to revise paragraph (a)(1)(i)(A)(*1*) to read as follows:

§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.

(a) * * *

(1) * * *

(i) * * *

(A)(*1*) At the later of the time of filing its most recent Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter) or the time of its most recent amendment to such registration statement for purposes of complying with section 10(a)(3) of the Act or, if no Form S–3 or Form F–3 has been filed, at the date of reliance on this section, meets the registrant requirements of such Form S–3 or Form F–3 and:

(*i*) At such date, meets the minimum float provisions of General Instruction I.B.1 of such Forms; or

(*ii*) At the date of reliance on this section, is, or if a registration statement has not been filed, will be, offering securities meeting the requirements for the offering of investment grade securities pursuant to General Instruction I.B.2 of Form S–3 or Form F–3; or

(*iii*) At the date of reliance on this section is a well-known seasoned issuer as defined in Rule 405 (§ 230.405), other than a majority-owned subsidiary that is a well-known seasoned issuer by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405; and

* * * * *

§ 230.405 [Amended]

■ 5. Amend § 230.405, definition of "Well-known seasoned issuer", paragraph (1)(i)(B)(*3*) to revise the cite "paragraph (1)(i)(B)(2)" to read "paragraph (1)(i)(B)(1)'.

■ 6. Amend § 230.433 by adding a sentence to the end of paragraph (b)(2)(ii) to read as follows:

§ 230.433 Conditions to permissible post-filing free writing prospectuses.

* * * * *

(b) * * *

(2) * * *

(ii) * * * For purposes of paragraph (f) of this section, the prospectus included in the registration statement relating to the offering that has been filed does not have to include a price range otherwise required by rule.

* * * * *

Dated: February 6, 2006.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–1286 Filed 2–10–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Moxidectin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health. The supplemental NADA provides for use of an injectable moxidectin solution in cattle for the treatment and control of an additional three species of internal parasites and an additional three life stages of previously-approved internal parasites.

DATES: This rule is effective February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 141–220 that provides for use of CYDECTIN (moxidectin) Injectable Solution for Beef and Nonlactating Dairy Cattle for the treatment and control of an additional three species of internal parasites and an additional three life stages of previously-approved internal parasites. The NADA is approved as of January 10, 2006, and the regulations are amended in 21 CFR 522.1450 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3

years of marketing exclusivity beginning January 10, 2006.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Revise paragraph (d)(2) in § 522.1450 to read as follows:

§ 522.1450 Moxidectin solution.

* * * * * *

(d) * * *

(2) *Indications for use.* For treatment and control of gastrointestinal roundworms: *Ostertagia ostertagi* (adults, fourth-stage larvae, and inhibited larvae), *Haemonchus placei* (adults), *Trichostrongylus axei* (adults and fourth-stage larvae), *Trichostrongylus colubriformis* (adults and fourth-stage larvae), *Cooperia oncophora* (adults), *Cooperia pectinata* (adults), *Cooperia punctata* (adults and fourth-stage larvae), *Cooperia spatulata* (adults), *Cooperia surnabada* (adults and fourth-stage larvae), *Nematodirus helvetianus* (adults), *Oesophagostomum radiatum* (adults and fourth-stage larvae), *Trichuris* spp. (adults); lungworms: *Dictyocaulus viviparus* (adults and fourth-stage larvae); grubs: *Hypoderma bovis* and *Hypoderma lineatum*; mites: *Psoroptes ovis* (*Psoroptes communis* var. *bovis*); lice: *Linognathus vituli* and *Solenopotes capillatus*; for protection of cattle from reinfection with *D. viviparus* and *O. radiatum* for 42 days after treatment, with *H. placei* for 35 days after treatment, and with *O. ostertagi* and *T. axei* for 14 days after treatment.

* * * * *

Dated: February 3, 2006.

Steven D. Vaughn,

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

[FR Doc. 06–1264 Filed 2–10–06; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[OECA–2005–0082; FRL–8031–4]

RIN 2070–AJ24

Revision to Toxic Substances Compliance Monitoring Grants (TSCA Section 28) Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This is an amendment to the grant regulations. EPA is amending regulations based on a determination that it is not practicable to award Toxic Substances Control Act (TSCA) compliance monitoring grant funds to States through a competitive process. Instead, EPA will award these grants to States on an allotment basis. Section 28 of TSCA authorizes EPA to award grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures within the States with respect to which EPA is unable or not likely to take action for their prevention or elimination.

DATES: This final rule is effective February 13, 2006.

ADDRESSES: Materials related to this rulemaking are contained in EPA Grants Docket OECA 2005–0082. The EPA Docket is located at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. The Air Docket is open from 8:30 a.m. until 4:30 p.m., Monday through Friday. Materials related to previous EPA actions on the essential use program are contained in EPA Docket No. OECA–2005–0082.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Chief, National Compliance Monitoring Policy Branch (NCMPB), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2405; fax number: (202) 564–0050; e-mail address: *flaherty.phyllis@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 28 of TSCA authorizes EPA to award grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures within the States with respect to which EPA is unable or not likely to take action for their prevention or elimination.

This action is necessary to reflect how EPA manages the TSCA compliance monitoring programs for PCB and asbestos compliance monitoring activities through grants to States. EPA manages these grants as continuing environmental programs with awards allocated to participating States annually on a non-competitive basis. For the grants awarded in FY2002, FY2003, FY2004, and FY2005, the EPA Grants Administration Division granted a deviation to allow EPA to award these grants without competition to avoid disruption of ongoing State compliance monitoring programs. As described more fully below, it is not practicable to award these funds competitively. If funds were competed, some States may receive reduced or zero funding which could adversely impact ongoing State compliance monitoring programs and cause layoffs of State personnel. This amendment will eliminate the need for additional deviations by removing the requirement to award these grant funds competitively.

EPA has in the past competitively awarded sector based/multimedia grants which funded discrete projects under the TSCA section 28 grant authority. When 40 CFR 35.312 was promulgated in 2001, the intent was that these project specific funds would be competed and that, as described above, the grants for PCBs and asbestos would continue to be funded as continuing programs and not be competed. EPA no longer awards its sector based/multimedia grants for discrete compliance monitoring projects exclusively under TSCA but awards these as multimedia capacity building and cooperative agreement grants under various statutes including TSCA section 10. EPA continues to compete these grants, as appropriate, which fund discrete projects rather than continuing environmental programs.

Under EPA's grants competition policy, EPA awards grants competitively "to the maximum extent practicable." EPA has determined that it is not practicable to award the TSCA PCB and asbestos compliance monitoring grants to States under 40 CFR 35.312 "through a competitive process" for the following reasons:

1. If the funds were competed, States may receive zero or reduced funding. Such funding reductions could result in layoffs or turnover of qualified and

experienced State inspectors who are responsible for operating State PCB and asbestos compliance monitoring programs. This would not be in the public interest since States with compliance monitoring programs depend on EPA grant funds to retain the skilled personnel needed for effective program implementation. Moreover, in States that scale back programs due to funding reductions, any turnover of experienced inspectors would require EPA to divert its limited grant dollars from high priority compliance monitoring activities to training new inspectors.

2. States with existing TSCA asbestos and PCB compliance monitoring programs depend on EPA grant funding to run these programs and State activities under the grants comprise a significant portion of EPA's national program for ensuring compliance with the TSCA asbestos and PCB requirements. Under a competition, these States may receive zero or reduced funding, which could cause them to discontinue their programs or cut back on inspections, potentially leading to an increased rate of non-compliance with PCB and asbestos regulations. Non-compliance with the regulations would pose a public health risk associated with the improper handling of PCB and asbestos materials.

3. Regions need to be able to work closely with States to ensure that their compliance monitoring programs meet current EPA standards and policies to ensure a cooperative and effective inspection program. Building and maintaining on-going State capacity is an important outcome of this grant program. This is particularly true for States seeking to become waiver States for purposes of the Asbestos Hazard Emergency Response Act (AHERA), which means they run the program entirely including the enforcement component. The need for such intensive interaction both before and during the application process makes it impracticable to compete these grants.

This grant regulatory change is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute and can be taken by EPA as a final action. Accordingly, the text of § 35.312 will read as follows: "EPA will allot and award Toxic Substances Control Act compliance monitoring grant funds to States in accordance with national program guidance." In addition, EPA is renaming the title of this section "Basis for allotment" from "Competitive process".

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act prior to publication of the rule in the **Federal Register.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Grant programs-environmental protection, Reporting and recordkeeping requirements.

Dated: January 31, 2006.

Stephen L. Johnson,

Administrator.

■ EPA amends 40 CFR part 35 as follows:

PART 35—[AMENDED]

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

■ 2. Section 35.312 is revised to read as follows:

§ 35.312 Basis for allotment.

EPA will allot and award Toxic Substances Control Act Compliance Monitoring grant funds to States based on national program guidance.

[FR Doc. 06–1309 Filed 2–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0088, FRL–8008–2]

RIN 2060–AM90

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for new and existing refractory products manufacturing facilities, which were promulgated on April 16, 2003, under section 112(d) of the Clean Air Act (CAA). The amendments clarify the testing and monitoring requirements and startup and shutdown requirements for batch processes, make certain technical corrections, and add recent changes to be consistent with the NESHAP General Provisions.

DATES: The direct final rule is effective on April 14, 2006 without further notice, unless adverse comments are received by March 15, 2006 or by March 30, 2006 if a public hearing is requested. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0088, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: *a-and-r-docket@epa.gov* and *fairchild.susan@epa.gov*.
- Fax: (202) 566–1741 and (919) 541–5600.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attn: Docket ID No. OAR–2002–0088, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0088, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. OAR–2002–0088. 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.epa.gov/edkpub/index.jsp*, 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 EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. OAR–2002–0088, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edkpub/index.jsp*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the EPA Docket Center, Docket ID No. OAR–2002–0088, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information contact Susan Fairchild, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504–05), Research Triangle Park, NC 27711; telephone number (919) 541–5167; fax number (919) 541–5600; e-mail address: *fairchild.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS*	Examples of regulated entities
Industrial	327124	Clay refractories manufacturing plants.
Industrial	327125	Nonclay refractories manufacturing plants.

*North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.9782 of the Refractory Products Manufacturing NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at *http://www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules. The TTN provides information and technology exchange in various areas of air pollution control.

Comments. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments because the amendments clarify several of the requirements of the NESHAP, bring the NESHAP into consistency with the General Provisions to 40 CFR part 63, and make technical corrections to the NESHAP. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for refractory products manufacturing facilities if adverse comments are filed. If we receive adverse comment on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective, and which amendments are being withdrawn due to adverse comment. We will address all public comments on withdrawn amendments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by April 14, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background

The EPA promulgated the NESHAP for new and existing refractory products manufacturing facilities on April 16, 2003 (68 FR 18730) as 40 CFR part 63, subpart SSSSS. Shortly after promulgation of the Refractory Products Manufacturing NESHAP, EPA also promulgated amendments to the General Provisions to 40 CFR part 63 (68 FR 32586, May 30, 2003). After reviewing the final amendments to the General Provisions and comparing those to the Refractory Products Manufacturing NESHAP, we discovered discrepancies between sections of the General Provisions as cited in the NESHAP and the newly amended sections of the General Provisions. We also identified minor technical errors and other specific sections of the Refractory Products Manufacturing NESHAP that needed clarification. Today's action includes amendments to the Refractory Products Manufacturing NESHAP that clarify the requirements for testing, control device operation, operating limits, and monitoring.

II. Amendments to 40 CFR Part 63, Subpart SSSSS

A. Emission Testing

The Refractory Products Manufacturing NESHAP specify several requirements that pertain to the testing of batch process sources. Because emissions of hazardous air pollutants (HAP) from a batch process source can vary significantly over the course of a batch cycle, the NESHAP specify emission limits in terms of the peak emissions period. In today's action, we are revising the definition of the peak emissions period in terms of the applicable emission limits to include separate definitions for the 3-hour peak total hydrocarbons (THC) mass emissions period, which applies to batch process sources that comply with the THC percentage reduction limit; the 3-hour peak THC emissions concentration period, which applies to batch sources that satisfy the THC emission concentration limit; and the 3-hour peak hydrogen fluoride (HF) mass emissions period, which pertains to the emission limits for batch process clay refractory products kilns. All references to the peak emissions period in the tables to 40 CFR part 63, subpart SSSSS, have been revised for consistency.

The NESHAP include provisions to allow the owner or operator of an affected batch process source to develop an emissions profile and use the profile to limit emissions testing to the peak emissions period. In today's action, we are amending 40 CFR 63.9802 to clarify that emissions profiles for sources subject to the THC emission limits must be developed using data collected at the maximum organic HAP processing rate. This amendment also clarifies that a new emissions profile must be developed if a facility wants to use an emissions profile to limit testing to the peak emissions period at a process, but increases its maximum organic HAP processing rate at that process. In addition, we are amending 40 CFR 63.9802 to clarify that emissions profiles for batch process clay refractory kilns must be developed using data from when the kiln is processing the clay refractory product with the highest uncalcined clay processing rate.

We are amending 40 CRF 63.9798(a) to eliminate the reference to permit renewal, and stating that subsequent performance tests must be conducted at least every 5 years. Item 1(b)(i)(1) of Table 4 to Subpart SSSSS of Part 63 is amended to clarify that a sampling port is also required at the control device inlet if the owner or operator plans to develop an emissions profile or use the provision for reducing the operating temperature of a thermal or catalytic oxidizer on an affected batch process source. In both cases, sampling is required at the control device inlet. Item 8(a)(i)(5) of Table 4 to Subpart SSSSS of Part 63 is amended to specify the THC concentration in terms of the outlet of the control device. We also made other minor changes to this provision in Table 4 to simplify the wording.

Item 13 of Table 4 to Subpart SSSSS of Part 63 is amended to eliminate the reference to the THC percentage reduction limit. We have clarified that regardless of which THC emission limit applies to a specific source, the owner or operator of the source must measure not only the THC concentration, but also the oxygen concentration at the control device inlet for at least the 1-hour period that immediately follows the temperature reduction. This measurement is necessary for demonstrating that the source is meeting the limit of 20 parts per million dry volume (ppmvd) THC, corrected to 18 percent oxygen, after the oxidizer temperature has been reduced.

Item 13.a.5 of Table 4 to Subpart SSSSS of Part 63 is amended to clarify that only the THC emissions concentration limit applies following any reduction in the oxidizer temperature. We received comment on the proposed rule (67 FR 42108, June 20, 2002) requesting a second emission limit be allowed for sources wanting to meet a percentage reduction limit rather than an emission concentration limit. The commenter believed that since EPA had promulgated percentage reduction limits for other MACT standards to reduce emissions of THC, and since air pollution control devices are usually rated and installed with a minimum percent reduction achieved by the devices, that emission limit would be simpler to meet. At promulgation of the final rule (68 FR 18730, April 16, 2003), we changed the rule to allow regulated sources to meet either the percentage reduction limit or the concentration limit.

In the final rule, we allowed the choice between either the percentage reduction limit or the concentration limit, but required owners and operators to meet the selected emission limit during all times of operation. We also allowed owners and operators the option to turn off the control device when it was no longer needed. However, for those owners or operators

meeting the percentage reduction compliance option, it is not possible to meet that limit if the control device is not in operation. We believe that conserving energy is a beneficial option for all owners and operators, and regardless of the compliance option selected, all should have the opportunity to benefit from turning off the control device when it is no longer needed. Thus, we are clarifying that whether an owner or operator shows compliance with the percentage reduction limit or the concentration limit, compliance with the rule for a unit with a control device no longer in operation may only be demonstrated by meeting the concentration limit; that is, when the THC emissions are below 20 ppmvd corrected to 18 percent oxygen from the heated process unit. Owners and operators in this case may choose to meet the percentage reduction limit before turning off the control device and may show compliance with the concentration limit after turning off the control device.

Item 14(a)(i)(1) of Table 4 to Subpart SSSSS of Part 63 is amended to specify that the performance tests must be performed while processing the clay refractory product with the highest uncalcined clay processing rate.

B. Control Device Operation

Refractory products manufacturing plants typically produce a wide range of products, some of which may contain organic HAP binders or additives, while other products may contain only inorganic binders or additives that do not contain or form HAP. Many plants do not have dedicated thermal process units (*e.g.*, dryers and kilns) for each type of product they manufacture and instead, use the same process units to manufacture products that emit HAP and products that do not contain or emit HAP. Recognizing this situation, we are amending 40 CFR 63.9792 of the NESHAP to clarify that control devices used to comply with the emission limits established by 40 CFR part 63, subpart SSSSS, do not have to be operated when an otherwise affected process unit is processing products that do not contain or release HAP. This amendment applies to sources subject to the THC emission limits as well as the emission limits for HF and hydrogen chloride (also known as hydrochloric acid).

Table 3 to Subpart SSSSS of Part 63, which specifies work practice standards, includes several options for controlling emissions of polycyclic organic matter from shape preheaters and pitch working tanks used in the manufacture of pitch-impregnated refractory products. Options include exhausting the affected source to a thermal or catalytic oxidizer that is comparable to a thermal or catalytic oxidizer that is used to meet the emission limits for an affected defumer or coking oven. To clarify what is meant by a "comparable" thermal or catalytic oxidizer, we are amending 40 CFR 63.9824 to include a definition of "comparable control device."

C. Operating Limits

The Refractory Products Manufacturing NESHAP refer to the operating limit as the "maximum allowable organic HAP processing rate." We are amending the definition of maximum organic HAP processing rate in 40 CFR 63.9824 to distinguish between the operating limit and the actual processing rate measured during the performance test.

The Refractory Products Manufacturing NESHAP include several operating limits for clay refractory products kilns that are controlled by dry limestone adsorbers (DLA). We are amending the NESHAP to eliminate the operating limits of maintaining free-flowing limestone throughout the DLA because the term "free-flowing" may not be appropriate for the grade of limestone used in DLA. The remaining operating limits specified for DLA in the NESHAP are adequate for ensuring compliance with the emission limits for clay refractory products kilns.

As specified in Table 2 (Requirements for Establishing Operating Limits) of the rule, Subpart SSSSS of Part 63, owners and operators of certain thermal process sources of organic HAP are required to establish an operating limit for the maximum organic HAP processing rate. The organic HAP processing rate is a function of the amount of organic HAP in the raw materials and the amounts of those raw materials in the refractory product formulation. Because there are minor variations in the content of organic HAP in a specific binder or additive, the operating limit for the maximum organic HAP processing rate can inadvertently be exceeded without changing the product formulation. In today's action, we are amending the procedure for establishing the operating limit and clarifying that minor exceedances of the maximum organic HAP processing rate established during the performance test are not violations of the operating limit. Specifically, we are amending items 3(b) and 8(b) of Table 4 (Requirements for Performance Tests) to Subpart SSSSS of Part 63 to be consistent with the requirements in Table 2 that reflect a 10 percent allowance when calculating the operating limit.

Today's action amends the procedures for determining minimum temperature operating limits for thermal and catalytic oxidizers that are used to control emissions from certain batch process sources of organic HAP as they pertain to sources that comply with the provisions for reducing the operating temperature of a thermal or catalytic oxidizer.

We are also amending subpart SSSSS to clarify that owners or operators of batch process sources controlled with thermal or catalytic oxidizers must measure the oxidizer operating temperature throughout each entire test run.

D. Monitoring

The Refractory Products Manufacturing NESHAP require THC continuous emission monitoring systems on thermal process sources of organic HAP that use process changes or control devices other than thermal or catalytic oxidizers to meet the THC emission limits. We are amending 40 CFR 63.9800(i)(1) by adding a reference to sources that use process changes to meet the emission limits.

We are also amending 40 CFR 63.9800(i) to state that such sources must maintain the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

Today's action amends the definition of "deviation" in 40 CFR 63.9824 to include failure to provide adequate continuous monitoring systems (CMS) data for demonstrating compliance with any emission limit or other requirement. In addition, we are amending the requirement that the owner or operator of an affected source that is required to use a CMS to meet an operating limit must report any deviations from those operating limits.

E. Other Changes

We are amending the Refractory Products Manufacturing NESHAP to include definitions for Shutdown and Startup to preclude unnecessary reporting of batch process source operation.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory

action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB approved the information collection requests for the NESHAP for refractory products manufacturing pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB assigned OMB control number 2060–0515 (EPA ICR No. 2040.02) to these information collection requests (ICR). A copy of the ICR may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; by e-mail at *auby.susan@epa.gov*; or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr*.

Today's action makes clarifying changes to the NESHAP for refractory products manufacturing and imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the direct final rule amendments, the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This action includes minor corrections and clarifications to the Refractory Products Manufacturing NESHAP that do not add any additional requirements.

Although the direct final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the direct final rule amendments on small entities. The EPA has limited the amendments to changes that clarify ambiguities of the Refractory Products Manufacturing NESHAP, correct citations to the General Provisions, and clarify the complex batch testing requirements of the Refractory Products Manufacturing NESHAP. The EPA believes that the amendments will simplify the NESHAP and will not add additional burden to regulated entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year, nor do the direct final rule amendments significantly or uniquely impact small governments because there are no requirements that apply to such governments or impose obligations upon them. Thus, today's direct final rule amendments are not subject to the

requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The direct final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State or local governments, and the direct final rule amendments will not supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate refractory products manufacturing facilities. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. In addition, the direct final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant regulatory action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that the direct final rule amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113; 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

The direct final rule amendments implement clarifications and corrections to the NESHAP for refractory product manufacturing, but do not change any technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments are effective on April 14, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 7, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart SSSSS—[Amended]

■ 2. Section 63.9792 is amended as follows:

■ a. Revising paragraph (b);

■ b. Redesignating paragraph (f) as paragraph (g); and

■ c. Adding a new paragraph (f).

§ 63.9792 What are my general requirements for complying with this subpart?

* * * * *

(b) Except as specified in paragraphs (e) and (f) of this section, you must

always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.9786 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been established, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

* * * * *

(f) For any affected source that is subject to any of the emission limits specified in Table 1 to this subpart, you do not have to operate the control device on that affected source under the conditions specified in paragraphs (f)(1) and (2) of this section.

(1) For any source that is subject to the THC emissions concentration limit or the THC percentage reduction limit, you do not have to operate the control device on that source when none of the refractory products that are being processed by that source contain or form an organic HAP.

(2) For any new clay refractory products kiln that is subject to the production-based mass emission limits or the percentage reduction limits for hydrogen flouride (HF) and hydrogen chloride (HCl), you do not have to operate the control device on that kiln when none of the refractory products that are being processed by that kiln are clay refractory products, as defined in § 63.9824.

* * * * *

■ 3. Section 63.9798 is amended as follows:

■ a. Revising paragraph (a);

■ b. Revising paragraph (c) introductory text; and

■ c. Revising paragraphs (c)(2) and (d).

§ 63.9798 When must I conduct subsequent performance tests?

(a) You must conduct a performance test at least every 5 years following the initial performance test.

* * * * *

(c) If you own or operate a source that is subject to the emission limits specified in items 2 through 9 of Table 1 to this subpart, you must conduct a performance test on the source(s) listed in paragraphs (c)(1) and (2) of this section before you start production of any refractory product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate, as defined in items 3(b) and 8(b) of Table 4 to this subpart, established during the most recent performance test on that same source.

* * * * *

(2) Each affected kiln that follows an affected shape dryer or curing oven in the same process line and is used to process the refractory product with the higher organic HAP processing rate.

(d) If you own or operate a kiln that is subject to the emission limits specified in item 5 or 9 of Table 1 to this subpart, you must conduct a performance test on the affected kiln following any process changes that are likely to increase organic HAP emissions from the kiln (*e.g.*, a decrease in the curing cycle time for a curing oven that precedes the affected kiln in the same process line).

* * * * *

■ 4. Section 63.9800 is amended as follows:

■ a. Revising paragraph (g)(1);

■ b. Revising paragraph (g)(3);

■ c. Revising paragraph (i)(1) introductory text; and

■ d. Adding paragraphs (i)(1)(iv) to (vi).

§ 63.9800 How do I conduct performance tests and establish operating limits?

* * * * *

(g) * * *

(1) To determine compliance with the total hydrocarbon (THC) emission concentration limit listed in Table 1 to this subpart, you must calculate your emission concentration corrected to 18 percent oxygen for each test run using Equation 1 of this section:

$$C_{THC_c} = \frac{2.9 \times C_{THC}}{(20.9 - C_{O_2})} \qquad \text{(Eq. 1)}$$

Where:

C_{THC_c} = THC concentration, corrected to 18 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{THC} = THC concentration (uncorrected), ppmvd

C_{O_2} = Oxygen concentration, percent

* * * * *

(3) To determine compliance with production-based HF and HCl emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of uncalcined clay processed for each test run using Equation 3 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 3)}$$

Where:

MP = mass emissions of specific HAP (HF or HCl) per unit of production, kilograms of pollutant per megagram (pounds per ton) of uncalcined clay processed

ER = mass emissions rate of specific HAP (HF or HCl) during each performance test run, kilograms (pounds) per hour

P = average uncalcined clay processing rate for the performance test, megagrams (tons) of uncalcined clay processed per hour

* * * * *

(i) * * *

(1) For sources subject to the THC concentration limit specified in item 3, 4, 7, or 8 of Table 1 to this subpart, you must satisfy the requirements specified in paragraphs (i)(1)(i) through (vi) of this section.

* * * * *

(iv) You must meet the data reduction requirements specified in § 63.8(g).

(v) You must maintain the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

(vi) To calculate the oxygen correction specified in paragraph (i)(1)(v) of this section, you may use oxygen concentration measurements concurrent with THC concentration measurements, the average oxygen concentration measured during the most recent performance test on the affected source, or other oxygen concentration measurements that are representative of normal operation for the affected source.

* * * * *

■ 5. Section 63.9802 is revised to read as follows:

§ 63.9802 How do I develop an emissions profile?

(a) If you decide to develop an emissions profile for an affected batch process source, as indicated in item 8(a)(i)(4) or 17(b)(i)(4) of Table 4 to this subpart, you must measure and record mass emissions of the applicable pollutant throughout a complete batch cycle of the affected batch process source according to the procedures described in paragraph (a)(1) or (2) of this section.

(1) If your affected batch process source is subject to the THC concentration limit specified in item 6(a), 7(a), 8, or 9 of Table 1 to this subpart or the THC percentage reduction limit specified in item 6(b) or 7(b) of Table 1 to this subpart, you must measure and record the THC mass emissions rate at the inlet to the control device using the test methods, averaging periods, and procedures specified in items 10(a) and (b) of Table 4 to this subpart for each complete hour of the batch process cycle and while the source is processing the product with the maximum organic HAP processing rate.

(2) If your affected batch process source is subject to the HF and HCl percentage reduction emission limits in item 11 of Table 1 to this subpart, you must measure and record the HF mass emissions rate at the inlet to the control device through a series of 1-hour test runs using one of the test methods specified in item 14(a) of Table 4 to this subpart for each complete hour of the batch process cycle and while the source is processing the product with the highest uncalcined clay processing rate.

(b) You must develop a new emissions profile if you meet all of the conditions specified in paragraphs (b)(1) through (3) of this section.

(1) You own or operate a batch process source that is subject to the emission limits specified in item 6(a), 6(b), 7(a), 7(b), 8, or 9 of Table 1 to this subpart.

(2) You use an emissions profile to limit emission testing to the 3-hour peak emissions period.

(3) You begin manufacturing a new refractory product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate established during the most recent performance test on that same source.

■ 6. Section 63.9812 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.9812 What notifications must I submit and when?

* * * * *

(b) As specified in § 63.9(b)(2), if you start up your affected source before April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after April 16, 2003.

(c) As specified in § 63.9(b)(2), if you start up your new or reconstructed affected source on or after April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

* * * * *

■ 7. Section 63.9816 is amended by revising paragraph (c)(9) to read as follows:

§ 63.9816 What records must I keep?

* * * * *

(c) * * *

(9) If you operate a source that is subject to the THC emission limits specified in item 2 or 6 of Table 1 to this subpart and is controlled with a catalytic oxidizer, records of annual checks of catalyst activity levels and subsequent corrective actions.

* * * * *

■ 8. Section 63.9824 is amended as follows:

■ a. Revising paragraph (3) and adding paragraph (4) to the definition of *Deviation;*

■ b. Revising the definitions of *Maximum organic HAP processing rate* and *Peak emissions period;* and

■ c. Adding the definitions of *Comparable control device, Shutdown,* and *Startup.*

§ 63.9824 What definitions apply to this subpart?

* * * * *

Comparable control device means, subject to paragraphs (1), (2), and (3) of this definition, a control device with design and operating parameters that are comparable to the reference control device.

(1) For a thermal oxidizer, a comparable control device is either:

(i) A thermal oxidizer with a residence time at least as long as, and a combustion chamber operating temperature at least as high as the reference thermal oxidizer; or

(ii) A control device that has been demonstrated to control emissions to a level that is comparable to or better than the level of emissions control achieved by the reference thermal oxidizer.

(2) For a catalytic oxidizer, a comparable control device is either:

(i) A catalytic oxidizer with a space velocity no greater than, and a catalyst bed inlet temperature at least as high as the reference catalytic oxidizer; or

(ii) A control device that has been demonstrated to control emissions to a level that is comparable to or better than the level of emissions control achieved by the reference catalytic oxidizer.

(3) For other control devices, a comparable control device is one that has been demonstrated either through engineering calculations or emission testing to control emissions to a level that is comparable to or better than the level of control achieved by the reference control device.

* * * * *

Deviation * * *.

(3) Fails to meet any emission limitation (emission limit, operating limit, or work practice standard) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart; or

(4) Fails to provide adequate monitoring data for demonstrating compliance with any emission limitation (emission limit, operating limit, or work practice standard) or other applicable requirement established by this subpart due to a malfunction or failure of any CMS required by this subpart.

* * * * *

Maximum organic HAP processing rate means the maximum rate at which the mass of organic HAP materials in refractory shapes are processed in an affected process unit. (See also the definition of *organic HAP processing rate.*)

* * * * *

Peak emissions period means the period of consecutive hourly average emissions of the applicable pollutant that is greater than any other period of consecutive hourly average emissions for the same pollutant over the course of a specified batch process cycle, as defined in paragraphs (1) through (3) of this definition. The peak emissions period is a function of the rate at which the temperature of the refractory shapes is increased, the mass and loading configuration of the shapes in the process unit, the constituents of the refractory mix, and the type of pollutants emitted.

(1) The 3-hour peak THC mass emissions period is the period of 3 consecutive hours over which the sum of the uncontrolled hourly THC mass emissions rates is greater than the sum of the uncontrolled hourly THC mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

(2) The 3-hour peak THC emissions concentration period is the period of 3 consecutive hours over which the sum of the THC concentrations, corrected to 18 percent oxygen, is greater than the sum of the THC concentrations at the same sampling location, corrected to 18 percent oxygen, for any other period of 3 consecutive hours during the same batch process cycle.

(3) The 3-hour peak HF mass emissions period is the period of 3 consecutive hours over which the sum of the uncontrolled hourly HF mass emissions rates is greater than the sum of the uncontrolled hourly HF mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

* * * * *

Shutdown means the cessation of operation of an affected source. For an affected batch process source, shutdown means the cessation of operation during a batch cycle. Shutdown does not include normal periods between batch cycles when the batch process source is not in operation.

Startup means the setting into operation of an affected source. For an affected batch process source, startup means the initial startup of the source

or the startup of the source following maintenance, replacement of equipment, or equipment repairs. Startup does not include routine recharging of a batch process source at the start of a batch cycle.

* * * * *

■ 9. Table 1 to subpart SSSSS is amended as follows:

■ a. Revising items 6.a and b;

■ b. Revising items 7.a and b;

■ c. Revising item 8;

■ d. Redesignating items 9, 10, and 11 as items 10, 11, and 12;

■ e. Adding a new clarification as item 9;

■ f. Revising newly redesignated items 11.a and b; and

TABLE 1 TO SUBPART SSSSS OF PART 63.—EMISSION LIMITS

[As stated in § 63.9788, you must comply with the emission limits for affected sources in the following table:]

For . . .	You must meet the following emission limits . . .
* * * * * * * *	
6. Batch process units that are controlled with a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak THC mass emissions period must be reduced by at least 95 percent.
7. Batch process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak THC mass emissions period must be reduced by at least 95 percent.
8. Batch process units that use process changes to reduce organic HAP emissions.	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
9. Batch process units that have turned off the control device or are not equipped with a control device.	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
10. Batch process kilns that are not equipped with a control device	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
11. Each new continuous kiln that is used to produce clay refractory products.	a. The 3-hour block average HF emissions must not exceed 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton kiln that is (lb/ton)) of uncalcined clay processed, OR the 3-hour block average HF mass emissions rate must be reduced by at least 90 percent; and b. The 3-hour block average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, OR the 3-hour block average HCl mass emissions rate must be reduced by at least 30 percent.
* * * * * * * *	

■ 10. Table 2 to subpart SSSSS is amended as follows:
■ a. Revising item 1.c;
■ b. Revising item 4;
■ c. Revising 7;
■ d. Revising items 8.a and b and adding items 8.c through e;
■ e. Revising items 9.a and b, and adding new items 9.d through f; and
■ f. Removing item 11.b and redesignating items 11.c and d as items 11.b and c, respectively.

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS

[As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table]

For . . .	You must . . .
1. Each affected source listed in Table 1 to this subpart	* * * b. Capture emissions and vent them through a closed system; and c. Operate each control device that is required to comply with this subpart on each affected source during all periods that the source is operating, except where specified in § 63.9792(e) and (f), item 2 of this table, and item 13 of Table 4 to this subpart; and * * *
* * * * * * *	
4. Each affected continuous process unit	Maintain the 3-hour block average organic HAP processing rate (pounds per hour) at or below the maximum allowable organic HAP processing rate established during the most recent performance test.
* * * * * * *	
7. Each affected batch process unit	For each batch cycle, maintain the organic HAP processing rate (pounds per batch) at or below the maximum allowable organic HAP processing rate established during the most recent performance test.
8. Batch process units that are equipped with a thermal oxidizer	a. Except as specified in item 8.b. of this table, maintain throughout the entire batch cycle the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and b. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfy the requirements of items 8.c. through 8.e. of this table; c. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintain the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; d. From the time when the batch process unit reaches its maximum temperature, maintain the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the thermal oxidizer temperature reduction during the most recent performance test; e. For the remainder of the batch process cycle, maintain the thermal oxidizer combustion chamber temperature at or above the reduced thermal oxidizer temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued

[As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table]

For . . .	You must . . .
9. Batch process units that are equipped with a catalytic oxidizer	a. Except as specified in item 9.b. of this table, maintain throughout the entire batch cycle the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and b. If complying with the provisions for reducing the catalytic oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfy the requirements of items 9.d through 9.f of this table; and c. Check the activity level of the catalyst at least every 12 months. d. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintain the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; e. From the time when the batch process unit reaches its maximum temperature, maintain the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the catalytic oxidizer temperature reduction during the most recent performance test; f. For the remainder of the batch process cycle, maintain the temperature at the inlet of the catalyst bed at or above the reduced catalyst bed inlet temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.

■ 11. Table 4 to subpart SSSSS is revised to read as follows:

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each affected source listed in Table 1 to this subpart.	a. Conduct performance tests.	i. The requirements of the General Provisions in subpart A of this part and the requirements to this subpart.	(1) Record the date of the test; and (2) Identify the emission source that is tested; and (3) Collect and record the corresponding operating parameter and emission test data listed in this table for each run of the performance test; and (4) Repeat the performance test at least every 5 years; and (5) Repeat the performance test before changing the parameter value for any operating limit specified in your OM&M plan; and (6) If complying with the THC concentration or THC percentage reduction limits specified in items 2 through 9 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 2.a.2 and 2.a.3. of this table; and (7) If complying with the emission limits for new clay refractory products kilns specified in items 10 and 11 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 14.a.i.4. and 17.a.i.4. of this table.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Select the locations of sampling ports and the number of traverse points.	i. Method 1 or 1A of 40 CFR, part 60, appendix A.	(1) To demonstrate compliance with the percentage reduction limits specified in items 2.b., 3.b., 6.b., 7.b., 10, and 11 of Table 1 to this subpart, OR to develop an emissions profile, OR to satisfy the requirements of item 13.a. of this table, locate sampling sites at the inlet of the control device and at either the outlet of the control device or at the stack prior to any releases to the atmosphere; AND (2) To demonstrate compliance with any other emission limit specified in Table 1 to this subpart, locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere.
	c. Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	Measure gas velocities and volumetric flow rates at 1-hr intervals throughout each test run.
	d. Conduct gas molecular weight analysis.	(i) Method 3, 3A, or 3B of 40 CFR part 60, appendix A; or	As specified in the applicable test method.
		(ii) ASME PTC 19.10–1981—Part 10.	You may use ASME PTC 19.10–1981—Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to EPA Method 3B.
	e. Measure gas moisture content.	Method 4 of 40 CFR part 60, appendix A.	As specified in the applicable test Method.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Conduct performance tests. b. Satisfy the applicable requirements listed in items 3 through 13 of this table.	.....	(1) Conduct the performance test while the source is operating at the maximum organic HAP processing rate, as defined in § 63.9824, reasonably expected to occur; and (2) Repeat the performance test before starting production of any product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate established during the most recent performance test, as specified in § 63.9798(c); and (3) Repeat the performance test on any affected uncontrolled kiln following process changes (e.g., shorter curing oven cycle time) that could increase organic HAP emissions from the affected kiln, as specified in § 63.9798(d).
3. Each affected continuous process unit.	a. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1, 4, and 5 of this table.	Each test run must be at least 1 hour in duration.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR material safety data sheets (MSDS), OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and. iii. Process feed rate data (tons per hour).	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each binder, or additive, in the product; and the process feed rate; and (2) Calculate and record the organic HAP processing rate (pounds per hour) for each test run; and (3) Calculate and record the maximum allowable organic HAP processing rate as 110 percent of the average of the processing rates for the three test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Record the operating temperature of the affected source.	Process data	During each test run and at least once per hour, record the operating temperature in the highest temperature zone of the affected source.
4. Each continuous process unit that is subject to the THC emission limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR Part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR Part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63,9800(g)(1); and ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour block average THC emission concentration, corrected to 18 percent oxygen.	The hourly average concentrati on of THC, corrected to 18 percent oxygen, for each test run.	Calculate the 3-hour block average THC emission concentration, corrected to 18 percent oxygen, as the average of the hourly average THC emission concentrations, corrected to 18 percent oxygen.
5. Each continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the inlet and outlet of the control device; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the inlet and outlet of the control device.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour block average THC percentage reduction.	i. The hourly THC mass emissions rates at the inlet and outlet of the control device.	(1) Calculate the hourly THC for each hour of the performance test using Equation 2 of § 63.9800(g)(1); and (2) Calculate the 3-hour block average THC percentage reduction.
6. Each continuous process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum allowable thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion temperature; and (2) Provide at least one measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average thermal oxidizer combustion chamber temperature for each hour of the performance test; and (4) Calculate the minimum allowable combustion chamber temperature as the average of the combustion chamber temperatures for the three test runs, minus 14 °C (25 °F).
7. Each continuous process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every the 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test; and (4) Calculate the minimum allowable catalyst bed inlet temperature as the average of the catalyst bed inlet temperatures for the three test runs, minus 14 °C (25 °F).

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
8. Each affected batch process unit.	a. Perform a minimum of 2 test runs.	i. The appropriate test methods specified in items 1, 9, and 10 of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of §63.9800(f)(3) and (4); and (2) Each test run must begin with the start of a batch cycle, except as specified in item 8.a.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in items 8.a.i.4. and 8.a.i.5. of this table; and (4) If you develop an emissions profile, as described in §63.9802(a)(1), you can limit each test run to the 3-hour peak THC mass emissions period; and (5) If you do not develop an emissions profile, a test run can be stopped, and the results of that run considered complete, if either of the following provisions are met: (i) you measure emissions continuously until at least 3 hours after the affected process unit has reached maximum temperature, AND the hourly average THC mass emissions rate at the outlet of the control device or in the stack has not increased during the 3-hour period since maximum process temperature was reached, AND the applicable emission limit specified in items 6 through 9 of Table 1 to this subpart was met during each of the 3 hours since maximum process temperature was reached, OR, (ii) for sources equipped with a thermal or catalytic oxidizer, at least 1 hour has passed since any reduction in the operating temperature of the oxidizer, as specified in item 13 of this table.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR MSDS, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and. iii. Batch weight (tons)	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product, and the batch weight prior (2) Calculate and record the organic HAP processing rate (pounds per batch) for each test run; and (3) Calculate and record the maximum allowable organic HAP processing as 110 percent of the average of the organic HAP processing rates for the two test runs.
	c. Record the batch cycle time.	Process data	Record the total elapsed time from the start to the completion of the batch cycle.
	d. Record the operating temperature of the affected source.	Process data	Record the operating temperature of the affected source at least once every hour from the start to the completion of the batch cycle.
9. Each batch process unit that is subject to the THC emission limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of §63.9800(g)(1); and ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurement; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of §63.9800(g)(1).

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	d. Determine the 3-hour peak THC emissions concentration period for each test run.	The hourly average THC concentrations, corrected to 18 percent oxygen.	Select the period of 3 consecutive hours over which the sum of the hourly average THC concentrations, corrected to 18 percent oxygen, at the control device outlet or in the stack is greater than the sum of the hourly average THC emission concentrations, corrected to 18 percent oxygen, at the control device outlet or in the stack for any other period of 3 consecutive hours during the test run.
	e. Determine the average THC concentration, corrected to 18 percent oxygen, for each test run.	The hourly average THC emission concentrations, corrected to 18 percent oxygen, for the 3-hour peak THC emissions concentration period.	Calculate the average of the hourly average THC concentrations, corrected to 18 percent oxygen, for the 3 hours of the peak THC emissions concentration period for each test run.
	f. Determine the 2-run block average THC concentration, corrected to 18 percent oxygen, for the emission test.	The average THC concentration, corrected to 18 percent oxygen, for each test run.	Calculate the average of the average THC concentrations, corrected to 18 percent oxygen, for the two test runs.
10. Each batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the control device inlet and outlet; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the control device inlet and outlet.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour peak THC mass emissions period for each test run.	The hourly THC mass emissions rates at the control device inlet.	Select the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates at the control device inlet is greater than the sum of the hourly THC mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	d. Determine the average THC percentage reduction for each test run.	i. Equation 2 of § 63.9800(g)(2); and ii. The hourly THC mass emissions rates at the control device inlet and outlet for the 3-hour peak THC mass emissions period.	Calculate the average THC percentage reduction for each test run using Equation 2 of § 63.9800(g)(2).
	e. Determine the 2-run block average THC percentage reduction for the emission test.	The average THC percentage reduction for each test run.	Calculate the average of the average THC percentage reductions for the two test runs.
	f. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, measure the oxygen concentration at the inlet to the control device.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Calculate each hourly average oxygen concentration using at least 50 1-minute measurements for each valid hourly average oxygen concentration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
11. Each batch process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes of each entire test run, measure and record the thermal oxidizer combustion chamber temperature: and (2) Provide at least one temperature measurement during at least three 15-minute periods per hour of testing; and (3) For each test run, calculate the hourly average combustion chamber temperature for each hour of the 3-hour peak THC emissions concentration period or the 3-hour peak THC mass emissions period, as defined in § 63.9824, whichever applies; and (4) Calculate the average combustion chamber temperature for the applicable 3-hour peak emissions period for each test run using the average hourly combustion chamber temperatures for the applicable 3-hour peak emissions period; and (5) Calculate the minimum allowable thermal oxidizer combustion chamber operating temperature as the average of the average combustion chamber temperatures for the applicable 3-hour peak emissions period for the two test runs, minus 14 °C (25 °F).
12. Each batch process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes of each entire test run, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) For each test run, calculate the hourly average catalyst bed inlet temperature for each hour of the 3-hour peak THC emissions concentration period or the 3-hour peak THC mass emissions period, as defined in § 63.9824, whichever applies; and (4) Calculate the average catalyst bed inlet temperature for the applicable 3-hour peak emissions period for each test run using the average hourly catalyst bed inlet temperatures for the applicable 3-hour peak emissions period; and (5) Calculate the minimum allowable catalyst bed inlet operating temperature as the average of the average catalyst bed inlet temperatures for the applicable 3-hour peak emissions period for the two test runs, minus 14 °C (25 °F).

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
13. Each batch process unit that is equipped with a thermal or catalytic oxidizer.	a. During each test run, maintain the applicable operating temperature of the oxidizer until emission levels allow the oxidizer to be shut off or the operating temperature of the oxidizer to be reduced.	.....	(1) The oxidizer can be shut off or the oxidizer operating temperature can be reduced if you do not use an emissions profile to limit testing to the 3-hour peak THC mass emissions period, as specified in item 8.a.i.4. of this table; (2) At least 3 hours have passed since the affected process unit reached maximum temperature; and (3) The applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was met during each of the previous three 3-hour periods; and (4) The hourly average THC mass emissions rate at the control device inlet did not increase during the 3-hour period that immediately preceded the oxidizer temperature reduction; and (5) The THC concentration at the oxidizer inlet did not exceed 20 ppmvd, corrected to 18 percent oxygen, during each of the four 15-minute periods immediately following the oxidizer temperature reduction; and (6) If the THC concentration exceeded 20 ppmvd, corrected to 18 percent oxygen, during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you must return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour; and (7) Continue the test run until the THC concentration at the oxidizer inlet is no more than 20 ppmvd, corrected to 18 percent oxygen, for at least four consecutive 15-minute periods that immediately follow the oxidizer temperature reduction.
14. Each new continuous kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCL.	i. Method 26A of 40 CFR part 60, appendix A; or 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	(1) Conduct the test while the kiln is operating at the maximum production level and is processing the refractory product with the highest uncalcined clay processing rate, as specified in item 15.a. of this table; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (e.g., HF or HCL dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1 and 14.a. of this table.	Each test run must be at least 1 hour in duration.
15. Each new continuous kiln that is subject to the production-based HF and HCL emission limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Record the uncalcined clay processing rate.	i. Production data; and ii. Product formulation data that specify the mass fraction of uncalcined clay in the products that are processed during the performance test.	(1) Record the production rate (tons per hour of fired product); and (2) Calculate and record the average rate at which uncalcined clay is processed (tons per hour) for each test run.
	b. Determine the HF mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rate for each test run.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Determine the 3-hour block average production-based HF emissions rate.	i. The HF mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HF emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HF emissions rate as the average of the hourly production-based HF emissions rates for each test run.
	d. Determine the HCL mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCl mass emissions rate for each test run.
	e. Determine the 3-hour block average production-based HCL emissions rate.	i. The HCl mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HCl emissions rate for each test run using Equation 3 of § 63.9800(g)(3): and (2) Calculate the 3-hour block average production-based HCl rate as the average of the production-based HCl emissions rates for each test run.
16. Each new continuous kiln that is subject to the HF and HCL percentage reduction limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Measure the HF mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or. iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rates at the control device inlet and outlet for each test run.
	b. Determine the 3-hour block average HF percentage reduction.	i. The HF mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HF percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HF percentage reduction as the average of the HF percentage reductions for each test run.
	c. Measure the HCL mass emissions rates at the inlet and outlet control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCl mass emissions rates at the control device inlet and outlet for each test run.
	d. Determine the 3-hour block average HCL percentage reduction.	i. The HCl mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HCl percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HCl percentage reduction as the average of HCl percentage reductions for each test run.
17. Each new batch process kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCL at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	(1) Conduct the test while the kiln is operating at the maximum production level and is processing the refractory product with the highest uncalcined clay processing rate, as specified in item 15.a. of this table; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (e.g., HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Perform a minimum of 2 test runs.	i. The appropriate test methods specified in items 1 and 17.a. of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must consist of a series of 1-hour runs at the inlet and outlet of the control device, beginning with the start of a batch cycle, except as specified in item 17.b.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in item 17.b.i.4. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(a)(2), you can limit each test run to the 3-hour peak HF mass emissions period.
	c. Determine the hourly HF and HCl mass emissions rates at the inlet and outlet of the control device.	i. The appropriate test methods specified in items 1 and 71.a. of this table.	Determine the hourly mass HF and HCl emissions rates at the inlet and outlet of the control device for each hour of each test run.
	d. Determine the 3-hour peak HF mass emissions period.	The hourly HF mass emissions rates at the inlet of the control device.	Select the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates at the control device inlet is greater than the sum of the hourly HF mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	e. Determine the 2-run block average HF percentage reduction for the emissions test.	i. The hourly average HF emissions rates at the inlet and outlet of the control device.	(1) Calculate the HF percentage reduction for each hour of the 3-hour peak HF mass emissions period using Equation 2 of § 63.9800(g)(2); AND (2) Calculate the average HF percentage reduction for each test run as the average of the hourly HF percentage reductions for the 3-hour peak HF mass emissions period for that run; and (3) Calculate the 2-run block average HF percentage reduction for the emission test as the average of the average HF percentage reductions for the two test runs.
	f. Determine the 2-run block average HCl percentage reduction for the emission test.	i. The hourly average HCl emissions rates at the inlet and outlet of the control device.	(1) Calculate the HCl percentage reduction for each hour of the 3-hour peak HF mass emissions period using Equation 2 of § 63.9800(g)(2); and (2) Calculate the average HCl percentage reduction for each test run as the average of the hourly HCl percentage reductions for the 3-hour peak HF mass emissions period for that run; and (3) Calculate the 2-run block average HCl percentage reduction for the emission test as the average of the average HCl percentage reductions for the two test runs.
18. Each new kiln that is used to process clay refractory products and is equipped with a DLA.	a. Establish the operating limit for the minimum pressure drop across the DLA.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the DLA; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the DLA for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the DLA for the two or three test runs, whichever applies.
	b. Establish the operating limit for the limestone feeder setting.	i. Data from the limestone feeder during the performance test.	(1) Establish the limestone feeder setting 1 week prior to the performance test; and (2) Record and maintain the feeder setting for the 1-week period that precedes the performance test and during the performance test.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
19. Each new kiln that is used to process clay refractory products and is equipped with a DIFF or DLS/FF.	a. Document conformance with specifications and requirements of the bag leak detection system.	Data from the installation and calibration of the bag leak detection system.	Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status.
	b. Establish the operating limit for the lime feeder setting.	i. Data from the lime feeder during the performance test.	(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times during the performance test; and (2) Record the feeder setting for the two or three runs, whichever applies. (3) If the feed rate setting varies during the three test runs, calculate and record the average feed rate for the two or three test runs, whichever applies.
20. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Establish the operating limit for the minimum scrubber pressure drop.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the scrubber; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the scrubber for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the scrubber for the two or three test runs, whichever applies.
	b. Establish the operating limit for the minimum scrubber liquid pH.	i. Data from the pH measurement device during the performance test.	(1) At least every 15 minutes, measure scrubber liquid pH; and (2) Provide at least one pH measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pH values for each hour of the performance test; and (4) Calculate and record the minimum liquid pH as the average of the hourly average pH measurements for the two or three test runs, whichever applies.
	c. Establish the operating limit for the minimum scrubber liquid flow rate.	i. Data from the flow rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber liquid flow rate; and (2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average liquid flow rate for each hour of the performance test; and (4) Calculate and record the minimum liquid flow rate as the average of the hourly average liquid flow rates for the two or three test runs, whichever applies.
	d. If chemicals are added to the scrubber liquid, establish the operating limit for the minimum scrubber chemical feed rate.	i. Data from the chemical feed rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber chemical feed rate; and (2) Provide at least one chemical feed rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average chemical feed rate for each hour of the performance test; and (4) Calculate and record the minimum chemical feed rate as the average of the hourly average chemical feed rates for the two or three test runs, whichever applies.

■ 12. Table 5 to subpart SSSSS is amended as follows:

■ a. Revising items 5 and 6; and

■ b. Revising items 10.a and b.

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.9806, you must show initial compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
* *	* * *	* *
5. Each affected batch process unit that is subject to the THC emission concentration limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 2-run block average THC emission concentration for the 3-hour peak THC emissions concentration period measured during the performance test using Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
6. Each affected batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 2-run block average THC percentage reduction for the 3-hour peak THC mass emissions period measured during the performance test using Method 25A is equal to or greater than 95 percent.
* *	* * *	* *
10. Each new batch process kiln that is used to process clay refractory products.	a. The average uncontrolled HF emissions must be reduced by at least 90 percent.	The 2-run block average HF emission reduction for the 3-hour peak HF mass emissions period measured during the performance test is equal to or greater than 90 percent.
	b. The average uncontrolled HCl emissions must be reduced by at least 30 percent.	The 2-run block average HCl emissions reduction for the 3-hour peak HF mass emissions period measured during the performance test is equal to or greater than 30 percent.
* *	* * *	* *

■ 13. Table 7 to subpart SSSSS is amended as follows:

■ a. Revising item 2:

■ b. Revising item 4 by designating the entry in column 3 as item i and adding item 4.ii;

■ c. Revising item 5 by designating the entry in column 3 as item i and adding item 5.ii; and

■ d. Removing item 9.a.ii and redesignating items 9.a.iii and iv as items 9.a.ii and iii, respectively.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
* *	* * *	* *
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 7 of this table	Satisfying the applicable requirements specified in items 3 through 7 of this table.
* *	* * *	* *
4. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	i. Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F; and ii. Maintaining the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
5. Each affected process unit that uses process changes to meet the applicable emission limit.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	i. Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F; and ii. Maintaining the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

■ 14. Table 8 to subpart SSSSS is amended as follows:

■ a. Revising item 4.iii and adding item 4.iv;

■ b. Revising item 7.iv and adding item 7.v;

■ c. Revising items 8 and 8.i through v and adding items 8.vi through viii:

■ d. Revising items 9 and 9.i through iv, redesignating items 9.v and vi as items 9.viii and ix, respectively, and adding items 9.v. through vii;

■ e. Revising items 11.a.ii and iii, adding item 11.a.iv, removing item 11.b, and redesignating items 11.c and d as items 11.b and c, respectively; and

■ f. Revising items 13.a.ii and iii, 13.b.ii and iii, 13.c.ii and iii, and 13.d.ii and iii, and adding items 13.a.iv, 13.b.iv, 13.c.iv, and 13.d.iv.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. Each affected continuous process unit	a. Maintain process operating parameters within the limits established during the most recent performance test.	* * * iii. Maintaining the 3-hour block average organic HAP processing rate at or below the maximum allowable organic HAP processing rate established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average organic HAP processing rate that exceeds the maximum allowable organic HAP processing rate established during the most recent performance test
7. Each affected batch process unit	a. Maintain process operating parameters within the limits established during the most recent performance test.	* * * iv. Maintaining the organic HAP processing rate at or below the maximum allowable organic HAP processing rate established during the most recent performance test; and v. Reporting, in accordance with § 63.9814(e), any organic HAP processing rate that exceeds the maximum allowable organic HAP processing rate established during the most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
8. Batch process units that are equipped with a thermal oxidizer.	Maintain the hourly average temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes throughout any period during which the thermal oxidizer is required to be in operation; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature for any period during which the thermal oxidizer is required to be in operation; and iii. Except as permitted by item 8.iv of this table, maintaining throughout the entire batch cycle the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test; and iv. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfying the requirements of items 8.vi. through 8.viii. of this table; and v. Reporting, in accordance with § 63.9814(e), any temperature measurements below the minimum allowable thermal oxidizer combustion chamber temperature established during the most recent performance test. vi. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintaining the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; vii. From the time when the batch process unit reaches its maximum temperature, maintaining the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the thermal oxidizer temperature reduction during the most recent performance test; viii. For the remainder of the batch process cycle, maintaining the thermal oxidizer combustion chamber temperature at or above the reduced thermal oxidizer temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
9. Batch process units that are equipped with a catalytic oxidizer.	Maintain the hourly average temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established during the most recent performance test.	i. Measuring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes throughout any period during which the catalytic oxidizer is required to be in operation; and ii. Calculating the hourly average temperature at the catalyst bed inlet for any period during which the catalytic oxidizer is required to be in operation; and iii. Except as specified in items 9.a.iv through 9.a.vii of this table, maintaining throughout the entire batch cycle the hourly average operating temperature at the catalyst bed inlet at or above the minimum allowable performance allowable operating temperature established during the most recent performance test; and iv. If complying with the provisions for reducing the catalytic oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfying the requirements of items 9.a.v. through 9.a.vii. of this table; and v. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintaining the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and vi. From the time when the batch process unit reaches its maximum temperature, maintaining the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the catalytic oxidizer temperature reduction during the most recent performance test; and vii. For the remainder of the batch process cycle, maintaining the temperature at the inlet of the catalyst bed at or above the reduced catalyst bed inlet temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and viii. Reporting, in accordance with § 63.9814(e), any catalyst bed inlet temperature measurements below the minimum allowable bed inlet temperature measured during the most recent performance test; and ix. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
* * *	* * *	* * *
11. Each new kiln that is equipped with a DLA	a. Maintain the average pressure drop the DLA for each 3-hour block period at or above the mininum pressure drop established during the most recent performance test.	* * * ii. Calculating the hourly average pressure drop across the DLA; and iii. Maintaining the 3-hour block average pressure drop across the DLA at or above the minimum pressure drop established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average pressure drop across the DLA below the minimum pressure drop established during the most recent performance test.
* * *	* * *	* * *
13. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Maintain the average pressure drop across the scrubber for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	* * * ii. Calculating the hourly average pressure drop across the scrubber; and iii. Maintaining the 3-hour block average scrubber pressure drop at or above the minimum pressure drop established during the most recent performance test; and iv. Reporting, in accordance with during the § 63.9814(e), any 3-hour block average most recent pressure drop across the scrubber below the minimum pressure drop established during the most recent performance test.
	b. Maintain the average average scrubber liquid pH for each 3-hour block period at or above the minimum scrubber liquid pH established during the most recent performance test.	* * * ii. Calculating the hourly average scrubber liquid pH; and iii. Maintaining the 3-hour block average scrubber liquid pH at or above the minimum scrubber liquid pH estalbished during the most recent perforamnce test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average scrubber liquid pH below the minimum liquid pH established during the most recent performance test.
	c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the minimum scrubber liquid flow rate established during the most recent performance test.	* * * ii. Calculating the hourly average scrubber liquid flow rate; and iii. Maintaining the 3-hour block average scrubber liquid flow rate at or above the minimum scrubber liquid flow rate established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average established scrubber liquid flow rate below the minimum liquid flow rate established during the most most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	d. If chemicals are added to the scrubber liquid, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the minimum scrubber chemical feed rate established during the most recent performance test.	* * * ii. Calculating the hourly average scrubber chemical feed rate; and iii. Maintaining the 3-hour block average scrubber chemical feed rate at or above the scrubber minimum scrubber chemical feed rate established during the most recent rate for each performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average scrubber chemical feed rate below the minimum chemical feed rate established during the most recent performance test
* * * * * * *		

■ 15. Table 10 to subpart SSSSS is amended by revising item 1 to read as follows:

TABLE 10 TO SUBPART SSSSS OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.9814, you must comply with the requirements for reports in the following table:]

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	The information in § 63.9814(a) through (f)	Semiannually according to the requirements in § 63.9814(b)
* * * * * * *		

■ 16. Table 11 to subpart SSSSS is amended as follows:

■ a. Revising citation § 63.4;

■ b. Adding citations § 63.6(i)(15) and (16);

■ c. Revising citation § 63.7(b)(2);

■ d. Revising citation § 63.7(e)(3); and

■ e. Revising citations § 63.8(c)(1)(i), (ii), and (iii).

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS

[As stated in § 63.9820, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Subject	Brief description	Applies to subpart SSSSS
* * * * * * *			
§ 63.4	Prohibited Activities	Compliance date; circumvention; fragmentation	Yes.
* * * * * * *			
§ 63.6(i)(15)	[Reserved].		
§ 63.6(i)(16)	Administrator's authority	Granting extension does not abrogate Administrator's authority.	Yes.
* * * * * * *			
§ 63.7(b)(2)	Notification of Rescheduling	Must notify Administrator as soon as is practicable and provide rescheduled date.	Yes.
* * * * * * *			
§ 63.7(e)(3)	Test Run Duration	Must have three test runs for at least the time specified in the relevant standard; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes; Yes, except where specified in § 63.9800 for batch process sources; Yes.
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS.	Must maintain CMS in accordance with § 63.6(e)(1)	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS	Must maintain spare parts for routine CMS repairs	Yes.
§ 63.8(c)(1)(iii)	SSMP for CMS	Must develop and implement SSMP for CMS	Yes.
* * * * * * *			

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6029–27; I.D. 020606D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen for 15 days in an area southeast of Portland, ME, totaling approximately 886 nm² to 1,569 nm² (3,039 km² to 5,382 km²), depending on the temporal and spatial overlap with two other DAM zones currently in effect. The two other overlapping DAM zones are in effect from 0001 hours February 3, 2006 through 2400 hours February 17, 2006,and from 0001 hours February 10, 2006, through 2400 hours February 24, 2006. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 15, 2006, through 2400 hours March 1, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32. relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On February 2, 2006, an aerial survey reported a sighting of seven right whales in the proximity 42° 59′ N. lat. and 69° 26′ W. long. This position lies southeast of Portland, ME. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM zone overlaps with two other DAM zones: one in effect from 0001 hours February 3, 2006, through 2400 hours February 17, 2006 (71 FR 5180, February 1, 2006), and the other in effect from 0001 hours February 10, 2006, through 2400 hours February 24, 2006 (70 FR 6396, February 8, 2006). Effective from 0001 hours February 15, 2006 through 2400 hours February 17, 2006, the DAM zone is bounded by the following coordinates when it overlaps these previously established DAM zones:

43° 18′ N., 69° 53′ W. (NW Corner)
43° 18′ N., 69° 15′ W.
42° 49′ N., 69° 15′ W.
42° 49′ N., 68° 58′ W.
42° 39′ N., 68° 58′ W.
42° 39′ N., 69° 32′ W.
43° 00′ N., 69° 32′ W.
43° 00′ N., 69° 53′ W.

Effective from 0001 hours February 18, 2006, through 2400 hours February 24, 2006, after the February 1, 2006, DAM zone (71 FR 5180) expires, the DAM zone is bounded by the following coordinates:

43° 18′ N., 69° 53′ W. (NW Corner)
43° 18′ N., 68° 58′ W.
42° 39′ N., 68° 58′ W.
42° 39′ N., 69° 32′ W.
43° 00′ N., 69° 32′ W.
43° 00′ N., 69° 53′ W.

Effective from 0001 hours February 25, 2006, through 2400 hours March 1, 2006, after the February 8, 2006, DAM zone (70 FR 6396) expires, the DAM zone is bounded by the following coordinates:

43° 18′ N., 69° 53′ W. (NW Corner)
43° 18′ N., 68° 58′ W.
42° 39′ N., 68° 58′ W.
42° 39′ N., 69° 53′ W.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: a portion of this DAM zone overlaps the year-round Cashes Ledge Closure Area found at 50 CFR 648.81(d) and the February Cashes Ledge Closure Area for harbor porpoise found at 50 CFR 229.33(a)(6). Due to these closures, sink gillnet gear is prohibited from these portions of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 15, 2006, through 2400 hours March 1, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this

action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 8, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 06–1306 Filed 2–8–06; 2:02 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051209329–5329–01; I.D. 020306B]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter I Fishery for Loligo Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, February 13, 2006. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* squid per trip for the remainder of the quarter (through March 31, 2006). This action is necessary to prevent the fishery from exceeding its Quarter I quota and to allow for effective management of this stock.

DATES: Effective 0001 hours, February 13, 2006, through 2400 hours, March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The regulations at § 648.21(d)(1) allow for the previous year's annual specifications to remain in effect if the annual specifications for the new fishing year are not published in the **Federal Register** prior to the start of the fishing year. The 2005 annual quota for *Loligo* squid was 16,744.9 mt, with 5,564.3 mt allocated to Quarter I (70 FR 13406, March 21,2005).

The allowable biological catch in 2006 is not proposed to change from the 2005 value, but because the proposed 2006 Research Set-Aside (RSA) is greater than the 2005 RSA allocation, the initial optimum yield and the individual quarterly quotas are minimally different. The proposed rule for the 2006 annual specifications published on December 27, 2005 (70 FR 76436), with a comment period that ended January 11, 2006. The proposed 2006 annual quota for *Loligo* squid is 16,872.50 mt. This amount is proposed to be allocated by quarter, as shown below.

TABLE. 1 *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons[1]	Research Set-aside
I (Jan-Mar)	33.23	5,606.70	N/A
II (Apr-Jun)	17.61	2,971.30	N/A
III (Jul-Sep)	17.3	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 research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II, and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter I will be harvested. Therefore, effective 0001 hours, February 13, 2006, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, April 1, 2006, when the Quarter II quota becomes available.

Classification

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

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

Dated: February 7, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–1305 Filed 2–8–06; 2:02 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 29
Monday, February 13, 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.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 735

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AH48

Regulations for the United States Warehouse Act; Cotton Loans

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) are soliciting comments and views on whether to revise the regulations at 7 CFR parts 735 and 1427 for the purpose of addressing the storage of upland cotton and its impact on loan eligibility.

DATES: Comments should be received on or before April 14, 2006 to be assured consideration.

ADDRESSES: CCC invites interested persons to submit comments on this proposed rule and on the collection of information. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *Gene.Rosera@USDA.gov*.
- Fax: Submit comments by facsimile transmission to: (202) 720–8481.
- Mail: Send comments to: Director, Price Support Division, Farm Service Agency, United States Department of Agriculture (USDA), Rm. 4095–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- Hand Delivery or Courier: Deliver comments to the above address.
- Federal Rulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gene Rosera; phone: (202) 720–7901; e-mail: *Gene.Rosera@usda.gov*; or fax: (202) 690–3307.

SUPPLEMENTARY INFORMATION:

Background

Traditionally, CCC has required that baled loan cotton must be inside approved warehouses as a condition of eligibility for a marketing assistance loan. When the 2004 and 2005 crops of upland cotton exceeded warehouse capacity in some southern-plains areas, CCC established requirements under which warehouses could request approval of short-term outside storage. For both years, approvals were granted under the provisions of 7 CFR 1427.1087.

Because some localized shortages of inside storage appear likely for coming crops, CCC is reviewing whether its storage requirements for loan cotton should be revised. CCC is considering whether it should strictly enforce the traditional inside-storage requirement or establish new provisions for exempting warehouses from one or more storage requirements. Under traditional storage requirements, cotton for which inside storage is not available might not be eligible as collateral within the loan availability period, thus losing any possible storage credit and loan gain as provided under recent short-term storage exemptions.

Issues for Public Comment

CCC does not have any statutory authority to regulate the storage of non-loan cotton. With respect to amending and revising current regulations regarding the storage of loan cotton, CCC is soliciting comments regarding the need and suitability of the following regulatory issues, and views regarding how any suggested changes might be implemented.

1. What should CCC storage requirements be with respect to upland loan cotton?

2. Should CCC strictly require that all upland loan cotton be stored inside approved cotton warehouses without granting exemptions for any period under any circumstances, and if so, why?

3. Under the Extra Long Staple (ELS) farm-stored loan program provided for by 7 CFR 1427.10(e) loan bales are identified to CCC by bale number, and any bale represented by an electronic warehouse receipt (EWR) is ineligible. Loans are provided based on the national average loan rate and any settlements are based on classification information established after the cotton is delivered into an approved warehouse. Such loans are provided in limited counties, and only at facilities with specialized equipment to package, store and handle the bales. Should CCC establish farm-stored loans for upland cotton, as currently available for ELS cotton, and if so, what would be appropriate loan eligibility requirements, storage and handling requirements, loan rates, settlement policies, and locational considerations for such a loan program? Conversely, should the ELS farm-stored loan provisions be eliminated to provide parity between programs?

4. Should upland loan cotton stored outside be provided the same dollar of storage credit as provided to inside-stored loan cotton, a portion of the credit, or no storage credit at all, and why?

5. Should CCC formalize a process for allowing approved cotton warehouses to request CCC approval for short-term use of outside yard storage for upland loan cotton? If so, what, if any, circumstances must be established by the applicant for CCC to favorably consider such requests, and why? Additionally, should CCC establish cutoff-dates for any approved outdoor storage periods, and if so, what dates are recommended for different production areas?

6. If CCC allows outside storage of loan cotton during periods when inside-storage is unavailable, should CCC provide public notice in advance of approving any request for use of short-term outside storage for upland cotton so that interested parties may identify reasonable and economical alternative storage locations before any exemption is granted?

7. Should USDA require that all cotton EWR's accommodate a trailer record indicating whether the bale has ever been stored outside, and if so, what information should be specifically required to be included on trailer record? If EWR trailer records were to contain information about any outside-

storage, who should have access to such information, and how should access be provided? Note that changes to the EWR and/or disclosure of such information may require amendments to 7 CFR part 735 or the Electronic Provider Agreements for cotton, or both.

8. As a condition of loan eligibility, should loan applicants be required to agree that CCC may disclose such storage information to potential cotton buyers?

9. If CCC provides a loan for upland cotton identified on the EWR as stored outside, should the loan rate be provided at the national average loan rate? Additionally, should the loan settlement for any upland loan cotton, that is stored outside and subsequently forfeited to CCC, be based on classification information provided by the producer after the cotton has been delivered to CCC inside an approved cotton storage warehouse? If so, should the additional costs of providing this classification information be paid by the producer or by CCC, and why?

10. Non-loan upland cotton stored outside at warehouses is not subject to CCC storage requirements. Are there any storage and handling practices commonly used by warehouses for outside storage that protect the cotton and all interested parties and that could be adopted for outside stored upland loan cotton, such as double bagging? If so, are there geographic, marketing, or other constraints to such practices?

11. Are there circumstances under which CCC should increase or decrease the weekly minimum shipping standard of 4.5 percent? If so, explain how CCC might administer any different standard. Is there a need for CCC to strengthen enforcement of the current standard, and if so, by what methods? Should CCC rules be changed to reflect 4.5 percent of total stocks rather than approved capacity?

12. In the past, CCC has at times re-concentrated loan cotton only for the purpose of protecting the interest of the producer or CCC. Merchants having options to purchase loan cotton may benefit from re-concentrating loan cotton for marketing efficiencies. Should CCC allow producers, or agents of producers, to request re-concentration of loan cotton for any reason? If so, would the producer/producer's agent be willing to pay for the charges associated with such re-concentration? Should they be required to pay such charges in all instances? Define circumstances, if any, when CCC should pay re-concentration charges.

Signed at Washington, DC February 6, 2006.

Thomas B. Hofeller,

Acting Administrator, Farm Service Agency, and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–1284 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–05–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 652 and 655

RIN 3052–AC17

Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Federal Agricultural Mortgage Corporation Disclosure and Reporting Requirements; Risk-Based Capital Requirements

ACTION: Proposed rule; comment period extension.

SUMMARY: The Farm Credit Administration (FCA) Board extends the comment period on the proposed rule that would revise risk-based capital requirements for the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation) to April 17, 2006, so that interested parties will have additional time to provide comments.

DATES: Please send your comments to us on or before April 17, 2006.

ADDRESSES: You may mail or deliver comments to Robert Coleman, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or send them by facsimile transmission to (703) 883–4477. You may also submit your comments by electronic mail to *reg-comm@fca.gov*, or through the Pending Regulations section of our Web site at *http://www.fca.gov*, or through the Government-wide Web site *http://www.regulations.gov*.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select "Legal Info," and then select "Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434; or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On November 17, 2005, FCA published a proposed rule in the **Federal Register** to amend regulations in parts 652 and 655 that establish a risk-based capital stress test for the Corporation as required by section 8.32 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2279bb–1). *See* 70 FR 69692, November 17, 2005. The comment period is scheduled to expire on February 15, 2006. Farmer Mac has requested us to extend the comment period for at least an additional 60 days. In response to this request, we are extending the comment period until April 17, 2006. The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and provide comments on the proposed rule.

Dated: February 7, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–1959 Filed 2–10–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23873; Directorate Identifier 2005–NM–110–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. The existing AD currently requires reviewing airplane maintenance records; inspecting the yaw damper actuator portion of the upper and lower rudder power control modules (PCM) for cracking, and replacing the PCMs if necessary; and reporting all airplane

maintenance records review and inspection results to the manufacturer. This proposed AD would expand the applicability and discontinue certain requirements of the existing AD. This proposed AD would require repetitive inspections of the PCMs and replacement of the PCMs if necessary. This proposed AD results from manufacturer findings that the inspections required by the existing AD must be performed at regular intervals. We are proposing this AD to detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder PCMs, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing.

DATES: We must receive comments on this proposed AD by March 30, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2006–23873; Directorate Identifier 2005–NM–110–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On November 3, 2003, we issued AD 2003–23–01, amendment 39–13364 (68 FR 64263, November 13, 2003), for certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. That AD requires reviewing airplane maintenance records; inspecting the yaw damper actuator portion of the upper and lower power control modules (PCM) for cracking, and replacing the PCMs if necessary; and reporting airplane maintenance records review and inspection results to the manufacturer. That AD was prompted by a report that the lower rudder of a Boeing Model 747–400 series airplane made an uncommanded move to the full left position (hardover) during flight. We issued that AD to detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder PCMs, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing.

Actions Since Existing AD Was Issued

The preamble to AD 2003–23–01 explains that we consider the requirements "interim action." The inspection reports required by that AD were intended to enable the manufacturer and the FAA to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. We now have determined that further rulemaking is necessary, and this proposed AD follows from that determination.

Since we issued AD 2003–23–01, there have been no further reports of a failure of the yaw damper actuator portion of the lower rudder PCM manifold. Also, investigations that included inspection results gathered during accomplishment of the original release of Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003 (which is referenced as the appropriate source of service information for doing the actions required by AD 2003–23–01), did not yield any explanation as to the cause of the cracks in the yaw damper actuator portion of the lower rudder PCM manifold. However, the failure that led to the issuance of AD 2003–23–01 highlighted a previously unidentified single point failure. Without inspection of the yaw damper actuator portion of the lower rudder PCM manifold, a developing crack can remain latent and grow to the point of failure. Therefore, to ensure that no latent crack can develop undetected to the point of failure of the PCM manifold, it has been determined that regular repetition of the inspection required by AD 2003–23–01 is necessary for all Boeing Model 747–400, 747–400D, and 747–400F series airplanes.

The compliance time for the initial inspection (for airplanes not previously inspected as required by AD 2003–23–01) has been revised to the earlier of 56,000 total flight hours or 9,000 total flight cycles, or, for airplanes that are close to or have exceeded that total, 24 months after the effective date of the AD. This compliance time is based on the data gathered from airplanes inspected in accordance with AD 2003–23–01, including the fact that there have been no further reports of a failure of the yaw damper actuator portion of the lower rudder PCM manifold. We find that this initial compliance time will be adequate to ensure the safety of the affected airplane fleet.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–27A2397, Revision 1, dated March 31, 2005. The service

bulletin describes procedures for performing repetitive ultrasonic inspections for cracking of the yaw damper actuator portion of the upper and lower rudder PCMs; reporting the finding of any indication of a cracked or broken PCM to the airplane manufacturer; and returning any cracked or broken part to the PCM manufacturer.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2003–23–01. This proposed AD would expand the applicability of the existing AD and require accomplishing all actions specified in Boeing Alert Service Bulletin 747–27A2397, Revision 1, described previously.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Costs of Compliance

There are approximately 636 airplanes of the affected design in the worldwide fleet. The FAA estimates that 86 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 4 work hours per airplane to accomplish the ultrasonic inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection is estimated to be $22,360, or $260 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–13364 (68 FR 64263, November 13, 2003) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–23873; Directorate Identifier 2005–NM–110–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by March 30, 2006.

Affected ADs

(b) This AD supersedes AD 2003–23–01.

Applicability

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

Unsafe Condition

(d) This AD results from manufacturer findings that the inspections required by AD 2003–23–01 must be performed at regular intervals. We are issuing this AD to detect and correct potential cracking in the yaw damper actuator portion of the upper and lower rudder power control modules (PCM), which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing.

Compliance

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

Verification of Rudder PCM/Main Manifold Time in Service

(f) For any affected airplane, if it can be positively verified that any rudder PCM or PCM main manifold installed on that airplane has accumulated a different total of flight hours or flight cycles than the totals accumulated by that airplane, the flight cycles or flight hours accumulated by the rudder PCM or PCM main manifold will be acceptable as valid starting points for meeting the compliance times required by this AD.

Inspection Accomplished Prior to the Issuance of This AD

(g) For airplanes which, prior to the effective date of this AD, have received an ultrasonic inspection for cracking of the yaw damper actuator portion of the upper and lower rudder PCM, in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003, as required by AD 2003–23–01, do paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2397, Revision 1, dated March 31, 2005.

(1) Perform the ultrasonic inspection described in paragraph (g) of this AD at the later of the times specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD, then do paragraph (g)(2) or (g)(3) of this AD, as applicable; and paragraph (g)(4) of this AD.

(i) Within 28,000 flight hours or 4,500 flight cycles after the date of the prior inspection, whichever occurs first.

(ii) Within 24 months after the effective date of this AD.

(2) If no cracking is found during any inspection required by paragraph (g)(1) or (h) of this AD: Apply sealant and a torque stripe and install a lockwire on the rudder PCM in accordance with the Accomplishment Instructions and Figure 1 or Figure 2, as applicable, of Alert Service Bulletin 747–27A2397, Revision 1.

(3) If any cracking is found during any inspection required by paragraph (g)(1) or (h) of this AD: Before further flight, replace the affected PCM with a new or serviceable PCM and submit the report required by paragraph (i) of this AD.

(4) Repeat the ultrasonic inspection described in paragraph (g) of this AD at intervals not to exceed 28,000 flight hours or 4,500 flight cycles, whichever occurs first,

and repeat the actions of paragraph (g)(2) or (g)(3) of this AD, as applicable.

Initial Inspection

(h) For airplanes not inspected prior to the effective date of this AD as specified in paragraph (g) of this AD: At the later of the times specified in paragraph (h)(1) or (h)(2) of this AD, perform an ultrasonic inspection for cracking of the yaw damper actuator portion of the upper and lower rudder PCM main manifold; and the actions specified in paragraph (g)(2) or (g)(3) of this AD, as applicable; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2397, Revision 1, dated March 31, 2005. Repeat the inspection thereafter at intervals not to exceed 28,000 flight hours or 4,500 flight cycles, whichever occurs first.

(1) Prior to the accumulation of 56,000 total flight hours or 9,000 total flight cycles, whichever occurs first.

(2) Within 24 months after the effective date of this AD.

Reporting Requirements and Damaged Parts Disposition

(i) For all airplanes: At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, accomplish paragraph (j) of this AD.

(1) If the inspection was done after the effective date of this AD: Submit the report and part, if applicable, within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report and part, if applicable, within 30 days after the effective date of this AD.

(j) At the applicable time specified in paragraph (i) of this AD: Do the requirements of paragraphs (j)(1) and (j)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If any inspection required by this AD reveals any indication of a cracked or broken part, submit a report to: The Boeing Company, Service Engineering—Mechanical Systems. The report must contain the airplane and rudder PCM serial numbers, the total flight hours and flight cycles for each rudder PCM (and rudder PCM main manifold, if known), and a description of any damage found. Submission of the Inspection Report Form (Figure 3 of Boeing Alert Service Bulletin 747–27A2397, Revision 1, dated March 31, 2005) is one acceptable method of complying with this requirement.

(2) Send any cracked or broken PCMs to Parker Hannifin Corporation in accordance with the shipping instructions specified in Appendix A of Boeing Alert Service Bulletin 747–27A2397, Revision 1.

Prior Accomplishment of Requirements

(k) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003, shall be considered acceptable for compliance with the corresponding requirements of this AD.

Parts Installation

(l) As of the effective date of this AD, no person shall install on any airplane a rudder PCM having part number (P/N) 332700–1003, –1005, –1007, or –1009; or P/N 333200–1003, –1005, –1007, or –1009; unless the PCM has been ultrasonically inspected (either by the operator or the supplier) in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2397, Revision 1, dated March 31, 2005.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously according to AD 2003–23–01, amendment 39–13364, are approved as AMOCs with this AD.

Issued in Renton, Washington, on January 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1944 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23870; Directorate Identifier 2005–NM–022–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–200 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A310–200 and –300 series airplanes. This proposed AD would require doing repetitive rotating probe inspections for any crack of the rear spar internal angle and the left and right sides of the tee fitting, and doing related investigative/corrective actions if necessary. This proposed AD would also require modifying the holes in the internal angle and tee fitting by cold expansion. This proposed AD results from full-scale fatigue tests, which revealed cracks in the lower rear spar internal angle, and tee fitting. We are proposing this AD to detect and correct fatigue cracks of the rear spar internal angle and tee fitting, which could lead to the rupture of the internal angle, tee fitting, and rear spar, and consequent reduced structural integrity of the wings.

DATES: We must receive comments on this proposed AD by March 15, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate. 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–23870; Directorate Identifier 2005–NM–022–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the

comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A310–200 and –300 series airplanes. During full-scale fatigue tests of the A310 airplane, the manufacturer found cracks at approximately 70,000 total flight cycles in the tee fitting at stiffener 8 on both sides of the center wing box, in the lower rear spar, and in the internal angles on both sides of the center wing box. DGAC advises that analysis of in-service inspections results has led the manufacturer to modify the existing inspection program, which is specified in action 1.14 of French airworthiness directive 1992–106–132(B) R6, dated June 25, 2003. The DGAC recommends that the thresholds and intervals be decreased and that a modification of the rear spar internal angle and tee fitting is needed to address fatigue cracks. Fatigue cracks of the rear spar internal angle and tee fitting, if not corrected, could lead to the rupture of the internal angle, tee fitting, and rear spar, and consequent reduced structural integrity of the wings.

Other Relevant Rulemaking

On December 8, 1998, we issued AD 98–26–01, amendment 39–10942 (63 FR 69179, December 16, 1998), for all Airbus Model A310 series airplanes, to require various inspections to detect fatigue cracks at certain locations on the fuselage, horizontal stabilizer, and wings and tail, and repair or modification, if necessary; and installation of doublers. Paragraph (o) of AD 98–26–01, for certain airplanes, requires repetitive rotating probe inspections to detect cracks in the fastener holes on the left- and right-hand sides of the rear spar internal angle and tee fitting, in accordance with Airbus Service Bulletin A310–57–2047, Revision 2, dated January 22, 1997. Certain actions in this proposed AD would terminate the requirements of paragraph (o) of AD 98–26–01.

Relevant Service Information

Airbus has issued Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004. The service bulletin describes procedures for performing repetitive rotating probe inspections for any crack of the rear spar internal angle and the left and right sides of the tee fitting located in the center wing box, and doing related investigative and corrective actions if necessary. The corrective actions include oversizing holes, replacing bolts with new bolts, and contacting the manufacturer if any crack is beyond certain limits. The related investigative action is doing a rotating probe inspection for any crack after a hole has been oversized.

Airbus has also issued Service Bulletin A310–57–2035, Revision 08, dated September 19, 2005. The service bulletin describes procedures for modifying the holes in the internal angle and tee fitting by cold expansion (including doing related investigative and corrective actions). The related investigative and corrective actions include performing a rotating probe inspection for any crack of the bolt holes of the internal angle and tee fitting and contacting the manufacturer if any crack is found.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–001, dated January 5, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

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

Differences Between the Proposed AD and the Service Bulletins

The service bulletins specify to contact the manufacturer if certain cracks are found, but this proposed AD would require repairing those conditions using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the DGAC approve would be acceptable for compliance with this proposed AD.

Operators should also note that, unlike particular provisions in Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, regarding adjustment of the compliance times using an "inspection threshold formula, this proposed AD would not permit formulaic adjustments of the inspection compliance times. We have determined that such adjustments may present difficulties in determining if the initial inspection following installation of the modification in accordance with the service bulletin has been accomplished within the appropriate time frame. Further, while such adjustable compliance times are utilized as part of the Maintenance Review Board program, they do not fit practically into the AD tracking process for operators or for Principal Maintenance Inspectors attempting to ascertain compliance with ADs. Based on reviews of the "inspection threshold" calculations with the Aircraft Evaluation Group, and in further consultation with the manufacturer, we have determined that fixed compliance times should be specified for accomplishment of the actions specified in this proposed AD. However, operators may request an extension of the compliance times of this AD in accordance with the "inspection threshold" formula, under the provisions of paragraph (q) of this AD.

Costs of Compliance

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

proposed AD would affect about 56 airplanes of U.S. registry. Work hours and parts costs vary according to the configuration of the airplane.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection	16–306	$65	$618–$18,489	$1,658–$38,379, per inspection cycle.	$92,848–$2,149,224, per inspection cycle.
Modification	146–381	$65	$4,350–$15,501	$13,840–$40,266	$775,040–$2,254,896.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2006–23870; Directorate Identifier 2005–NM–022–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 15, 2006.

Affected ADs

(b) Certain requirements of this AD terminate certain requirements of AD 98–26–01, amendment 39–10942.

Applicability

(c) This AD applies to all Airbus Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from full-scale fatigue tests, which revealed cracks in the lower rear spar internal angle and tee fitting. We are issuing this AD to detect and correct fatigue cracks of the rear spar internal angle and tee fitting, which could lead to the rupture of the internal angle, tee fitting, and rear spar, and consequent reduced structural integrity of the wings.

Compliance

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

Initial and Repetitive Inspections

(f) At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, do a rotating probe inspection for any crack of the rear spar internal angle located in the center wing box and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, except as required by paragraphs (k), (l), and (m) of this AD. Do all applicable related investigative and corrective actions before further flight.

(1) Within 1,000 flight cycles or 1,600 flight hours after the effective date of this AD, whichever is first.

(2) At the applicable time specified in Table 1 of this AD.

TABLE 1.—INITIAL COMPLIANCE TIMES FOR THE REAR SPAR INTERNAL ANGLE

Airplane model and configuration	Threshold
Model A310–203, –204, –221, and –222 airplanes that are not modified by Airbus Modifications 06672S6812 and 07387S7974.	Before the accumulation of 10,300 total flight cycles or 16,600 total flight hours, whichever is first.
Model A310–203, –204, –221, and –222 airplanes that are modified by Airbus Modifications 06672S6812 and 07387S7974 (modified either in production or in accordance with Airbus Service Bulletin A310–57–2035).	Before the accumulation of 23,400 total flight cycles or 37,700 total flight hours, whichever is first.
Model A310–304, –322, –324, and –325 airplanes that are not modified by Airbus Modifications 06672S6812 and 07387S7974.	Before the accumulation of 9,500 total flight cycles or 15,000 total flight hours, whichever is first.

TABLE 1.—INITIAL COMPLIANCE TIMES FOR THE REAR SPAR INTERNAL ANGLE—Continued

Airplane model and configuration	Threshold
Model A310–304, –322, –324, and –325 airplanes that are modified by Airbus Modifications 06672S6812 and 07387S7974 (modified either in production or according to Airbus Service Bulletin A310–57–2035).	Before the accumulation of 21,500 total flight cycles or 34,000 total flight hours, whichever is first.

(g) Repeat the inspection specified in paragraph (f) of this AD thereafter at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For Model A310–203, –204, –221, and –222 airplanes: Repeat thereafter at intervals not to exceed 9,100 flight cycles or 14,650 flight hours, whichever is first.

(2) For Model A310–304, –322, –324, and –325 airplanes: Repeat thereafter at intervals not to exceed 9,500 flight cycles or 15,000 flight hours, whichever is first.

(h) At the applicable time specified in Table 2 of this AD or within 6 months after the effective date of this AD, whichever occurs later: Do a rotating probe inspection for any crack of the left and right sides of the tee fitting, and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, except as required by paragraphs (k), (l), and (m) of this AD. Do all applicable related investigative and corrective actions before further flight.

TABLE 2.—INITIAL COMPLIANCE TIMES FOR THE TEE FITTING

Airplane model and configuration	Threshold
Model A310–203, –204, –221, and –222 airplanes that are not modified by Airbus Modification 06673S6813.	Before the accumulation of 21,600 total flight cycles or 34,800 total flight hours, whichever is first.
Model A310–203, –204, –221, and –222 airplanes that are modified by Airbus Modification 06673S6813 (modified either in production or in accordance with Airbus Service Bulletin A310–57–2035).	Before the accumulation of 41,300 total flight cycles or 66,500 total flight hours, whichever is first.
Model A310–304, –322, –324, and –325 airplanes that are not modified by Airbus Modification 06673S6813.	Before the accumulation of 17,100 total flight cycles or 27,000 total flight hours, whichever is first.
Model A310–304, –322, –324, and –325 airplanes that are modified by Airbus Modification 06673S6813 (modified either in production or in accordance with Airbus Service Bulletin A310–57–2035).	Before the accumulation of 32,300 total flight cycles or 51,000 total flight hours, whichever is first.

(i) Repeat the inspection specified in paragraph (h) of this AD thereafter at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD.

(1) For Model A310–203, –204, –221, and –222 airplanes: Repeat thereafter at intervals not to exceed 10,800 flight cycles or 17,400 flight hours, whichever is first.

(2) For Model A310–304, –322, –324, and –325 airplanes: Repeat thereafter at intervals not to exceed 8,800 flight cycles or 13,900 flight hours, whichever is first.

Modification

(j) For all airplanes except those that are modified by Airbus Modifications 06672S6812, 06673S6813, and 07387S7974 in production: Within 60 months after the effective date of this AD, modify the holes in the internal angle and tee fitting and do all applicable related investigative and corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A310–57–2035, Revision 08, dated September 19, 2005, except as required by paragraph (k) of this AD. Do all applicable related investigative and corrective actions before further flight.

Contact the FAA

(k) Where Airbus Service Bulletin A310–57–2035, Revision 08, dated September 19, 2005; and Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004; specify to contact the manufacturer if certain cracks are found, before further flight, repair those conditions according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Touch-and-Go Flights

(l) All touch-and-go landings must be counted in determining the total number of flight cycles between consecutive inspections.

No Reporting Required

(m) Although Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Actions Accomplished According to Previous Issues of Service Bulletins

(n) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2047, Revision 03, dated November 26, 1997; Revision 04, dated March 5, 1999; or Revision 05, dated August 3, 2000; are considered acceptable for compliance with the corresponding actions specified in paragraphs (f) through (i) of this AD.

(o) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2035, Revision 1, dated October 13, 1989; Revision 2, dated February 26, 1990; Revision 3, dated May 23, 1990; Revision 4, dated April 15, 1991; Revision 5, dated May 27, 1992; Revision 6, dated March 8, 1994; or Revision 7, dated April 17, 1996; are considered acceptable for compliance with the corresponding actions specified in paragraph (j) of this AD.

Related AD

(p) Accomplishing the initial inspections specified in paragraphs (f) and (g) of this AD terminates the requirements specified in paragraph (o) of AD 98–26–01.

Alternative Methods of Compliance (AMOCs)

(q)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(r) French airworthiness directive F–2005–001, dated January 5, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on February 1, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1942 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–144620–04]

RIN 1545–BD70

Partner's Distributive Share; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations that provides rules for testing the substantiality of an allocation under section 704(b) where the partners are look-through entities or members of a consolidated group.

DATES: The public hearing originally scheduled for February 15, 2006, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, November 18, 2005 (70 FR 69919) announced that a public hearing was scheduled for February, 15, 2006, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 704(b) of the Internal Revenue Code. The public comment period for these regulations expired on January 25, 2006.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, February 7, 2006, no one has requested to speak. Therefore, the public hearing scheduled for February 15, 2006, is cancelled.

LaNita VanDyke,

Federal Register Liaison Officer, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–1926 Filed 2–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD00

Indian Oil Valuation

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulations regarding valuation, for royalty purposes, of oil produced from Indian leases. This proposal intends to add certainty to Indian oil valuation, eliminate reliance on posted oil prices, and address unique terms of Indian leases.

DATES: Comments must be submitted on or before April 14, 2006.

ADDRESSES: *Proposed Rule Comments:* Submit your comments, suggestions, or objections regarding the proposed rule by any of the following methods:

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225:

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225; or

By e-mail. mrm.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include "Attn: RIN 1010–AD00" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

Information Collection Request (ICR) Comments: Submit written comments by either fax (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior [OMB Control Numbers ICR 1010–0140 (expires October 31, 2006) and ICR 1010–0103 (expires April 30, 2006), as they relate to the proposed Indian oil valuation rule].

Also submit copies of written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

The OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *Sharron.Gebhardt@mms.gov.* The principal authors of this proposed rule are John Barder, Theresa Walsh Bayani, and Kenneth R. Vogel of the Minerals Revenue Management, MMS, Department of the Interior, and Geoffrey Heath of the Office of the Solicitor, Department of the Interior, in Washington, D.C.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 1998, the MMS published a notice in the **Federal Register** (63 FR 7089) (February 1998 proposal) of proposed rulemaking applicable exclusively to the valuation of oil produced from Indian leases. The February 1998 proposal proposed to value oil based on the highest of (1) New York Mercantile Exchange (NYMEX) prices, adjusted for location and quality; (2) the lessee's or its affiliate's gross proceeds; or (3) an MMS-calculated "major portion" value. The MMS proposed further changes to the February 1998 proposal in a supplementary proposed rule published on January 5, 2000 (65 FR 403) (January 2000 proposal). Among other things, the January 2000 proposal proposed to replace using NYMEX futures prices with spot prices, including using the average of the high daily spot prices, rather than the average of the five highest NYMEX settle prices in a given month. The MMS received extensive

comments on both the February 1998 and January 2000 proposals.

The MMS published a notice in the **Federal Register** on February 22, 2005 (70 FR 8556) withdrawing the February 1998 and January 2000 proposals. The MMS explained that it was beginning a new process of developing a proposed rule to value oil produced from Indian leases for royalty purposes. In the same notice, MMS scheduled public meetings in three different locations to consult with Indian tribes and individual Indian mineral owners and to obtain information from interested parties. The public meetings were held on March 8, 2005, in Oklahoma City, Oklahoma; on March 9, 2005, in Albuquerque, New Mexico; and on March 16, 2005, in Billings, Montana. The MMS has posted summaries of the discussions at the meetings on its Web site at *www.mrm.mms.gov/Laws_R_D/FRNotices/AD00.htm.* In June 2005, MMS conducted five additional consultation meetings with tribes and with individual Indian mineral owners regarding this proposed rulemaking.

The intent of this proposed rulemaking is to add more certainty to the valuation of oil produced from Indian lands, eliminate reliance on oil posted prices, and address the unique terms of Indian (tribal and allotted) leases—specifically, the major portion provision. Most Indian leases include a major portion provision, stating that value for royalty purposes may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered at the time of production for the major portion of oil produced from the same field.

II. General Valuation Approach of the Proposed Rule (Proposed 30 CFR §§ 206.52 and 206.53)

Establishing proper values, for royalty purposes, of oil produced from Indian leases begins with an understanding of where the oil is produced and how it is marketed. The areas of oil production on tribal reservations and allotted lands are the following:

1. The San Juan Basin in southeastern Utah, northwestern New Mexico, and southwestern Colorado (including Navajo tribal, Navajo allotted, Ute Mountain Ute tribal, Southern Ute tribal, Southern Ute allotted, and Jicarilla Apache tribal leases). This area accounted for 36 percent of the oil sold from all Indian leases in 2004 (down from 42.75 percent in 2003).

2. Northeastern Utah (Ute tribal and allotted leases). This area accounted for 25 percent of the oil sold from all Indian leases in 2004 (up from 15.32 percent in 2003).

3. Wyoming (Shoshone and Arapaho tribal and allotted leases). This area accounted for 21.54 percent of the oil sold from all Indian leases in 2004 (down from 22.53 percent in 2003).

4. Oklahoma (mostly allotted leases with a few leases distributed among several tribes). This area accounted for 9.98 percent of the oil sold from all Indian leases in 2004 (down from 10.89 percent in 2003).

5. Western and central Montana (Blackfeet tribal and allotted and Crow tribal and allotted leases) and the Williston Basin area in eastern Montana and western North Dakota (Ft. Peck Assiniboine and Sioux tribal and allotted and Ft. Berthold Arikara, Mandan, and Hidatsa tribal and allotted leases). Together, these areas accounted for 6.14 percent of the oil sold from all Indian leases in 2004 (down from 6.80 percent in 2003).

6. Texas (Alabama-Coushatta tribal leases). This area accounted for 1.31 percent of the oil sold from all Indian leases in 2004 (down from 1.68 percent in 2003).

7. Two other leases (one in northern North Dakota and one in Michigan) accounted for the remaining 0.03 percent of the oil sold from Indian leases in 2003 and 2004.

This overview reveals a stark contrast with the composition of Federal leases that produce oil. First, the vast majority of oil produced from Federal leases comes from the Gulf of Mexico Outer Continental Shelf. Second, there are numerous onshore Federal leases in California and Alaska (where there are no Indian leases covered by this proposed rule). Federal leases in the Western United States also far outnumber Indian leases there. These factors result in major differences in the marketing of oil produced from Federal and Indian leases.

According to our analysis and experience, almost all oil sold from Indian leases (more than 98 percent in 2003 and more than 97 percent in 2004) is sold or exchanged at arm's length before it is refined. Included in that percentage are volumes taken by one tribal lessor as royalty in kind (RIK). It appears that only one payor (who is a lessee in one of the producing areas) currently transports oil produced from Indian leases to its own refinery. The oil sold by that payor constituted 1.69 percent of oil sold from all Indian leases in 2003 and 2.02 percent in 2004. There is only one producing area in which significant volumes (reported by one producer) are initially transferred to an affiliate before being resold at arm's length. There are other occasional non-arm's-length transfers, but they involve only a few payors and insignificant volumes.

Further, the vast majority of the oil sold at arm's length appears to be sold at the lease. As discussed below, MMS records indicate that only two payors claimed transportation allowances for oil produced from Indian leases in 2004. Only one payor has claimed transportation allowances thus far in 2005.

Further, except for the possibility of some oil sold in Oklahoma (which, as explained above, accounts for only about 10 percent of the oil sold from Indian leases), oil sold from Indian leases apparently does not flow to (and is not exchanged to) Cushing, Oklahoma, where NYMEX prices are published. Thus, with the exception of Oklahoma (and possibly one type of oil produced in Wyoming), it is extremely difficult to obtain reliable location and quality differentials between Cushing and areas where the large majority of the oil is produced from Indian leases, including the San Juan Basin, northeastern Utah, Wyoming (for other oil types), and Montana. Even in Oklahoma, more than 97 percent of the oil sold from Indian leases in 2004 was reported to MMS as sold at arm's length.

This contrasts sharply with the marketing and disposition of oil produced from Federal leases. Much of the oil produced from Federal leases that is ultimately sold at arm's length, whether without or after a transfer to an affiliate, is transported before the arm's-length sale. Additionally, a substantial share of the oil produced from Federal leases, particularly oil produced offshore in the Gulf of Mexico, is exchanged to Cushing or flows to market centers that have well-established differentials between the market center and Cushing.

Consequently, MMS is not proposing to use either NYMEX or spot market index pricing as primary measures of value for oil produced from Indian leases. Because of the environment in which Indian oil is produced and marketed, MMS proposes to value oil at the gross proceeds the lessee or its affiliate receives in an arm's-length sale. In the rare circumstance that the sale occurs away from the lease, the proposed rule would provide for appropriate transportation allowances discussed further below (see paragraphs (a) through (d) of proposed § 206.52). This valuation principle would apply to almost all the oil produced from Indian leases on which royalty is paid in value.

The MMS also proposes to specify in § 206.52(b) that, if a lessee sells oil produced from a lease under multiple arm's-length contracts instead of just

one contract, the value of the oil is the volume-weighted average of the total consideration established under § 206.52 for all contracts for the sale of oil produced from that lease. In the Federal Oil Valuation Rule, published on March 15, 2000 (65 FR 14022) (2000 Federal Oil Rule), the regulations at 30 CFR 206.102(b) provide that, if a lessee has multiple arm's-length contracts for the sale of oil produced from a lease, the value of the oil is "the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease." The volume-weighted average is the sum of the unit values of each contract multiplied by the volume sold under each contract divided by the total volume. The phraseology in § 206.52(b) of this proposed rule clarifies that the volume-weighted average is calculated on the total consideration received under all of the contracts.

It is possible that the lessee or its affiliate may enter into one or more exchanges. The MMS anticipates that, if there are any exchanges of oil produced from Indian lands at all, they would be quite rare. The MMS does not presently know of any specific examples of exchanges, but the proposed rule covers this contingency (see proposed § 206.52(e)). If the lessee or its affiliate ultimately sells the oil received in exchange, the value would be the gross proceeds for the oil received in exchange, adjusted for location and quality differentials derived from the exchange agreement(s). If the lessee exchanges oil produced from Indian leases to Cushing, Oklahoma, value would be the NYMEX price, adjusted for location and quality differentials derived from the exchange agreements. If the lessee does not ultimately sell the oil received in exchange, and does not exchange oil to Cushing, the lessee must ask MMS to establish a value based on relevant matters.

The only situation that is not covered under the proposed § 206.52 is where the lessee transports the oil produced from the lease to its own refinery. As mentioned above, there appears to be only one such case at the present time. In this circumstance, proposed § 206.53 would require the lessee to value the oil at the volume-weighted average of the gross proceeds paid or received by the lessee or its affiliate, including the refining affiliate, for purchases and sales under arm's-length contracts of other like-quality oil produced from the same field (or the same area if the lessee does not have sufficient arm's-length purchases and sales from the field) during the production month, adjusted for transportation costs. If the lessee purchases oil away from the field(s) and if it cannot calculate a price in the field(s) because it cannot determine the seller's cost of transportation, it would not include those purchases in the weighted-average price calculation.

III. Calculation of the Major Portion Value

Most Indian leases include a major portion provision, under which value may, in the discretion of the Secretary, be calculated on the basis of the "highest price paid or offered at the time of production for the major portion of oil production from the same field." The current rule at 30 CFR 206.52(a)(2), promulgated in 1988 and recodified to its current section in 1996, provides that, if data are available to compute a major portion value, MMS will, where practicable, compare the major portion value to the value computed under the other provisions of that section. It further provides that the major portion value will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area). That production is then arrayed from the highest price to the lowest price (at the bottom). The major portion value is the price at which 50 percent (by volume) plus one barrel (starting from the bottom) is sold.

Historically, MMS has encountered considerable difficulty in calculating oil major portion values. Among other factors, complete sales price data for a producing field that includes particular Indian leases often is not available because the field also includes private or state leases (or both), whose working interest owners do not report to MMS. Quality information also has not been readily available in a practically usable form because currently there is no requirement to collect the crude oil type and API gravity (quality) information on the Form MMS–2014. By collecting the quality information needed to calculate major portion prices directly on Form MMS–2014, MMS would have all the necessary information to more accurately calculate major portion prices. For these and other reasons, calculating an accurate major portion value has most often not been practicable.

For oil produced from Indian leases, this proposed rule would use values reported for Indian oil produced from the designated area (discussed below) on Form MMS–2014, Report of Sales and Royalty Remittance, because it is the best data available to MMS in view of the fact that sales price information for production from state or private leases (that may be within the field) is not available. The proposed rule would allow MMS to identify designated areas, and MMS would publish in the **Federal Register** and make available on its Web site at *www.mrm.mms.gov* a list of the Indian lease number prefixes in each designated area. The proposed rule would allow MMS to designate and publish additional areas as circumstances warrant. For example, MMS may designate groups of counties in Oklahoma, for purposes of calculating major portion values for the Indian leases in Oklahoma, after conducting research regarding the location of the leases and the fields in which they are located. Those designated areas would be identified in a later notice. The MMS seeks comments on:

- Whether we should include arm's-length sales of oil produced from Federal leases within a designated area, as reported to MMS, in the calculation of the major portion value; and
- Whether we should expand the boundaries of the designated area beyond the reservation boundaries and include arm's-length sales of oil produced from Federal leases in the vicinity of a reservation, as reported to MMS, in the calculation of the major portion value.

The proposed rule would not use values reported for oil that is not ultimately sold at arm's length before being refined. Under the proposed rule, MMS would use the values reported to MMS under § 206.52. That will include all lessees' arm's-length sales and their affiliates' arm's-length re-sales. The MMS would adjust reported values for any applicable transportation allowances.

One of the tribal lessors takes a substantial portion of its royalty in kind rather than in value. The producers nevertheless do report a value for that oil on Form MMS–2014. The MMS understands that the value reported for the royalty-in-kind volumes is the price at which the lessee sold its working interest share. Under the proposed rule, MMS would include these values in the major portion calculation. Not doing so would result in loss of substantial volumes from the major portion calculation.

The only reported values that would not be included in the major portion calculation are values reported for oil that is refined without being sold at arm's length (i.e., values reported under § 206.53 or § 206.52(e)(4)). As noted above, MMS knows of only one such situation.

The MMS would not change the percentile at which the major portion value is determined. The MMS

historically has used the 50th-percentile-plus-one-unit measure for the major portion calculation. Because we believe almost all oil produced from Indian leases is sold at arm's length, there appears to be no reason in the oil context to depart from the major portion measure in the current rule.

There are a few older Indian leases that are still in production that do not contain a major portion provision and do not reserve to the Secretary the authority to determine the reasonable value of production. The major portion provisions of the proposed § 206.54 would not apply to those leases. However, the burden would be on the lessee to demonstrate that its lease has neither of these provisions. The MMS would presume that the lease has at least one of these provisions, unless the lessee demonstrates otherwise.

To calculate the major portion value, MMS must normalize the reported values for each oil type produced from the designated area to a common quality basis, adjusting for API gravity using applicable posted price gravity adjustment scale tables. The MMS would use posted price adjustment tables to adjust for gravity because the posted price adjustment tables are the only reliable source of this information that is available. The MMS's experience has been that the adjustment tables are accurate and are consistent between different parties who post prices. The MMS believes that the adjustment tables are likely to remain reliable because the posting purchasers are in competition. The MMS would use the posted price adjustment tables only for purposes of normalizing for gravity within a particular type of oil.

The MMS would calculate separate major portion values for different oil types because the lease provision expressly refers to "like-quality" oil (oil of the same type is of like quality). The proposed rule would define "oil type" as a general classification of oil that has generally similar chemical and physical characteristics. For example, oil types may include classifications such as New Mexico sour, Wyoming sweet, Wyoming asphalt sour, black wax, yellow wax, etc. Like-quality oil does not have to be of the same API gravity. Further normalizing for gravity within the oil type will yield reported prices in the major portion calculation that are based on a common quality. The MMS will designate the oil types that are produced from each designated area. A designated area may produce more than one oil type.

For MMS to be able to calculate major portion values based on oil type, and to be able to adjust reported arm's-length gross proceeds values for API gravity, MMS must require the royalty payors to report this information on Form MMS–2014. The API gravity is currently reported to MMS on production reports, but not in a manner that will allow the data to be used in conjunction with the royalty data reported. If a final rule adopts the major portion methodology proposed here, MMS would revise the reporting requirements for Indian leases for Form MMS–2014 to require lessees to report oil type and API gravity for Indian leases.

The MMS would then array the normalized and adjusted (for transportation costs) values in order from the highest to the lowest, together with the corresponding volumes reported at those values. The major portion value would be the normalized and adjusted price in the array that corresponds to 50 percent (by volume) plus one barrel of the oil (starting from the bottom). Proposed § 206.54(e) contains an example.

Under the proposed § 206.54, lessees would initially report on Form MMS–2014 the value of production at the value determined under § 206.52 or § 206.53, and would pay royalty on that value. The MMS would calculate the major portion values as described above and notify lessees of the major portion values by publishing the major portion values for each designated area in the **Federal Register** and making them available on MMS's Web site at *www.mrm.mms.gov*. The values that MMS publishes would be at the normalized gravity, and MMS would include the normalized gravity and the adjustment tables in the **Federal Register** and on the Web site.

The lessee would then compare the major portion value to the value initially reported on Form MMS–2014, normalized and adjusted for gravity and transportation. If the major portion value is higher than the value initially reported, normalized and adjusted for gravity and transportation, the lessee would have to submit an amended Form MMS–2014, reporting the value as the major portion value, and pay any additional royalty owed. The Web site also would include a due date by which the lessee would have to submit an amended Form MMS–2014, together with any additional royalty due. Proposed § 206.54(f) includes an example.

Under proposed § 206.54(g), late payment interest would not begin to accrue under 30 CFR 218.54 on any additional amount owed as a result of the higher major portion value, until after the due date of the amended Form MMS–2014. Further, MMS would not change the major portion values for a specific time period after it publishes those values on the Web site, unless an administrative or judicial decision requires MMS to make a change. The MMS will continue to calculate and publish major portion values for subsequent time periods.

IV. Transportation Allowances

As explained above, lessees report very few transportation allowances on oil produced from Indian leases. Only two royalty payors on Indian leases claimed transportation allowances for oil in 2004 on their initial royalty reports (Form MMS–2014) before later adjustments. The allowances reported by one of those payors on tribal leases in one area constituted approximately 98 percent of the claimed allowances in 2004.

If the transportation arrangement is at arm's length, the proposed rule would incorporate the provisions of the 2000 Federal Oil Rule that became effective on June 1, 2000 (as amended in 2004), in calculating that allowance. That allowance is based on the actual cost paid to an unaffiliated transportation provider. While the 2004 Federal Oil Rule did not change the consistent historical approach of using the actual costs paid to the unaffiliated transporter, the Federal rule, at 30 CFR 206.110, specifies more precisely what costs are allowable as transportation costs and what costs are not. As has been the case historically, MMS is proposing to continue to treat arm's-length transportation arrangements for oil produced from Indian leases identically to arm's-length transportation arrangements for oil produced from Federal leases.

For arm's-length transportation allowances, MMS also proposes to eliminate the requirement in the current Indian rule, at 30 CFR 206.55(c)(1), to file Form MMS–4110, Oil Transportation Allowance Report. Instead of Form MMS–4110, the lessee would have to submit copies of its transportation contract(s) and any amendments thereto within 2 months after the lessee reported the transportation allowance on Form MMS–2014. This change mirrors the elimination of the requirement to file the analogous Form MMS–4295 for arm's-length transportation allowances under the Indian Gas Valuation Rule, published on August 10, 1999 (64 FR 43506) (1999 Indian Gas Rule), and effective January 2000.

For non-arm's-length transportation arrangements, the lessee would have to calculate its actual costs. Under the proposed rule, Form MMS–4110 would

still be required, but the requirement to submit a Form MMS–4110 in advance with estimated information would be eliminated. Instead, the lessee would submit the actual cost information to support the allowance on Form MMS–4110 within 3 months after the end of the 12-month period to which the allowance applies. This also mirrors the change made in the 1999 Indian Gas Rule at 30 CFR 206.178(b)(1)(ii).

As MMS explained when it proposed these changes in the 1999 Indian Gas Rule, in the case of oil valuation, MMS "believes this change will ease the burden on industry and still provide MMS with documents useful to verify the allowance claimed."

The MMS is proposing that the non-arm's-length allowance calculation, and the costs that would be allowable and non-allowable under the non-arm's-length transportation allowance provisions, be revised to incorporate the provisions of the 2004 Federal Oil Rule. See proposed § 206.59(b). The MMS proposes treatment of costs identical to the treatment of costs in the 2004 Federal Oil Rule because it does not perceive any reason to treat oil pipeline transportation costs differently depending on lessor ownership. The MMS seeks comments on the question of whether allowable and non-allowable costs under this Indian oil valuation proposed rule should be different than the allowable and non-allowable costs under the 2004 Federal Oil Rule. Based on the comments, MMS may adopt all, part, or none of the changes that are different from the current Indian oil valuation regulations or the 1999 Indian Gas Rule.

The 2000 Federal Oil Rule provides that the lessee must base its transportation allowance in a non-arm's-length or no-contract situation, on the lessee's actual costs. These include (1) operating and maintenance expenses; (2) overhead; (3) depreciation; (4) a return on undepreciated capital investment; and (5) a return on 10 percent of total capital investment once the transportation system has been depreciated below 10 percent of total capital investment (30 CFR 206.111(b)). The MMS proposes to incorporate the same cost allowance structure into this proposed rule, as discussed in more detail below.

Before June 1, 2000, the regulations for Federal oil valuation provided (as do current Indian oil valuation regulations) that, in the case of transportation facilities placed in service after March 1, 1988, actual costs could include either depreciation and a return on undepreciated capital investment or a cost equal to the initial investment in the transportation system multiplied by the allowed rate of return. The regulations before June 1, 2000, did not provide for a return on 10 percent of total capital investment once the system has been depreciated below 10 percent of total capital investment. See former 30 CFR 206.105(b)(2)(iv)(A) and (B) (1999), and current 30 CFR 206.55(b)(2)(iv)(A) and (B). The 2000 Federal Oil Rule eliminated the alternative of a cost equal to the initial investment in the transportation system multiplied by the allowed rate of return, because it became unnecessary in view of the other changes made in the rule (discussed below), and because it had been used in very few, if any, situations. The MMS proposes to make the same change in this rule for the same reason the change was made to the 2000 Federal Oil Rule. The MMS knows of no instance in which the alternative has been used for any transportation system for oil produced from Indian leases.

Further, the 2000 Federal Oil Rule also set forth the basis for the depreciation schedule to be used in the depreciation calculation. See 30 CFR 206.111(h). The MMS proposes to adopt identical provisions for this rule through incorporation, except that the relevant date would be the effective date of a final rule that adopts these provisions. In the 2000 Federal Oil Rule, the depreciation schedule for a transportation system depended on whether the lessee owned the system on, or acquired the system after, the effective date of the final rule. The MMS proposes to apply the same principle in the context of Indian leases.

Finally, the 2004 Federal Oil Rule, which amended 30 CFR 206.111(i)(2), changed the allowed rate of return used in the non-arm's-length actual cost calculations from the Standard & Poor's BBB bond rate to 1.3 times the BBB bond rate. In March 2005, MMS promulgated an identical change to the allowed rate of return used in the calculation of actual costs under non-arm's-length transportation arrangements in the Federal Gas Valuation Rule, published March 10, 2005 (70 FR 11869) (2005 Federal Gas Rule), which amended 30 CFR 206.157(b)(2)(v). The proposed change to this rule would incorporate this same change, for the same reasons the rate of return was changed in the 2004 Federal Oil and 2005 Federal Gas Rules (*i.e.*, the 1.3 times BBB rate more accurately reflects the lessees' cost of capital).

At the present time (and as has been the case for at least the last few years), there is only one lessee producing oil from Indian leases who reports transportation of oil under a non-arm's-length arrangement. Therefore, only one non-arm's-length oil transportation allowance currently is being reported to MMS. However, in 2004, that arrangement accounted for more than 98 percent of total oil transportation allowances initially reported for Indian leases. In 2005 to date, it is the only Indian oil transportation allowance of any kind that any lessee is claiming on royalty reports submitted to MMS.

V. Other Issues

In proposed § 206.50, MMS would add a provision that, if the regulations are inconsistent with a Federal statute, a settlement agreement or written agreement, or an express provision of a lease, then the statute, settlement agreement, written agreement, or lease provision would govern to the extent of the inconsistency. A "settlement agreement" would mean a settlement agreement resulting from either administrative or judicial litigation. A "written agreement" would mean a written agreement between the lessee and the MMS Director (and approved by the tribal lessor for tribal leases), establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under the regulations.

The proposed provision is similar to provisions that have been included in the 2000 Federal Oil Rule and 2005 Federal Gas Rule. See 30 CFR 206.100(c) (2000–present) and 206.150(b) (2005). As explained in the preamble to the 2005 Federal Gas Rule, "this provision is intended to provide flexibility to both MMS and the lessee in those few unusual circumstances where a separate written agreement is reached, while at the same time maintaining the integrity of the regulations. The MMS used this provision in the June 2000 Federal Oil Valuation Rule to address unexpectedly difficult royalty valuation problems."

The MMS also proposes to add a definition of the term "affiliate" and revise the definition of "arm's-length contract" in § 206.51 to be identical to the 2000 Federal Oil Rule and to conform the rule to the court's decision in *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999). The MMS recently made the same change to the 2005 Federal Gas Rule at 30 CFR 206.151.

The MMS also proposes to modify the format of the definition of "Exchange agreement" in § 206.51 from the way that it is formatted in the 2000 Federal Oil Rule. The MMS is proposing to make this change only for the purpose of readability. The MMS does not intend

to change the meaning of the term "Exchange agreement" in any respect.

The MMS is also considering whether to change the definition of the term "marketable condition" in § 206.51 to mean lease products "that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract or transportation contract typical for disposition of production from the field or area." This change is incorporated in the proposed rule. The current definition refers to lease products "that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area." We request your comments regarding this change.

In proposed § 206.57, MMS is also seeking comments on whether presenting certain information in a table versus text format would be preferable to the reader. In the proposed table format, MMS would also change the grouping of the information by presenting the main ideas in a table and then listing the considerations applicable to that information below the table in text format. The MMS wishes to use the format that makes the regulations the most clear and easily accessible.

Finally, proposed § 206.64 regarding records retention is adapted from 30 CFR 206.105. The time for which records must be maintained is governed by § 103(b) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1713(b), and is not affected by the change in 30 U.S.C. 1724(f), which was enacted as part of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), because RSFA applies only to Federal leases. The referenced regulations in proposed § 206.64 reflect this difference.

VI. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Web site at *www.mrm.mms.gov*. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There 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 comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Royalty Impact Data

Summarized below are the estimated administrative costs and royalty impacts of this proposed rule to all potentially affected groups: industry, state and local governments, Indian tribes and individual Indian mineral owners, and the Federal Government. The administrative costs and royalty collection impacts are segregated into two categories—those that would accrue in the first year after the proposed rule becomes effective and those that would accrue on a continuing basis each year thereafter.

A. Industry

For industry, we anticipate a royalty increase of $416,000 in the first year and each subsequent year. We also anticipate an administrative cost increase of $4,810,000 in the first year and, for subsequent years, a cost increase of $22,000 per year. In addition, we estimate administrative cost savings of $4,500 in the first and subsequent years. The following chart shows the royalty impact increase and summarizes the net expected change in administrative costs to industry.

NET ADMINISTRATIVE COST AND ROYALTY IMPACT TO INDUSTRY

Description	Administrative cost/royalty impact	
	First year	Subsequent years
(1) Royalty Increase	$416,000	$416,000
(2) Administrative Cost Increase	4,810,000	22,000
(3) Administrative Cost Savings	−4,500	−4,500
Net Expected Change in Administrative Costs	4,805,500	17,500

(1) *Industry royalty increase.* The MMS estimates that the oil valuation changes proposed in this proposed rule would increase the annual royalties that industry must pay to Indian tribes and individual Indian mineral owners by approximately $416,000. Based on revenues reported by companies in calendar year 2003, we calculate that small businesses (by U.S. Small Business Administration criteria) would pay approximately $162,240, or roughly 39 percent, of the increase. The computations of the additional mineral revenues payable to Indian tribes and individual Indian mineral owners can be found in Section VI.2.C, Indian Tribes and Individual Indian Mineral Owners.

(2) *Industry administrative cost increase.* The MMS estimates administrative costs to industry of $4,810,000 in the first year: (a) $4,788,000 for one-time equipment/software costs; (b) $200 for arm's-length contract submission costs; (c) $21,700 for additional reporting requirements; and (d) $100 for recordkeeping. The MMS estimates costs to industry in subsequent years of $22,000 ($200 for submission of all contract amendments; $21,700 for additional reporting requirements; and $100 for recordkeeping.)

(2a) *Industry administrative cost increase—Equipment/software.* Industry would incur a one-time cost increase for equipment/software modifications in order to conform to the new reporting requirements on Form MMS–2014. We estimate the following one-time cost to industry to comply with the proposed rule:

ADMINISTRATIVE COST DETAIL FOR EQUIPMENT/SOFTWARE

Description	Cost/royalty impact amount	
	First year	Subsequent year
Software development/modification: Electronic reporters—large companies	$3,000,000	0
Software development/modification: Electronic reporters—mid-level companies	1,780,000	0
Spreadsheet software: Paper reporters	8,000	0
Total Net Cost Increase to Industry	4,788,000	0

The above figures are calculated as follows: There are approximately 200 oil royalty reporters on Indian leases that fall into three groups: (1) Large companies (electronic reporters); (2) mid-level companies (electronic reporters); and (3) small companies (paper reporters). For each of the three groups of reporters, administrative costs are calculated as follows: large companies, $3,000,000 (6 × $500,000); mid-level companies, $1,780,000 (178 × $10,000); and paper reporters, $8,000 (16 × $500).

(2b) *Industry administrative cost increase—Filing arm's-length transportation contracts and amendments.* Industry would also incur $200 per year to submit a copy of each arm's-length transportation contract and any amendments thereto within 2 months after the date the payor reported the transportation allowance on Form MMS–2014. Analysis of the most recent information reported to MMS on Form MMS–2014 indicates that there are only two payors claiming transportation allowances against royalties, and one of the payors has an arm's-length transportation arrangement.

On average, a payor would have one transportation contract to transport oil off the lease to a point of value determination. We estimate that a payor would need about 4 hours on average to gather the necessary contract information, copy, and submit it to MMS. Therefore, MMS estimates that the annual cost to industry would be $200, calculated as follows:

(2b–1) *Industry administrative cost increase—Filing initial year arm's-length contract.* The first year cost is estimated at $200, calculated as follows: 1 payor × 1 arm's-length contract submission per year × 4 hours per submission = 4 burden hours per year × $50 per hour = $200 per year in the initial year.

(2b–2) *Industry administrative cost increase—Filing subsequent year arm's-length-contract amendments.* In subsequent years, we estimate the payor would submit amendments once per year due to contract changes. The subsequent annual cost is estimated at $200, calculated as follows: 1 payor × 1 arm's-length contract amendment submission per year × 4 hours per submission = 4 burden hours per year × $50 per hour = $200 per year in subsequent years.

(2c) *Industry administrative cost increase—Filing revised Form MMS–2014 for major portion.* The total annual estimated cost for filing additional Form MMS–2014 lines would be $21,700 for the entire universe of 200 reporters.

Under the proposed rule, MMS would calculate a major portion value by oil type for each designated area. The major portion value would be based on arm's-length reported values from Form MMS–2014. If the MMS-calculated major portion value is greater than what the lessee initially reported, the lessee would have to file a revised Form MMS–2014 and pay additional royalties.

Industry would incur an administrative burden as a result of filing revised Form MMS–2014 lines to comply with the proposed rule's major portion provision. The MMS analyzed reported royalty data for Indian leases and determined there are approximately 31,000 individual lines reported for oil and condensate on Form MMS–2014 annually. We estimate that, under the proposed rule using recent data, there would be as many as 12,400 additional lines reported annually, or 1,033 lines monthly. This estimate includes backing out previously reported lines and reporting new lines. The MMS bases potential impact to reporting on our assumption that 40 percent of Indian payors would report on initial value less than the major portion value and would therefore have to make adjustments (31,000 × 40 percent = 12,400).

(2c–1) *Industry administrative cost increase—Electronic reporting.* Electronic reporting accounts for about 98 percent of the lines reported to MMS by Indian lessees on Form MMS–2014. Based on an average of 2 minutes per line at a cost of $50 per hour, we estimate the administrative burden would be $20,250 annually calculated as follows: 98 percent electronic reporting lines × 12,400 additional royalty lines = 12,152 lines per year × 2 minutes per line = 24,304/60 minutes = 405 hours per year × $50 per hour = $20,250 per year.

(2c–2) *Industry administrative cost increase—Paper reporting.* The MMS estimates there would be 248 additional royalty lines reported manually (2 percent of reported Indian oil lines) and that this effort would stay the same in the future. Based on an average of 7 minutes per line at $50 per hour, the administrative burden for manual payors would be $1,450 annually, calculated as follows: 2 percent paper reporting lines × 12,400 additional royalty lines = 248 lines per year × 7 minutes per line = 1,736/60 minutes = 29 hours per year × $50 per hour = $1,450 per year.

(2d) *Industry administrative cost increase—Recordkeeping for transportation submissions.* The recordkeeping burden for transportation submissions, related to transportation allowances, is estimated at 2 hours for a total cost of $100 ($50 for 1 arm's-length submission and $50 for 1 non-arm's-length submission), and calculated as follows: 1 payor × 1 arm's-length submission per year × 1 hour per submission = 1 burden hour per year × $50 per hour = $50 per year; and 1 payor × 1 non-arm's-length submission per year × 1 hour per submission = 1 burden hour per year × $50 per hour = $50 per year.

(3) *Industry administrative cost savings.* Industry would realize administrative savings because of the reduced complexity in royalty determination and payment in this proposed rule. Altogether, with the limited information we can collect and the gross estimates we made, we anticipate total administrative savings to industry would be $4,500. This includes

industry savings for the following: (a) $2,400 for simplified reporting and (b) $2,100 for reduced reporting on Form MMS–4110, Specifically, the proposed rule would result in:

(3a) *Industry administrative cost savings—Simplified reporting and valuation, coupled with certainty.* We estimate the cost savings would be $2,400 for simplified reporting and valuation, coupled with certainty. We anticipate that the proposed rule would significantly reduce the time involved in the royalty calculation process. In the proposed framework, in almost all cases, the lessee would ultimately pay royalties based on either its (or its affiliate's) arm's-length gross proceeds or the major portion value applicable to its production. The need to work through and apply the current benchmarks for non-arm's-length transactions would be eliminated. Further, once MMS calculates a major portion value, the lessee would compare this price to the major portion value and make adjustments as necessary. The lessee's reporting/pricing procedures thus should be fairly straightforward.

In addition, the proposed rule parallels the transportation allowance requirements of the current Federal oil valuation regulations in many respects. It thereby would further reduce the complexity of valuation between Federal and Indian leases.

The estimated savings to industry are based on the current amount of time spent calculating royalties. This varies greatly by company, depending on many variables such as the complexity of the disposition or sale of the product, the amount of production to account for, and the computation of any necessary adjustments.

However, we assume simplified reporting in the proposed rule would save each payor who reports based on a non-arm's-length disposition at least 30 minutes per month to report. This figure realizes a reduction of 6 hours per year per payor at $50 per year for a savings of $300 per year per payor.

Eight of the 200 oil payors reported a non-arm's-length Sales Type Code on the Form MMS–2014. For these payors, we estimate a total savings of $2.400, calculated as follows: 6 annual burden hour savings per payor × 8 payors = 48 hours industry savings × $50 per hour = $2,400 total annual industry savings.

(3b) *Industry administrative cost savings—Reduction in filing Form MMS–4110, Oil Transportation Allowance Report.* We estimate the cost savings to be $2,100 for a reduction in filing Form MMS–4110. Under arm's-length transportation arrangements, MMS proposes to eliminate the requirement to file Form MMS–4110. Under non-arm's-length transportation arrangements, the lessee would continue to submit actual costs, but the requirement to submit estimated allowance information would be eliminated. We estimate the savings at $2,100.

The MMS used the current information collection request data to calculate the estimated savings for allowance form filing under the proposed rule.

(3b–1) *Arm's-length transportation.* Proposed requirements would eliminate filing both estimated and actual costs, calculated as follows: 3 payors × 4 hours per submission × 2 submissions per year = 24 burden hours per year × $50 per hour = $1,200 per year savings.

(3b–2) *Non-arm's-length transportation.* Proposed requirements would eliminate filing estimated costs, calculated as follows: 3 payors × 6 hours per submission × 1 submission per year = 18 burden hours per year × $50 per hour = $900 per year savings. The requirement would continue for filing actual costs on Form MMS–4110, for payors with non-arm's-length transportation arrangements.

Summary of Impacts to Industry. The royalty impact of the proposed rule on industry would be $416,000 annually. Industry's administrative costs would increase by $4,810,000 ($4,788,000 + $200 + $21,700 + $100) in the first year and $22,000 ($200 + $21,700 + $100) every year thereafter. Industry would realize administrative cost savings of $4,500 ($2,400 + $2,100) in the first year and every year thereafter. The net expected increase in administrative costs would be $4,805,500 ($4,810,000 − $4,500) in the first year and $17,500 ($22,000 − $4,500) in subsequent years.

B. State and Local Governments

No additional cost or royalty impact would be incurred by state and local governments as a result of the proposed rule for the first year or any subsequent year.

C. Indian Tribes and Individual Indian Mineral Owners

We estimate that our proposed oil valuation regulations would result in increased annual Indian oil royalties of approximately $416,000 related to the calculation of major portion values. We do not estimate any decrease or increase in royalties related to the elimination of the current benchmarks for valuing Indian oil not sold at arm's-length. The proposed rule instead requires the value to be based on the affiliate's arm's-length resale price which should approximate the value determined under the benchmarks. Additionally, because there is only one Indian payor with a non-arm's-length transportation situation and that one pipeline is fully depreciated, we estimate no impact on Indian royalties from the change in the rate of return to 1.3 times the Standard & Poor's BBB bond rate.

NET ROYALTY INCREASE TO INDIAN TRIBES AND INDIVIDUAL INDIAN MINERAL OWNERS

Description	Administrative cost/royalty impact	
	First year	Subsequent years
(1) Royalty Increase	$416,000	$416,000
(2) Administrative Cost Increase	0	0
(3) Administrative Cost Savings	0	0
Net Expected Change in Administrative Costs	0	0

(1) *Indian royalty increase.* (1a) *Data analyzed.* For the analysis of the potential royalty impact on the Indian tribes and individual Indian mineral owners or additional mineral revenues associated with the proposed rule, we used year 2003 royalty information reported on Form MMS–2014 because it (1) represents a typical production year with no major market interruptions, and (2) reflects data where reporting edits and some compliance activities have been performed.

We performed the major portion calculations for the top designated areas

which accounted for 95.75 percent of all royalty received in value for oil and condensate on Indian lands. We projected the royalty impact on all Indian tribes and Indian mineral owners to the remaining designated areas.

(1b) *Determining the major portion value at the 50-percent level.* Under the proposed rule, MMS would calculate monthly major portion values by arraying reported arm's-length sales and associated volumes from highest to lowest price and applying the price associated with the sale where accumulated volumes exceed 50 percent plus 1 barrel of oil of the total, starting from the bottom.

In order to calculate this major portion value for the analysis, we used arm's-length sales of oil and condensate reported on Form MMS–2014 for Indian leases. For each oil type in the designated areas, we normalized the reported prices in the array for API gravity using applicable posted price gravity adjustment tables for the area and adjusted for transportation.

The proposed rule provides for API gravity and oil type information to be gathered via Form MMS–2014. In the analysis, we used the API gravity reported on Form MMS–4054, Oil and Gas Operations Report, and made assumptions in order to correlate the API gravity data to Form MMS–2014 royalty information. Because oil type data is not currently reported to MMS, we assumed different oil types by analyzing the reported API gravity and price differences in an attempt to differentiate between oil types.

(1c) *Comparison of values.* We calculated the major portion liabilities for individual payors by comparing the major portion value to the reported value per barrel (normalized and adjusted for API gravity and transportation). If the reported value per barrel was less than the major portion value, the difference was multiplied times the associated volume subject to royalty times the royalty rate. The resulting amount was the additional royalties owed to the Indian tribe or individual Indian mineral owner.

In the analysis, we totaled the additional royalties for both oil and condensate. Under the provisions of the proposed rule, the total additional royalties for all tribal and allotted leases is estimated at approximately 1.6 percent of the total royalties reported in 2003.

Typically, the additional royalty associated with the major portion calculation increases as the number of payors on the reservation increases. We observed that, for designated areas with few payors, little additional royalty resulted from the major portion calculation. On the other hand, when many payors reported, the additional royalty associated with the major portion calculation increased.

(1d) *Projection of gains to all tribes and individual Indian mineral owners.* To estimate the total annual dollar impact for all tribal and allotted leases from oil and condensate in 2003, MMS used the combined dollar increase calculated for the top nine designated areas in terms of royalty receipts. Royalties received by these nine designated areas ($24,866,256) represented 95.75 percent of the total Indian oil and condensate in value royalties actually reported in 2003. We estimated that under the proposed rule total royalties for the nine designated areas would increase by about 1.6 percent (percentage from the major portion analysis performed for 2003) or $397,860. We projected the increase for all Indian recipients, as follows:

($397,860 × 100)/95.75 = $415,520

We estimated that the total increase for all Indian royalty recipients under the proposed rule would be approximately $416,000 (rounded up from $415,520) or about 1.6 percent of the total royalties reported for Indian properties.

(2) *Indian administrative cost impact.* There is no administrative cost to Indian tribes or individual Indian mineral owners.

(3) *Indian administrative cost savings.* There is no administrative cost savings to Indian tribes or individual Indian mineral owners.

Summary of Impacts to Indian Tribes and Individual Indian Mineral Owners. The proposed rule would result in an annual increase of $416,000 in royalties owed to Indian tribes and individual Indian mineral owners. There would be no administrative cost impacts to Indian tribes and individual Indian mineral owners.

D. Federal Government

The proposed rule has no royalty impact to the Federal Government. We anticipate that the proposed rule would result in increased administrative costs to the Federal Government of $998,100 in the first year and $312,100 for subsequent years. The Federal Government would realize administrative costs savings of $900 in the first year and in subsequent years. The net expected change in administrative costs would be an increase of $997,200 for the first year and $311,200 for subsequent years.

In addition, since the proposed rule would eliminate the use of the non-arm's-length benchmarks, the need for audit work associated with applying the benchmarks would also be eliminated. Any resources that would be designated for this audit work could be reallocated to other audits and increase overall coverage on Indian properties.

NET ADMINISTRATIVE COST AND ADMINISTRATIVE COST SAVINGS TO THE FEDERAL GOVERNMENT

Description	Administrative cost/royalty impact	
	First year	Subsequent years
(1) Royalty Impact	0	0
(2) Administrative Cost Increase	$998,100	$312,100
(3) Administrative Cost Savings	−900	−900
Net Expected Change in Administrative Costs	997,200	311,200

(1) *Federal Government royalty impact.* There is no royalty impact to the Federal Government.

(2) *Federal Government administrative cost increase.* (2a) *Implementation of the proposed rule—First year administrative costs (ICR 1010–0140, Form MMS–2014).* These costs are estimated at $998,000 ($500,000 + $450,000 + $36,000 + $12,000 = $998,000). The MMS estimates that the initial set-up of the major portion calculation would be the greatest burden. This set-up would primarily involve researching the

quality aspects of the oil and condensate produced on tribal and allotted leases and writing the programming code to calculate the major portion figures for all designated areas. The initial cost of systems development and modification to Form MMS–2014 is estimated at $500,000. In addition, developing an automated tool to calculate major portion and identify potential underpayments is estimated at $450,000.

There are costs associated with implementing the new rule in addition to systems costs. The MMS must conduct training sessions, update manuals, issue Dear Payor letters, etc. We estimate an additional $36,000 for training and $12,000 for manual updates, Dear Payor letters, etc. These implementation costs are associated with the initial year after the publication of the rule.

(2b) *MMS Major portion value calculations—Subsequent years administrative costs (ICR 1010–0140, Form MMS–2014).* After the first year of implementation and set up, MMS would incur ongoing costs of $312,000 annually in subsequent years to calculate major portion value. The proposed rule would define 12 MMS-designated areas, typically corresponding to reservation boundaries, and require separate major portion calculations by oil type. Additionally, of the 12 designated areas, about 7 of those would require distinct oil major portion calculations for condensate. Considering a separate monthly price by oil type and product (oil/condensate), MMS would calculate over 300 major portion values annually.

The number of producing oil leases, payors, and complexities of each area would directly affect the burden of performing the major portion calculations. There would be an ongoing burden to MMS to perform the calculations for each month and update the programming code and quality aspects, as production is added or abandoned. There also would be administrative costs associated with notifying the tribes and payors of the major portion calculations as well as additional workload in performing oil major portion compliance reviews. This cost is estimated to involve three full time employees' time or $312,000 per annum (3 FTE × 2,080 hours per year × $50 per hour = $312,000).

(2c) *Processing arm's-length contracts and amendments.* The MMS would also incur $100 per year to process companies' arm's-length transportation contract or amendment submissions, calculated as follows: 1 arm's-length contract or amendment submission per year × 2 hours per submission = 2 burden hours per year × $50 per hour = $100 per year.

(3) *Federal Government administrative cost savings.* The MMS would realize administrative savings because of reduced complexity in royalty determination and payment under this proposed rule. Specifically, the proposed rule would result in:

(3a) *Reduction in processing Form MMS–4110, Oil Transportation Allowance Report.* Under arms-length transportation arrangements, MMS proposes to eliminate the requirement to file Form MMS–4110. For non-arm's-length transportation arrangements, the lessee would submit the actual cost information to support the allowance on Form MMS–4110 within 3 months after the end of the 12-month period to which the allowance applies. We propose to eliminate the requirement to submit estimated allowance information.

(3a–1) *Arm's-length transportation*—Would eliminate filing both estimated and actual costs, calculated as follows: 3 payors × 2 hours per submission × 2 submissions per year = 12 burden hours per year × $50 per hour = $600 per year.

(3a–2) *Non-arm's-length transportation*—Would eliminate filing estimated costs, calculated as follows: 3 payors × 2 hours per submission × 1 submission per year = 6 burden hours per year × $50 per hour = $300 per year.

Summary of Impacts to the Federal Government. The proposed rule would have no impact on royalties owed to the Federal Government. We estimate an administrative cost increase of $998,100 in the first year and $312,100 every year thereafter. We estimate the total administrative cost savings to the Federal Government would be $900 ($600 + $300) in the first year and every year thereafter. The net expected change in administrative costs would be a net increase of $997,200 ($998,100 − $900) in the first year and a net increase in subsequent years of $311,200 ($312,100 − $900).

E. Summary of Royalty Impacts and Costs to Industry, State and Local Governments, Indian Tribes and Individual Indian Mineral Owners, and Federal Government

In the table, a negative number means a reduction in payment or receipt of royalties or a reduction in costs. A positive number means an increase in payment or receipt of royalties or an increase in costs.

SUMMARY OF ADMINISTRATIVE COSTS AND ROYALTY IMPACTS

Description	Administrative cost and royalty increase or royalty decrease	
	First year	Subsequent years
A. Industry:		
(1) Royalty Increase	$416,000	$416,000
(2) Administrative Cost Increase	4,810,000	22,000
(3) Administrative Cost Savings	−4,500	−4,500
Net Expected Change in Administrative Costs	4,805,500	17,500
B. State and Local Governments:		
(1) Royalty Impact	0	0
(2) Administrative Cost Increase	0	0
(3) Administrative Cost Savings	0	0
Net Expected Change in Administrative Costs	0	0
C. Indian Tribes and Individual Indian Mineral Owners:		
(1) Royalty Increase	416,000	416,000
(2) Administrative Cost Increase	0	0
(3) Administrative Cost Savings	0	0
Net Expected Change in Administrative Costs	0	0

SUMMARY OF ADMINISTRATIVE COSTS AND ROYALTY IMPACTS—Continued

Description	Administrative cost and royalty increase or royalty decrease	
	First year	Subsequent years
D. Federal Government:		
(1) Royalty Impact	0	0
(2) Administrative Cost Increase	998,100	312,100
(3) Administrative Cost Savings	−900	−900
Net Expected Change in Administrative Costs	997,200	311,200

Note: Some of the data supporting this analysis cannot be released because of proprietary data concerns.

3. Regulatory Planning and Review, Executive Order 12866

This document is a significant rule and the Office of Management and Budget has reviewed this rule under Executive Order 12866.

1. This rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, we have performed an analysis of costs and royalty impacts, which is discussed in detail in the Procedural Matters section of this document.

2. This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. This rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule raises novel legal or policy issues.

4. Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–800–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Would not have an annual effect on the economy of $100 million or more.

2. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, Indian, or local government agencies, or geographic regions.

3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

1. This proposed rule would not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

2. This proposed rule would not produce a Federal mandate of $100 million or greater in any year: i.e., it is not a significant regulatory action under the Unfunded Mandates Reform Act. The analysis prepared for Executive Order 12866 will meet the requirements of the Unfunded Mandates Reform Act. See the analysis in Section VI.2, Summary Cost and Royalty Impact Data.

7. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required.

8. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this proposed rule would not have significant federalism implications. A federalism assessment is not required. It would not substantially and directly affect the relationship between the Federal and state governments. The management of Indian leases is the responsibility of the Secretary of the Interior, and all royalties collected from Indian leases are distributed to tribes and individual Indian mineral owners. This proposed rule would not alter that relationship.

9. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This proposed rule, RIN 1010–AD00, would contain new information collection requirements (ICR). The title of the new ICR is "30 CFR 206—PRODUCTION VALUATION, Subpart B—Indian Oil."

The proposed rule would affect two existing ICRs: ICR 1010–0140 (expires October 31, 2006) and ICR 1010–0103 (expires April 30, 2006). The net estimated proposed burden hour change for the two ICRs is 338 burden hours. For ICR 1010–0140, there is an estimated net increase of 386 burden hours per year and, for ICR 1010–0103, an estimated net decrease of 48 burden hours per year, both due to program changes.

The intent of this proposed rulemaking is to add more certainty to the valuation of oil produced from Indian lands, eliminate reliance on oil posted prices, and address the unique terms of Indian (tribal and allotted) leases—specifically, the major portion provision. Most Indian leases include a major portion provision, stating that value for royalty purposes may, in the discretion of the Secretary, be the highest price paid or offered at the time of production for the major portion of oil produced from the same field. The additional information collection requirements in this proposed rulemaking would allow MMS and the tribes to ensure that Indian mineral lessors receive the proper value for oil produced from their land under the lease terms and these proposed rules.

We have submitted an ICR to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. If this proposed rule is adopted as a final rule, we will prepare the required Forms OMB 83–C and transfer the burden hours and costs to their respective primary collections. As part of our continuing effort to reduce paperwork and respondent burden, we will invite the public and other Federal agencies to comment on any aspect of the reporting burden through the information collection process.

Submit written comments by either fax (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior [OMB Control Numbers ICR 1010–0140 (expires October 31, 2006) and ICR 1010–0103 (expires April 30, 2006), as they relate to the proposed Indian oil valuation rule].

Also submit copies of written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

The OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

Information Collection Requests

The net estimated annual hour burden cost is 338 hours (386 − 48 hours = 338 hours) or, using $50 per hour, $16,900 ($19,300 − $2,400). For ICR 1010–0140, there would be an increase of 386 burden hours or $19,300. For ICR 1010–0103, there would be a decrease of 48 burden hours or $2,400. Computation details are shown below.

ICR 1010–0140 Hour Burden Cost

The net impact of changes related to ICR 1010–0140 is estimated at 386 hours (434 − 48 hours = 386 hours) or, using an average of $50 per hour, $19,300 ($21,700 − $2,400 = $19,300).

The proposed rule would require the collection of new information under ICR 1010–0140 on Form MMS–2014, Report of Sales and Royalty Remittance. There are approximately 200 payors on Indian oil-producing leases, who report on Form MMS–2014. We estimate that this new reporting requirement would result in 12,400 additional royalty line submissions per year (12,152 lines from electronic reporters and 248 lines from paper reporters). For electronic reporters, we estimate an increase of 405 burden hours annually (12,152 lines × 2 minutes per line = 24,304 minutes/60 minutes per hour = 405 hours). For paper reporters, we estimate an increase of 29 burden hours annually (248 lines × 7 minutes per line = 1,736 minutes/60 minutes per hour = 29 hours). The total additional annual burden is 434 hours (405 + 29). Using an average of $50 per hour, the total cost to respondents would be $21,700 (434 hours × $50) for the additional reporting requirements.

Further, we estimate that the provisions of the rule would result in additional savings of $2,400 for simplified reporting and pricing, coupled with certainty, for 8 payors with non-arm's-length dispositions of their oil. For 96 annual submissions of Form MMS–2014 (8 payors × 12 report months), we estimate that respondents would save 30 minutes per response, or 48 hours annually (96 submissions × 30 minutes = 2,880 minutes/60 minutes = 48 hours per year savings). Using an average cost of $50 per hour, the total savings to respondents would be $2,400 (48 hours × $50).

PROPOSED INCREASE IN BURDEN HOURS FOR ICR 1010–0140

[Includes only proposed citation 30 CFR 206 burden hour changes]

Burden hours per response	Average number of annual responses (lines)	Estimated annual burden hours
Electronic Reporting (98 percent):		
2 minutes	12,152	405
Paper Reporting (2 percent):		
7 minutes	248	29
Total Estimated Burden Increase	12,400	434

Note: The above burden hours relate to 200 payors on Indian oil-producing leases.

PROPOSED DECREASE IN BURDEN HOURS FOR ICR 1010–0140

[Includes only proposed citation 30 CFR 206 burden hour changes]

Annual burden hours per response	Average number of annual responses	Estimated annual burden hours
Simplified Reporting:		
30 minutes savings per month	96	−48
Total Estimated Burden Decrease	96	−48

Note: The above burden hours relate to 8 payors with non-arm's-length dispositions on Indian oil-producing leases.

ICR 1010–0103 Hour Burden Cost

In addition, the proposed changes would affect ICR 1010–0103. The changes in filing requirements for Form MMS–4110, Oil Transportation Allowance Report, would result in a small overall reduction in the burden hours for both arm's-length contracts and non-arm's-length or no contract. In ICR 1010–0103, MMS estimated that six Indian lessees would report on the Form MMS–4110. The current OMB-approved annual hours for Form MMS–4110 are 60, and the proposed hours are estimated to be 12, for a net estimated decrease of 48 burden hours annually. This would result in a net estimated savings of $2,400 (48 hours × $50), detailed as follows:

- $1,200 annual decrease for arm's-length transportation proposed requirements that would eliminate filing both estimated and actual costs (6 submissions per year × 4 burden hours per submission = 24 burden hours per year × $50 per hour = $1,200 annual decrease);
- $900 annual decrease for non-arm's-length transportation proposed requirements that would eliminate filing estimated costs (3 submissions per year × 6 burden hours per submission = 18 burden hours per year × $50 per hour = $900 annual decrease);
- $600 annual decrease for an adjustment in the number of responses for actual-cost reporting requirements for payors with non-arm's-length situations (reduction in number of responses from 3 to 1 = 2-response reduction × 6 burden hours per response = 12 burden hours per year × $50 = $600 annual decrease);
- $200 annual increase related to reporting arm's-length contracts (1 response per year × 4 burden hours per submission × $50 per hour = $200 annual increase); and
- $100 annual increase related to recordkeeping (1 response per year × 2 burden hours per year × $50 per hour = $100 annual increase).

The following chart shows the estimated burden hours by CFR section and paragraph.

RESPONDENTS' ESTIMATED BURDEN HOUR CHART

Citation 30 CFR 206 subpart B	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Indian Oil Transportation Allowances			
Proposed Rule Eliminates § 206.55(a)(1)(i).	*Arm's-length transportation contracts.* * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report. * * *.	See § 206.55(c)(1)(i) and (iii). Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(b)(1).	*Non-arm's-length or no contract.* * * * Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety. * * *.	See § 206.55(c)(2)(i), and (iii). Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(c)(1)(i).	*Reporting requirements. Arm's-length contracts.* With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to. or at the same time as, the transportation allowance determined under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. * * *.	−4	−3	−12
Proposed Rule Eliminates § 206.55(c)(1)(iii).	*Arm's-length contracts.* After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	−4	−3	−12
Proposed Rule Eliminates § 206.55(c)(1)(iv).	*Arm's-length contracts.* MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.	Produce Records—The Office of Regulatory Affairs (ORA) determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		

RESPONDENTS' ESTIMATED BURDEN HOUR CHART—Continued

Citation 30 CFR 206 subpart B	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
		Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(c)(2)(i).	*Non-arm's-length or no contract.* With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014 * * * The initial report may be based upon estimated costs.	–6	–3	–18
Proposed Rule Revises § 206.55(c)(2)(iii) and Moves the Citation to § 206.60.	*Non-arm's-length or no contract.* For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year * * * MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	–6 Proposed Rule Revises and Moves	–3 Proposed Rule Revises and Moves	–18 Proposed Rule Revises and Moves
Proposed Rule Eliminates § 206.55(c)(2)(iv).	*Non-arm's-length or no contract.* For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. * * *.	See § 206.55(c)(2)(i). Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(c)(2)(vi).	*Non-arm's-length or no contract.* Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The date shall be provided within a reasonable period of time, as determined by MMS.	Produce Records The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions Proposed Rule Eliminates		
	Total Hour Burden Eliminated			–60
Proposed Rule § 206.52(e)(4).	How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract? (e)(4) * * * you must request that MMS establish a value for the oil based on relevant matters. * * *.	See § 206.58		
Proposed Rule § 206.53(c).	How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract? (c) If you demonstrate to MMS's satisfaction that. * * *.	Covered under renewal for ICR 1010–0103 (expires April 30, 2006).		
Proposed Rule § 206.54.	How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil? * * * The MMS will presume that all Indian leases have at least one of these provisions unless you demonstrate otherwise. * * *.	See § 206.58.		
Proposed Rule § 206.57(a).	How do I calculate a transportation allowance under an arm's-length transportation contract? * * * You must be able to demonstrate that you or your affiliate's contract is at arm's length. * * *.	See § 206.58.		
Proposed Rule § 206.57(d)(3).	How do I calculate a transportation allowance under an arm's-length transportation contract? (d)(3) You may propose to MMS a cost allocation method on the basis of the values of the products transportated. * * *.	See § 206.58.		
Proposed Rule § 206.57(e) and (e)(2).	How do I calculate a transportation allowance under an arm's-length transportation contract? (e) * * * then you must propose an allocation procedure to MMS. * * * (2) You must submit your initial proposal. * * *.	See § 206.58		
Proposed Rule § 206.57(g)(2).	How do I calculate a transportation allowance under an arm's-length transportation contract? (g)(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price.	See § 206.58.		

RESPONDENTS' ESTIMATED BURDEN HOUR CHART—Continued

Citation 30 CFR 206 subpart B	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Proposed Rule § 206.58.	What are my reporting requirements under an arms-length transportation contract? You have the burden of demonstrating that your contract is arms-length. You must submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your Form MMS–2014 on which a transportation allowance is reported.	4	1	4
Proposed Rule § 206.60.	What are my reporting requirements under a non-arm's-length transportation arrangement? All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4110, Oil Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies.	6	1	6
Proposed Rule § 206.62.	May I ask MMS for valuation guidance? * * * You may produce a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. * * *.	Covered under renewal for ICR 1010–0103 (expires April 30, 2006).		
Proposed Rule § 206.64(a).	What record must I keep and produce? (a) On request, you must make available sales, volume, and transportation data. * * *.	Produce Records The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
Proposed Rule § 206.64(b).	What records must I keep and produce? (b) You must retain all data relevant data to the determination of royalty value. * * *.	1	2	2
Proposed Rule § 206.64(b).	What records must I keep and produce? (b) * * * The MMS, Indian representatives, or other authorized persons may review and audit such data you possess, and * * *.	Produce Records The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
	Total Hour Burden for Proposed Rule			12
	Total Net Hour Burden Decrease			−48

Note: The current OMB-approved burden hours are 60 for Form MMS–4110 and transportation contracts (previously on ICR 1010–0061, recently consolidated into ICR 1010–0103). The new burden hours for this program change are estimated to be 12, for a net decrease of 48 burden hours annually due to program change.

Summary Administrative Non-Hour Cost Data

The net estimated first year non-hour burden cost is $4,788,000. There are no other non-hour burden costs associated with this ICR for the first year or future years. Computation details are shown below.

ICR 1010–0140 Non-Hour Burden Cost: This proposed rule would impose a non-hour cost burden on industry. Industry would incur a one-time cost increase of $4,788,000 for equipment/software modifications in order to conform to the new reporting requirements on Form MMS–2014. If the final rule adopts the proposed program changes, MMS would revise the reporting requirements and Form MMS–2014 to require lessees to report oil types and their associated API gravity for Indian oil-producing leases. These reporting changes are discussed in the proposed 30 CFR 206.54, and they would be further detailed in the final rulemaking, if adopted. We estimate the following one-time cost to industry to comply with the proposed rule:

ADMINISTRATIVE COST DETAIL FOR EQUIPMENT/SOFTWARE

Description	Administrative cost/royalty impact	
	First year	Subsequent year
Software development/modification:		
Electronic reporters—large companies	$3,000,000	0
Software development/modification:		
Electronic reporters—mid-level companies	1,780,000	0
Spreadsheet software:		
Paper reporters	8,000	0

ADMINISTRATIVE COST DETAIL FOR EQUIPMENT/SOFTWARE—Continued

Description	Administrative cost/royalty impact	
	First year	Subsequent year
Total Net Cost Increase to Industry	4,788,000	0

The above figures are calculated as follows: There are approximately 200 oil royalty reporters on Indian leases that fall into three groups: (1) Large companies (electronic reporters); (2) mid-level companies (electronic reporters); and (3) small companies (paper reporters). For each of the three groups of reporters, administrative costs are calculated as follows: large companies, $3,000,000 (6 × $500,000); mid-level companies, $1,780,000 (178 × $10,000); and paper reporters, $8,000 (16 × $500).

ICR 1010–0103 Non-Hour Burden Cost: There is no identified non-hour burden cost.

Public Comment Policy. The PRA (44 U.S.C. 3501, *et seq.*) provides that 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. Before submitting an ICR to OMB, PRA § 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this proposed information collection and address them in our final rule. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

We will post all comments in response to this proposed information collection on our Web site at *www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public 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 request that we withhold your name and/or address, 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.

11. National Environmental Policy Act

This proposed rule deals with financial matters and would have no direct effect on MMS decisions on environmental activities. Pursuant to 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process.

12. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that the changes we are proposing may have an impact on tribes and individual Indian mineral owners. During the writing of this proposed rule, we have consulted extensively with tribal representatives and individual Indian mineral owners regarding the regulatory changes affecting tribes and individual Indian mineral owners in this proposed rule. The MMS will determine how to proceed with this rulemaking based on comments received.

13. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation would not have a significant effect on the Nation's energy supply, distribution, or use. The proposed changes better reflect the way industry accounts internally for its oil valuation and provides a number of technical clarifications. None of these proposed changes would impact significantly the way industry does business and, accordingly, would not affect their approach to energy

development or marketing. Nor would the proposed rule otherwise impact energy supply, distribution, or use.

14. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

This proposed rule does not have tribal implications that would impose substantial direct compliance costs on Indian tribal governments. In accordance with Executive Order 13175, and with the Department's policy to consult with individual Indian mineral owners on all policy changes that may affect them, MMS scheduled public meetings in three different locations, announced February 22, 2005, in a **Federal Register** notice (70 FR 8556), for the purpose of consulting with Indian tribes and individual Indian mineral owners and to obtain public comments from other interested parties. The public meetings were held on March 8, 2005, in Oklahoma City, Oklahoma; on March 9, 2005, in Albuquerque, New Mexico; and on March 16, 2005, in Billings, Montana. The MMS also held five additional consultation sessions with tribes and individual Indian mineral owners to discuss and hear comments, including sessions in Window Rock, Arizona, on June 7, 2005; Fort Duchesne, Utah, on June 9, 2005; Fort Washakie, Wyoming, on June 15, 2005; Muskogee, Oklahoma, on June 16, 2005; and Anadarko, Oklahoma, on June 17, 2005.

15. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, § 204.200 What is the purpose of this part?) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Part 206

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: November 3, 2005.

Chad Calvert,

Acting Assistant Secretary for Land and Minerals Management.

For the reasons set forth in the preamble, MMS proposes to amend 30 CFR part 206 as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Subpart B—Indian Oil is revised to read as follows:

Subpart B—Indian Oil

Sec.

Subpart B—Indian Oil

§ 206.50 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). This subpart does not apply to Federal leases, including Federal leases for which revenues are shared with Alaska Native Corporations. This subpart:

(1) Establishes the value of production for royalty purposes consistent with the Indian mineral leasing laws, other applicable laws, and lease terms;

(2) Explains how you as a lessee must calculate the value of production for royalty purposes consistent with applicable statutes and lease terms; and

(3) Is intended to ensure that the United States discharges its trust responsibilities for administering Indian oil and gas leases under the governing Indian mineral leasing laws, treaties, and lease terms.

(b) If the regulations in this subpart are inconsistent with a Federal statute, a settlement agreement or written agreement as these terms are defined in this paragraph, or an express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency. For purposes of this paragraph:

(1) "Settlement agreement" means a settlement agreement between the United States and a lessee, or between an Indian mineral owner and a lessee that is approved by the United States, resulting from administrative or judicial litigation; and

(2) "Written agreement" means a written agreement between the lessee and the MMS Director (and approved by the tribal lessor for tribal leases) establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under this subpart.

(c) MMS or Indian tribes may audit, or perform other compliance reviews, and require a lessee to adjust royalty payments and reports.

§ 206.51 What definitions apply to this subpart?

For purposes of this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person.

(1) Ownership or common ownership of more than 50 percent of the voting

securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person. MMS will consider the following factors in determining whether there is control in a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership:

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility:

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Area means a geographic region in which oil has similar quality and economic characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Indian leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (generally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Designated area means an area specified by MMS for valuation purposes.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location, and other consideration. Exchange agreements:

(1) May or may not specify prices for the oil involved;

(2) Frequently specify dollar amounts reflecting location, quality, or other differentials;

(3) Include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement, or in separate agreements; and

(4) May include, but are not limited to, exchanges of produced oil for specific types of oil (e.g., West Texas Intermediate); exchanges of produced oil for other oil at other locations (location trades); exchanges of produced oil for other grades of oil (grade trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields usually are given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective states in which the fields are located.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM operations personnel.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services, such as dehydration, marketing, measurement, or gathering that the lessee must perform at no cost to the lessor in order to put the production into marketable condition;

(2) The value of services to put the production into marketable condition, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Indian royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating those payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Indian tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or that is subject to Federal restriction against alienation.

Individual Indian mineral owner means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under an Indian mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products. Depending on the context, "lease" may also refer to the land area covered by that authorization.

Lease products means any leased minerals attributable to, originating from, or allocated to Indian leases.

Lessee means any person to whom the United States, a tribe, or individual Indian mineral owner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. "Lessee" includes:

(1) Any person who has an interest in a lease (including operating rights owners);

(2) An operator, purchaser, or other person with no lease interest who makes royalty payments to MMS or the lessor on the lessee's behalf; and

(3) All affiliates, including but not limited to a company's production, marketing, and refining arms.

Lessor means an Indian tribe or individual Indian mineral owner that has entered into a lease.

Like-quality oil means oil of a particular oil type.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract or transportation contract typical for disposition of production from the field or area.

MMS means the Minerals Management Service of the Department of the Interior.

Net means to reduce the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form MMS–2014.

NYMEX price means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the nearest month of delivery for which NYMEX futures prices are published corresponding to each such day; and

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

Oil type means a general classification of oil that has generally similar chemical and physical characteristics. For example, oil types may include classifications such as New Mexico sour, Wyoming sweet, Wyoming asphalt sour, black wax, yellow wax, etc. The MMS will designate oil types for each designated area.

Operating rights owner, also known as a working interest owner, means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease until the operating rights have been transferred from record title (see Bureau of Land Management regulations at 43 CFR 3100.0–5(d)).

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Sale means a contract between two persons where;

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

WTI means West Texas Intermediate.

You means a lessee, operator, or other person who pays royalties under this subpart.

§ 206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?

(a) The value of oil under this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under §§ 206.56, 206.57, and 206.59. If the arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, you must value the oil sold as the total consideration accruing to the seller. Use this section to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the total consideration established under this section for all contracts for the sale of oil produced from that lease.

(c) If MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(1) Misconduct by or between the parties to the arm's-length contract; or

(2) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, MMS will establish a value based on other relevant matters.

(i) The MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(ii) The fact that the price received by the seller under an arm's-length contract is less than other measures of market price is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil produced from the lease.

(d) You must base value on the highest price that the seller can receive through legally enforceable claims under the oil sales contract. If the seller fails to take proper or timely action to receive prices or benefits to which it is entitled, you must base value on that obtainable price or benefit.

(1) In some cases the seller may apply timely for a price increase or benefit allowed under the oil sales contract, but the purchaser refuses the seller's request. If this occurs, and the seller takes reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits. This paragraph (d)(1) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(2) Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

(e) If you or your affiliate enter(s) into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, then you must value your oil under this paragraph.

(1) If you or your affiliate exchange(s) oil at arm's length for WTI or equivalent

oil at Cushing, Oklahoma, you must value the oil using the NYMEX price, adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under §§ 206.56, 206.57, and 206.59.

(2) If you do not exchange oil for WTI or equivalent oil at Cushing, but exchange it at arm's-length for oil at another location and following the arm's-length exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you must use the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s), adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under §§ 206.56, 206.57, and 206.59.

(3) You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If MMS determines that any exchange agreement does not reflect reasonable location or quality differentials, MMS may adjust the differentials you used based on relevant information. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(4) If you or your affiliate exchange(s) your oil at arm's-length, and neither paragraph (e)(1) nor (e)(2) of this section applies, you must request that MMS establish a value for the oil based on relevant matters. After MMS establishes the value, you must report and pay royalties and any late payment interest owed based on that value.

(f) You must also comply with § 206.54.

§ 206.53 How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract?

(a) The unit value of your oil not sold under an arm's-length contract is the volume-weighted average of the gross proceeds paid or received by you or your affiliate, including your refining affiliate, for purchases or sales under arm's-length contracts.

(1) When calculating that unit value, use only purchases or sales of other like-quality oil produced from the field (or the same area if you do not have sufficient arm's-length purchases or sales of oil produced from the field) during the production month.

(2) You may adjust the gross proceeds determined under paragraph (a) of this section for transportation costs under §§ 206.56, 206.57, and 206.59, as applicable, before including those proceeds in the volume-weighted average calculation.

(3) If you have purchases away from the field(s) and cannot calculate a price in the field because you cannot determine the seller's cost of transportation that would be allowed under §§ 206.56, 206.57, and 206.59, you must not include those purchases in your weighted-average calculation.

(b) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliates' arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Use the applicable gravity adjustment tables published on MMS's Web site (*http://www.mrm.mms.gov*) for the designated area and type of oil produced from the lease to normalize for gravity.

Example to paragraph (b): Assume that a lessee, who owns a refinery and refines the oil produced from the lease at that refinery, purchases like-quality oil from other producers in the same field at arm's-length for use as feedstock in its refinery. Further assume that the oil produced from the lease that is being valued under this section is Wyoming general sour with an API gravity of 23.5°. Assume that the refinery purchases at arm's length oil (all of which must be Wyoming general sour) in the following volumes of the API gravities stated at the prices and locations indicated:

10,000 bbl	24.5°	$34.70/bbl	Purchased in the field.
8,000 bbl	24.0°	$34.00/bbl	Purchased at the refinery after the third-party producer transported it to the refinery, and the lessee does not know the transportation costs.
9,000 bbl	23.0°	$33.25/bbl	Purchased in the field.
4,000 bbl	22.0°	$33.00/bbl	Purchased in the field.

Because the lessee does not know the costs that the seller of the 8,000 bbl incurred to transport that volume to the refinery, that volume will not be included in the volume-weighted average price calculation. Further assume that the gravity adjustment scale provides for a deduction of $.02 per 1/10 degree API gravity below 34°. Normalized to 23.5° (the gravity of the oil being valued under this section), the prices of each of the volumes that the refiner purchased that are included in the volume-weighted average calculation are as follows:

10,000 bbl	24.5°	$34.50 (1.0° difference over 23.5° = $.20 deducted).
9,000 bbl	23.0°	$33.35 (0.5° difference under 23.5° = $.10 added).
4,000 bbl	22.0°	$33.30 (1.5° difference under 23.5° = $.30 added).

The volume-weighted average price is ((10,000 bbl × $34.50/bbl) + (9,000 bbl × $33.35/bbl) + (4,000 bbl × $33.30/bbl)) / 23,000 bbl = $33.84/bbl. That price will be the value of the oil produced from the lease valued under this section.

(c) If you demonstrate to MMS's satisfaction that paragraphs (a) and (b) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(d) You must also comply with § 206.54.

§ 206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?

This section applies if your lease either has a major portion provision or provides for the Secretary to determine value. The MMS will presume that all Indian leases have at least one of these provisions unless you demonstrate otherwise.

(a) *When MMS will calculate a major portion value.* The MMS will calculate a major portion value for each designated area for each type of oil produced from that area. The MMS will notify lessees by publishing these values in the **Federal Register** and making them available on MMS's Web site (*http://www.mrm.mms.gov*), as set forth in this section.

(b) *Designated areas.* Each designated area includes all Indian leases in that area. The MMS will publish in the **Federal Register** and make available on MMS's Web site (*http://www.mrm.mms.gov*) a list of the lease number prefixes in each designated area. If in the future there are new area designations, MMS will publish them in the **Federal Register** and make them available on MMS's Web site (*http://*

www.mrm.mms.gov). The designated areas are:

(1) Alabama-Coushatta;
(2) Blackfeet Reservation;
(3) Crow Reservation;
(4) Fort Berthold Reservation;
(5) Fort Peck Reservation;
(6) Jicarilla Apache Reservation;
(7) MMS-designated groups of counties in the State of Oklahoma;
(8) Navajo Reservation;
(9) Southern Ute Reservation;
(10) Ute Mountain Ute Reservation;
(11) Uintah and Ouray Reservation;
(12) Wind River Reservation; and
(13) Any other area that MMS designates.

(c) *Source of information.* The MMS will calculate the major portion value using the values reported as arm's-length sales (which does not include values reported under § 206.52(e)(4)) for production of each oil type from Indian leases in the designated area on Form MMS–2014, Report of Sales and Royalty Remittance. In calculating the major portion value, MMS will not use any values reported under § 206.53.

(d) *Calculation methodology.* (1) The MMS will normalize the reported values to a common quality basis, adjusting for API gravity using applicable posted price gravity adjustment tables. The MMS also will adjust the reported values for reported transportation allowances. The MMS will array the normalized and adjusted values by oil type in order from the highest to the lowest, together with the corresponding volumes reported at those values.

(2) The major portion value is the normalized and adjusted price in the array in paragraph (d)(1) of this section corresponding to 50 percent (by volume) plus one barrel of the oil (starting from the bottom).

(e) *Example of how the methodology works.* (1) For example, assume that reported sales volumes of the same oil type from the Indian leases in a designated area total 100,000 barrels. Further assume that this volume and the corresponding normalized and adjusted reported values are set out in an array as follows:

Reported sales volume (bbl)	Price per bbl normalized and adjusted to 40°	Percentage of volume (Starting from the lowest unit value)
17,109	$25.50	100.000
21,485	25.40	82.891
12,225	25.30	61.486
21,150	25.20	49.181
18,210	25.10	28.031
9,821	25.00	9.821

(2) Under paragraph (d)(2) of this section, MMS would begin at the lowest value in the array and would take away 50,000 barrels (50 percent of the total sales of sweet oil from Indian leases in the designated area). The next barrel higher in the array is valued at $25.30. That value, $25.30/bbl, would be the major portion value. In this example, three lessees must pay the difference between their normalized and adjusted value and the major portion value, namely, the lessees whose normalized and adjusted reported values were $25.00, $25.10 and $25.20. The other three lessees had already reported and paid on a value equal to or greater than the major portion value and, therefore, would not owe additional royalties.

(f) *How to adjust initially reported values and pay any additional royalties due.* (1) On Form MMS–2014, you must initially report and pay the value of production at the value determined under § 206.52 or § 206.53.

(2) The MMS will determine the major portion value by oil type under this section and publish that value in the **Federal Register** and make that value available on MMS's Web site *http://www.mrm.mms.gov*. That value will be at the normalized gravity, and MMS will include the normalized gravity and the adjustment tables on the Web site. The Web site also will include a due date by which you must submit an amended Form MMS–2014 together with any additional royalty due, if you owe additional royalty as a result of the major portion calculation.

(3) You must compare the major portion value to the value that you initially reported on Form MMS–2014, normalized and adjusted for gravity and transportation. If the major portion value is higher than the reported value, normalized and adjusted for gravity and transportation, you must calculate the difference and multiply the volume subject to royalty by the royalty rate. This is the additional royalty owed. You must submit an amended Form MMS–2014 and pay any additional royalty owed by the due date specified on the Web site.

(4) *Example.* For example, assume that the lessee whose normalized and adjusted value in the array is $25.10 produced sweet oil with API gravity of 38.5 degrees. Further assume that the oil was subject to an adjustment scale that provides for a deduction of $.015 per 1/10 degree below API gravity of 40°. (This implies that the lessee's original reported value was $24.875 because it was 15/10ths below 40°.) When MMS publishes the major portion value on the Web site, normalized to 40°, the lessee would then compare the major portion value ($25.30/bbl) to the normalized and transportation-adjusted reported value ($25.10/bbl). The difference ($0.20/bbl) would be multiplied by the volume subject to royalty times the royalty rate to determine the additional royalty owed.

(g) *Late payment interest.* Late payment interest will not begin to accrue under 30 CFR 218.54 on any underpayment based on any additional amount owed as a result of the higher major portion value until after the due date of your amended Form MMS–2014.

(h) *No changes to major portion value after publication.* The MMS will not change the major portion value after it publishes that value in the Web site publication, unless an administrative or judicial decision requires MMS to make a change.

(i) *Additional reporting guidance.* The MMS may specify, in the MMS *Minerals Revenue Reporter Handbook* or otherwise, additional guidance for reporting under this section and §§ 206.52 and 206.53.

§ 206.55 What are my responsibilities to place production into marketable condition and to market the production?

You must place oil in marketable condition and market the oil for the mutual benefit of yourself and the Indian lessor at no cost to the lessor, unless the lease agreement provides otherwise. If in the process of marketing the oil or placing it in marketable condition, your gross proceeds are reduced because services are performed on your behalf that would be your responsibility; and, if you valued the oil using your or your affiliate's gross proceeds (or gross proceeds received in the sale of oil received in exchange) under § 206.52, you must increase value to the extent that your gross proceeds are reduced.

§ 206.56 What transportation allowances apply in determining the value of oil?

(a) If you value oil under § 206.52(a) or (b) based on the gross proceeds that you or your affiliate receive(s) from a sale at a point off the lease, unit, or communitized area where the oil is produced, MMS will allow a deduction, under § 206.57 or § 206.59, as applicable, for the reasonable, actual costs to transport oil from the lease to the point off the lease, unit, or communitized area where the oil is sold at arm's length.

(b) If you value oil under § 206.52(e)(1) through (e)(3) because you or your affiliate enter into one or more arm's-length exchange agreements, MMS will allow a deduction, under § 206.57 or § 206.59, as applicable, for the reasonable, actual costs to transport the oil:

(1) From the lease to a point where oil is given in exchange; and

(2) If oil is not exchanged to Cushing, Oklahoma, from the point where oil is received in exchange to the point where the oil received in exchange is sold.

(c) If you value oil under § 206.53, MMS will allow a deduction, under § 206.57 or § 206.59, as applicable, for the reasonable, actual costs:

(1) That you incur to transport oil that you or your affiliate sell(s), that is included in the weighted-average price calculation, from the lease to the point where the oil is sold; and

(2) That the seller incurs to transport oil that you or your affiliate purchase(s), that is included in the weighted-average cost calculation, from the property where it is produced to the point where you or your affiliate purchase(s) it.

(d) You may not deduct any costs of gathering as part of a transportation deduction or allowance.

(e) *Limits on transportation allowances.* (1) Except as provided in paragraph (e)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under § 206.52 before the deduction of allowances, or 50 percent of each price against which the transportation cost is deducted before the computation of the weighted average price used to calculate value under § 206.53 of this part. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (e)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production (or the price of particular production used in calculating the weighted average price under § 206.53) to less than 1 percent of the value of the production (or the price used in the weighted average calculation) before the deduction of allowances.

(f) *Allocation of transportation costs.* You must allocate transportation costs among all products produced and transported as provided in §§ 206.56 or 206.57 of this part. You must express transportation allowances for oil as dollars per barrel.

(g) *Liability for additional payments.* (1) If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54.

(2) If you or your affiliate net a transportation allowance rather than report it as a separate entry against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease per sales type code per sales period.

(3) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under paragraph (e)(2) of this section, you must pay interest on the excess allowance amount taken, up to the date you or your affiliate file an exception request that MMS approves. If you do not file an exception request, or if MMS does not approve your request, you must pay interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

§ 206.57 How do I calculate a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred as more fully explained in paragraph (b) of this section, except as provided in paragraphs (a)(1) and (a)(2) of this section and subject to the limitation in § 206.56(e). You must be able to demonstrate that your or your affiliate's contract is at arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.59, or may limit your allowance to the actual consideration, at MMS's sole discretion.

(2) You must calculate the transportation allowance under § 206.59 if MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) The MMS will not use this provision to simply substitute its judgment of the reasonable oil transportation costs incurred by you or your affiliate under an arm's-length transportation contract.

(B) The fact that the cost you or your affiliate incur in an arm's-length transaction is higher than other measures of transportation costs, such as rates paid by others in the field or area, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that you or your affiliate acted unreasonably or in bad faith in transporting oil from the lease.

(b) You may deduct any of the actual costs you (including your affiliates) incur for transporting oil allowed under 30 CFR 206.110(b), except that for the cost of carrying inventory as line fill under paragraph (b)(4) of that section you must use the value calculated under § 206.52 or § 206.53, as applicable.

(c) You may not deduct any costs that are not actual costs of transporting oil, including but not limited to, those identified in § 206.110(c).

(d) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs to each of the liquid products transported.

(1) Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(2) You may not claim an allowance for the costs of transporting lease production that is not royalty-bearing.

(3) You may propose to MMS a cost allocation method on the basis of the values of the products transported. The MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(e) If your arm's-length transportation contract includes both gaseous and liquid g62 products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.

(1) You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(2) You must submit your initial proposal, including all available data, within 3 months after first claiming the

allocated deductions on Form MMS–2014. If you do not submit your proposal, you may be subject to civil penalties.

(f) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar-value equivalent.

(g) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, do not separately report the transportation factor as a transportation allowance on Form MMS–2014.

(1) You may use the transportation factor in determining your gross proceeds for the sale of the product.

(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.58 What are my reporting requirements under an arm's-length transportation contract?

You have the burden of demonstrating that your contract is arm's-length. You must submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your Form MMS–2014 on which a transportation allowance is reported.

§ 206.59 How do I calculate a transportation allowance under a non-arm's-length transportation arrangement?

(a) This section applies where you or your affiliate do not have an arm's-length transportation contract, including situations where you or your affiliate provide(s) your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs include the costs allowed under § 206.111, except that:

(1) For the cost of carrying inventory as line fill under paragraph (b)(6)(ii) of that section you must use the value calculated under § 206.52 or § 206.53, as applicable; and

(2) For purposes of paragraphs (h) and (j) of that section, use [THE EFFECTIVE DATE OF THE FINAL RULE] instead of June 1, 2000.

§ 206.60 What are my reporting requirements under a non-arm's-length transportation arrangement?

All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4110, Oil Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies.

§ 206.61 What must I do if MMS finds that I have not properly determined value?

(a) If MMS finds that you have not properly determined value, you must:

(1) Pay the difference, if any, between the royalty payments you made and those that are due, based upon the value MMS establishes; and

(2) Pay interest on the difference computed under 30 CFR 218.54.

(b) If you are entitled to a credit due to overpayment on Indian leases, see 30 CFR 218.53. The credit will be without interest.

§ 206.62 May I ask MMS for valuation guidance?

You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with a non-binding determination of the guidance you requested.

§ 206.63 What are the quantity and quality bases for royalty settlement?

(a) You must compute royalties on the quantity and quality of oil as measured at the point of settlement approved by BLM for the lease.

(b) If you determine the value of oil under §§ 206.52, 206.53 or 206.54 of this subpart based on a quantity or quality different from the quantity or quality at the point of royalty settlement approved by the BLM for the lease, you must adjust the value for those quantity or quality differences.

(c) You may not deduct from the royalty volume or royalty value actual or theoretical losses incurred before the royalty settlement point unless BLM determines that any actual loss was unavoidable.

§ 206.64 What records must I keep and produce?

(a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the designated area. You must make this data available to MMS, Indian representatives, or other authorized persons.

(b) You must retain all data relevant to the determination of royalty value. Document retention and recordkeeping requirements are found at 30 CFR 207.5, 212.50, and 212.51. The MMS, Indian representatives, or other authorized persons may review and audit such data you possess, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart or the lease.

§ 206.65 Does MMS protect information I provide?

The MMS will keep confidential, to the extent allowed under applicable laws and regulations, any data or other information that you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior, 43 CFR part 2.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[MT–025–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the reopening and extension of the public comment period for a previously announced proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions to, additions of, and deletions of rules about: Definitions; permit application requirements; application processing and public participation; application review, findings, and issuance; permit conditions; permit renewal; performance standards; prospecting permits and notices of intent; bonding and insurance; protection of parks and historic sites; lands where mining is prohibited; inspection and enforcement; civil penalties; small operator assistance program (SOAP); restrictions on employee financial interests; blasters license; and revision of permits.

At the request of three interested parties, we are extending the previously announced public comment period.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the extended comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t., February 28, 2006. If requested, we will hold a public hearing on the amendment on February 28, 2006. We will accept requests to speak until 4 p.m., m.s.t., on February 23, 2006.

ADDRESSES: You may submit comments, identified by "MT–025–FOR," by any of the following methods:

- E-mail: *rbuckley@osmre.gov*. Include "MT–025–FOR" in the subject line of the message.
- Mail, Hand Delivery/Courier: Richard Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601–1018. (307) 261–6550.
- Fax: (307) 261–6552.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and the identifier "MT–025–FOR". For detailed instructions on submitting comments and additional information on the rulemaking process, see "II. Public Comment Procedures" below.

Docket: Access to the docket, to review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Richard Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601–1018. (307) 261–6550. E-mail: *rbuckley@osmre.gov*.

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901. (406) 444–2544. E-mail: *neharrington@mt.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Buckley, Telephone: (307) 261–6550. E-mail: *rbuckley@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Proposed Amendment
II. Public Comment Procedures

I. Background on the Proposed Amendment

By letter dated August 29, 2005, Montana sent us a proposed amendment to its program (MT–025–FOR, Administrative Record No. MT–22–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to legislative revisions to its statutes, to the required program amendments at 30 CFR 926.16(e)(1), (k), (l), and (m), and to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**. Detailed information on the program amendment is also available in the November 29, 2005, **Federal Register** (70 FR 71428).

We announced receipt of the proposed amendment in the November 29, 2005, **Federal Register**, provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 29, 2005. On that date, we received from one citizen and two citizen/environmental groups (Kentucky Resources Council, Bull Mountain Land Alliance) requests to extend the comment period by 30 days. Because of the extensive nature of this proposed program amendment (the November 29, 2005, proposed rule encompasses some 13 pages in the **Federal Register**), we are extending the comment period for the full 30 days requested.

II. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations.

Electronic Comments

Please submit Internet comments as an ASCII or MSWord file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. MT–025–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at (307) 261–6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t., on February 23, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 30, 2005.

Allen D. Klein,

Director, Western Region.

[FR Doc. E6–2005 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SATS No. NM–044]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to statutes concerning administrative review of decisions and the award of attorney's fees and legal costs. New Mexico intends to revise its program to be consistent with the corresponding provisions of SMCRA and clarify the administrative and judicial review process.

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. March 15, 2006. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., m.s.t. on February 28, 2006.

ADDRESSES: You may submit comments, identified by "SATS No. NM–044", by any of the following methods:

- E-mail: *WGAINER@OSMRE.GOV.* Include "SATS No. NM–044" in the subject line of the message.
- Mail/Hand Delivery/Courier: Willis Gainer, Chief, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248–5096.

E-mail address: *wgainer@osmre.gov.*

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

Instructions: All submissions received must include the agency name and SATS No. NM–044. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket, to review copies of the New Mexico program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Albuquerque Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Willis Gainer, Chief, Albuquerque Field Office Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, NM 87102 Telephone: (505) 248–5096, E-mail address: *wgainer@osmre.gov.*

Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, NM 87505, Telephone: (505) 476–3400.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer Telephone: (505) 248–5096. E-mail address: *wgainer@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico 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 State 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 this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Description of the Proposed Amendment

By letter dated November 18, 2005, New Mexico sent us a proposed amendment to its program (administrative record No. 874) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to a condition of the New Mexico program approval at 30 CFR 931.11(e), concerning the award of attorney's fees and legal costs, and to include the changes made at its own initiative to clarify the administrative and judicial appeals process. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

New Mexico proposes revisions, described below, of the New Mexico Surface Mining Act (NMSA) 1978 and New Mexico Annotated Code (NMAC). The proposed revisions of NMSA 1978 were adopted by the New Mexico legislature and became effective June 17, 2005. The proposed revisions of NMAC were adopted by the Coal Surface Mining Commission on November 16, 2005, but will not become effective until they are published in the New Mexico Register.

New Mexico proposes stylistic editorial revisions to update citations and grammar of NMSA 1978 at (1) Section 69–25A–18.A., B., C., D., and F., concerning the decisions of the director of the New Mexico program and

appeals, and (2) Section 69–25A–29.A., B., C., D., E., and F., concerning the administrative review of a notice or order by the director of the New Mexico program.

New Mexico proposes to revise NMSA 1978 at Section 69–25A–29.F, concerning administrative review and the assessment of costs and expenses, including attorney fees, for a person's participation in the administrative proceedings, including judicial review of agency actions, by deleting the provision stating that no such assessment shall be imposed upon the director of the New Mexico program.

New Mexico proposes to revise NMSA 1978 at Section 69–25A–29, concerning administrative review, by deleting entirely 69–25A–29.G., which provided for an appeal to the commission for relief by any person aggrieved by a decision of the director of the New Mexico program.

New Mexico proposes stylistic editorial revisions of NMSA 1978, at Section 69–25A–30A. and B., concerning judicial review, to update grammar and clarify that appeals to the district court may be made by a party who is aggrieved by a decision of the director of the New Mexico program.

New Mexico proposes revision of NMSA 1978 at Section 69–25A–36, concerning termination of agency life, to extend the authority of the Coal Surface Mining Commission to operate according to the provisions of NMSA from July 1, 2005, until July 1, 2012.

New Mexico proposes editorial revisions, stylistic in nature, to correct citations and/or clarify sentence or paragraph structure, of NMAC at the following sections:

Section 19.8.11.1100.A.(3), D., and D.(2), concerning public notices of filing of permit applications;

Section 19.8.11.1101.C., concerning opportunity for submission of written comments on permit applications;

Section 19.8.11.1102.A and B.(2), concerning the right to file written objections;

Section 19.8.11.1103.A.(3), B., B.(1), D., E.(1), and F., concerning hearings and conferences;

Section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the director;

Section 19.8.11.1105.C.(2), D., E., and F., concerning review of permit applications;

Section 19.8.11.1106.C., D.(3), F., G.(1) and (2), and N., concerning criteria for permit approval or denial;

Section 19.8.11.1107.A., B., B.(1), B.(1)(b), B.(3), C., D., E., and F., concerning general procedures for improvidently issued permits;

Section 19.8.11.1108.B, concerning existing structures and criteria for permit approval or denial;

Section 19.8.11.1109.A.(4), B., B.(1) and (2), B.(2)(b), B.(3), and D., concerning permit approval or denial actions;

Section 19.8.11.1110.A.(1), concerning the rescission process for improvidently issued permits;

Section 19.8.11.1111.B., concerning permit terms;

Section 19.8.11.1113.C.(2), concerning conditions of permit for environment, public health and safety;

Section 19.8.11.1114., concerning conformance of permit;

Section 19.8.11.1115.A., B., and C., concerning verification of ownership or control application information;

Section 19.8.11.1116.B. and B.(2)(b), concerning review of ownership or control and violation information;

Section 19.8.11.1117.A., A.(1), (2) and (3), B., C., D., D.(1) and (2), and D.(2)(a) and (b), concerning procedures for challenging ownership or control links shown in the applicant violator system; and

Section 19.8.11.1118.B, B.(1), (2) and (3), B.(3)(1), C., C.(1)(a) through (c), and C.(2), concerning standards for challenging ownership or control links and the status of violations.

New Mexico proposes to revise Section 10.8.12.1201 NMAC, concerning appeals for administrative review by the Coal Surface Mining Commission of decisions by the director of the New Mexico program, by deleting it entirely and reserving it.

New Mexico proposes to revise Section 10.8.12.1202 NMAC, concerning judicial review, to state that (1) a party to a proceeding before the director who is aggrieved by a director's decision issued after a hearing may obtain a review of that decision pursuant to Section 39–3–1.1 NMSA 1978; and (2) a person who is or may be aggrieved by a rule or an amendment or repel of a rule the commission adopts may appeal to the court of appeals for review pursuant to Subsection B of 69–25A–30 NMSA 1978.

New Mexico proposes editorial revisions of Section 19.8.12.1203.A through J. and L. NMAC, concerning formal review of notices of violation, cessation orders, and show cause orders by the director of the New Mexico program, that are stylistic in nature to clarify the grammar and sentence structure.

New Mexico proposes revision of Section 19.8.12.1203.K NMAC, concerning formal review of notices of violation, cessation orders, and show cause orders issued by the director of the New Mexico program, to state that the district court may review the director's decisions pursuant to Subsection G of Section 69–25A–29 NMSA 1978 and 19.8.12.1202. NMAC.

New Mexico proposes to revise Part 19.8.12.1200 NMAC by adding Section 19.8.12.1204.A through G, concerning petitions for award of legal costs and expenses, to specify who may file, time and place for filing, contents of the petition, timeframe for response to the petition, who may receive an award, what the award may include, and where to appeal a decision concerning the award of such legal costs and expenses.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Albuquerque Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. NM–044" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Albuquerque Field Office.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not

consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) 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. 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 rule does not involve or affect Indian tribes in any way.

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. 4321 *et seq*).

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. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2) of 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.

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 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 was not considered a major rule.

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 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.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 14, 2005.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. E6–1976 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–250–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposes to revise the Ohio Revised Code (ORC) regarding changes to the State's alternate bonding system (bond pool). The amendment is intended to satisfy a program condition codified in the Federal regulations.

This document gives the times and locations that the Ohio program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: Written comments must be received on this amendment on or before 4 p.m. (local time), March 15, 2006 to ensure our consideration. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., local time, on February 28, 2006.

ADDRESSES: You may submit comments, identified by "OH–250–FOR", by any of the following methods:

- E-mail: *grieger@osmre.gov*. Include "OH–250–FOR" in the subject line of the message;
- Mail/Hand Delivery: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220; or
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Docket: You may review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Pittsburgh Field Division listed below.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220. Telephone: (412) 937–2153. E-mail: *grieger@osmre.gov*.

Mr. Michael Sponsler, Chief, Division of Mineral Resources Management, Ohio Department of Natural Resources, 1855 Fountain Square Court-Bldg. H–2, Columbus, Ohio 43224. Telephone: (614) 265–6633.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Chief, Pittsburgh Field Division, Telephone: (412) 937–2153. E-mail: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio 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 Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated December 19, 2005, Ohio sent us a proposed amendment to its program (Administrative Record Number OH–2185–07) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio has submitted a draft bill for the Ohio legislature to consider that revises the ORC regarding changes to the State's alternate bonding system (bond pool). The amendment is intended to satisfy a program condition codified in the Federal regulations at 30 CFR 935.11(h). The program condition provides that Ohio must submit a program amendment that demonstrates how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited.

In addition to the revisions described in detail below, the amendment submitted by Ohio contains numerous changes to existing citations to reflect

changes in renumbering due to the proposed amendments. Also, numerous minor formatting changes have also been proposed to be made throughout the provisions. Section 1 of the amendment submittal provides the following specific revisions:

Section 1513.01(W) Definition of "Performance Security." This definition is new, and provides as follows:

> Performance Security means a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in this state; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance that is acceptable to the chief.

Section 1513.02(A)(5) is amended by deleting the word "bond" and adding in its place the word "security."

Section 1513.07(A)(2) is amended in the last sentence by deleting the words "bond coverage" and adding in their place the words "performance security."

Section 1513.07(B)(1) is amended by deleting the existing language and renumbering the subdivisions.

Section 1513.07(B)(2)(e)(i) is amended by adding the words "performance security" between the words "mining bond" and the words "or similar security."

Section 1513.07(B)(2)(e)(ii) is amended by adding the words "performance security" between the words "coal mining surface bond" and the words "or similar security."

Section 1513.07(E)(6) is amended by revising the phrase "surface mining bond, or security deposited" by adding the words "performance security" and "similar." As amended the phrase is as follows: "surface mining bond performance security or similar security deposited."

Section 1513.07(E)(7)(f)(iv) is amended by revising the phrase "surface mining bond, or security deposited" by adding the words "performance security" and "similar." As amended the phrase is as follows: "surface mining bond performance security or similar security deposited."

Section 1513.071(A) is amended by adding the words "of the division of mineral resources management" immediately following the word "chief" in the first sentence. Also in the first sentence, the word "his" is deleted and replaced by the words "the applicant's."

Section 1513.071(B) is amended by adding the words "the chief's" in place of the word "his" that is being deleted in the third sentence. Also, the word "bond" is deleted and replaced by the word "security" in the second from last sentence.

Section 1513.08 has been amended by deleting some language and adding a lot of new language. As amended, section 1513.08 provides as follows:

Sec. 1513.08. (A) After a coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the chief of the division of mineral resources management, on a form prescribed and furnished by the chief, the performance security required under this section.

(B) Using the information contained in the permit application; the requirements contained in the approved permit and reclamation plan; and, after considering the topography, geology, hydrology, and the revegetation potential of the area of the approved permit, the probable difficulty of reclamation; the chief shall determine the estimated cost of reclamation under the initial term of the permit if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the applicant. The chief shall send written notice of the amount of the estimated cost of reclamation by certified mail to the applicant. The applicant shall send written notice to the chief indicating the method by which the applicant will provide the performance security pursuant to division (C) of this section. Applicants for preparation plants or coal refuse disposal areas not located within the permit area of a producing mine shall provide performance security in accordance with division (C)(1) of this section in the full amount of the estimated cost of reclamation as determined by the chief.

(C) The applicant shall provide the performance security in an amount using one of the following methods:

(1) If the applicant elects to provide performance security without reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the amount of the estimated cost of reclamation as determined by the chief under division (B) of this section for the increments of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application;

(2) If the applicant elects to provide performance security together with reliance on the reclamation forfeiture fund through payment of the additional tax on the severance of coal that is levied under division (A)(8) of section 5749.02 of the Revised Code, an amount of twenty-five hundred dollars per acre of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application. In order to be eligible to rely upon the reclamation forfeiture fund for a portion of the performance security, the applicant must have held a permit to mine coal in Ohio for a minimum of five (5) years. In the event of forfeiture of performance security that was provided in accordance with division (C)(2) of this section, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the chief under division (B) of this section shall be obtained from money in the reclamation forfeiture fund as needed to complete the reclamation. The performance security provided under division (C) of this section for the entire area to be mined under one permit issued under this chapter shall not be less than ten thousand dollars. The performance security shall cover areas of land affected by mining within or immediately adjacent to the permitted area, so long as the total number of acres does not exceed the number of acres for which the performance security is provided. However, the authority for the performance security to cover areas of land immediately adjacent to the permitted area does not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the chief additional performance security to cover the increments in accordance with this section. If a permittee intends to mine areas outside the approved permit area, the permittee shall provide additional performance security in accordance with this section to cover the areas to be mined.

If the performance security is required under this section for a coal preparation plant or coal refuse disposal area that is in existence on the effective date of this amendment and that is not located within a permitted area of a mine, the permittee shall provide the performance security not later than one year after the effective date of this amendment.

(D) A permittee's liability under the performance security shall be limited to the obligations established under the permit, which include completion of the reclamation plan in order to make the land capable of supporting the postmining land use that was approved in the permit. The period of liability under the performance security shall be

for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements under section 1513.16 of the Revised Code.

(E) The amount of a permittee's performance security may be adjusted by the chief as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases. If performance security that was provided in accordance with division (C)(2) of this section and the chief has issued a failure to abate cessation order for non-contemporaneous reclamation on a permit, the chief may require that the performance security provided by the permittee on said permit be increased from twenty five hundred dollars per acre of land to the amount of five thousand dollars per acre of land. The chief shall notify the permittee, each surety, and any person who has a property interest in the performance security and who has requested to be notified of any proposed adjustment to the performance security. The permittee may request an informal conference with the chief concerning the proposed adjustment, and the chief shall provide such an informal conference. If the chief increases the amount of performance security under this division, the permittee shall provide additional performance security in an amount determined by the chief. If the chief decreases the amount of performance security under this division, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount of reduction to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(F) A permittee may request a reduction in the amount of the performance security by submitting to the chief documentation proving that the amount of the performance security provided by the permittee exceeds the estimated cost of reclamation if the reclamation would have to be performed by the division in the event of forfeiture of the performance security. The chief shall examine the documentation and determine whether the permittee's performance security exceeds the estimated cost of reclamation. If the chief determines that the performance security exceeds that estimated cost, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief. Adjustments in the amount of performance security under this division shall not be considered release of performance security and are not subject to section 1513.16 of the Revised Code.

(G) If the performance security is a bond, it shall be executed by the operator and a surety licensed to do business in this state. If the performance security is a cash deposit or negotiable certificates of deposit of a bank or savings and loan association, the bank or savings and loan association shall be licensed and operating in this state. The cash deposit or market value of the securities shall be equal to or greater than the amount of the performance security required under this section. The chief shall review the performance security document and approve or disapprove the document. The chief shall notify the applicant of the chief's determination.

(H) If the performance security is a bond, the chief may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the chief the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.

(I) Performance security provided under this section may be held in trust, provided that the state is the conditional beneficiary of the trust and the custodian of the performance security held in trust is a bank, trust company, or other financial institution that is licensed and operating in this state. The chief shall review the trust document and approve or disapprove the document. The chief shall notify the applicant of the chief's determination.

(J) If a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security required under this section becomes insolvent, the permittee shall notify the chief of the insolvency, and the chief shall order the permittee to submit a plan for replacement performance security within thirty days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(1) of this section, the permittee shall provide the replacement performance security within ninety days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(2) of this section, the permittee shall provide the replacement performance security within one year after receipt of notice from the chief, and, for a period of one year after the permittee's receipt of notice from the chief or until the permittee provides the replacement performance security, whichever occurs first, money in the reclamation forfeiture fund shall be the permittee's replacement performance security in an amount not to exceed the estimated cost of reclamation as determined by the chief.

(K) A permittee's responsibility for repairing material damage resulting from subsidence, including replacement of water supplies, may be satisfied by utilizing appropriate terms and conditions for liability insurance required under this Chapter in lieu of the permittee's performance security to assure the financial responsibility to comply with this Chapter.

(L) If the performance security otherwise equals or exceeds that estimated cost of reclamation, the chief may authorize any interest or other earnings on the performance security provided under this section be paid to the permittee.

Section 1513.081 is new and provides as follows:

Sec. 1513.081. If an operator becomes insolvent, the division of mineral resources management shall have a priority lien in front of all other interested creditors against the assets of that operator for the amount of any reclamation that is required as a result of the operator's mining activities. The chief of the division of mineral resources management shall file a statement in the office of the county recorder of each county in which the mined land lies of the estimated cost to reclaim the land. Estimated costs shall include direct and indirect costs of the development, design, construction, management, and administration of the reclamation. The statement shall constitute a lien on the assets of the operator as of the date of the filing. The lien shall continue in force so long as any portion of the lien remains unpaid or until the chief issues a certificate of release of the lien. If the chief issues a certificate of release of the lien, the chief shall file a certificate of release in the office of each applicable county recorder.

(B) The chief promptly shall issue a certificate of release under any of the following circumstances:

(1) Upon the repayment in full of the money that is necessary to complete the reclamation;

(2) Upon the transfer of an existing permit that includes the areas of the surface mine for which reclamation was not completed.

(3) Any other circumstances that the chief determines to be in the best interests of the state.

(C) The chief may modify the amount of a lien under this section. If the chief modifies a lien, the chief shall file a statement in the office of the county recorder of each applicable county of the new amount of the lien. However, the chief shall not extinguish a lien under this section until the required reclamation is completed and the chief issues a certificate approving the reclamation.

(D) The chief may authorize a closing agent to hold a certificate of release in escrow for a period not to exceed one hundred eighty days for the purpose of facilitating the transfer of unreclaimed mine land.

(E) All money from the collection of liens under this section shall be deposited in the state treasury to the credit of the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

Section 1513.16(A)(15)(d) is amended by deleting the word "bond" and adding in its place the words "performance security."

Section 1513.16(A)(21)(b) is amended by deleting the word "bonded" in the first sentence. In addition, the first sentence is amended by adding the words "for which performance security has been applied" at the end of the sentence.

Section 1513.16(F)(1) has been amended in the first sentence by deleting the words "bond or deposit" and replacing those words with the word "security." In the second sentence, the words "bond or deposit" are deleted and replaced by the words "performance security." In the third sentence, the word "bond" is deleted in two locations and replaced with the words "performance security." In the fourth and fifth sentences, the words "bond" are deleted and replaced with the words "performance security."

Section 1513.16(F)(2) is amended in the first sentence by deleting the words "bond or deposit" and replacing those words with the words "performance security." In the last sentence, the words "bond or deposit" are deleted and replaced by the word "security."

Section 1513.16(F)(3) is amended by deleting the words "bond or deposit" and replacing those words with the words "performance security."

Section 1513.16(F)(3)(a) is amended by deleting the words "a bonded" and replacing those words with the word "an." In addition, the words "for which performance security has been provided" have been added immediately before the words "in accordance with the approved reclamation plan." Also, the words "bond or deposit" are deleted in two places and replaced with the words "performance security."

Section 1513.16(F)(3)(b) is amended by deleting the words "bond or deposit" and "bond" in several locations and replacing those words with the words "performance security."

Section 1513.16(F)(3)(c) is amended by deleting the words "bond" in several locations and replacing that word with the words "performance security" or "security."

Sections 1513.16(F)(4) through (F)(7) are amended by deleting the words "bond or deposit" and "bond" in several locations and replacing those words with the words "performance security" or "security."

Sections 1513.16(F)(8) and (F)(9) are new and provide as follows:

(8)(a) Except as provided in division (F)(8)(c) of this section, if the chief determines that a permittee is responsible for mine drainage that requires water treatment after reclamation is completed under the terms of the permit or that a permittee must provide an alternative water supply after reclamation is completed under the terms of the permit, the permittee shall provide alternative financial security in an amount determined by the chief prior to the release of the remaining portion of performance security under division (F)(3)(c) of this section. The alternative financial security shall be in an amount that is equal to or greater than the present value of the estimated cost over time to develop and implement mine drainage plans and provide water treatment or in an amount that is necessary to provide and maintain an alternative water supply, as applicable. The alternative financial security shall include a contract, trust, or other agreement or mechanism that is enforceable under law to provide long-term water treatment or a long-term alternative water supply, or both.

(b) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary for the administration of division (F)(8)(a) of this section.

(c) Division (F)(8)(a) of this section does not apply while the chief's determination of a permittee's responsibility under that division is the subject of a good faith administrative or judicial appeal contesting the validity of the determination. If after completion of the appeal there is an enforceable administrative or judicial decision affirming or modifying the chief's determination, the permittee shall provide the alternative financial security in an amount established in the administrative or judicial decision.

(9) Final release of the performance security in accordance with division (F)(3)(c) of this section terminates the jurisdiction of the chief under this chapter over the reclaimed site of a surface coal mining and reclamation operation or applicable portion of an operation. The chief may reassert jurisdiction over such a site only if the chief demonstrates in writing with evidence that the release was based on fraud, collusion, or misrepresentation of a material fact. Any person with an interest that is or may be adversely affected by the chief's determination may appeal the determination to the reclamation commission in accordance with section 1513.13 of the Revised Code.

Section 1513.16(G) is amended by deleting the word "bond" and replacing that word with the words "performance security."

Section 1513.17(A)(6) is amended by deleting the word "bond" and replacing that word with the words "performance security."

Section 1513.171 is new and provides as follows:

Sec. 1513.171. (A) For the purpose of claiming a credit under section 5749.11 of the Revised Code, an operator with a valid permit issued under section 1513.07 of the Revised Code may submit an application to the chief of the division of mineral resources management to perform reclamation on land or water resources that are not within the area of the applicant's permit and that have been adversely affected by past coal mining where the performance security was forfeited. The chief shall provide the application form. The application shall include all of the following:

(1) The operator's name, address, and telephone number;

(2) The valid permit number of the operator;

(3) An identification of the area or areas to be reclaimed;

(4) An identification of the owner of the land;

(5) A reclamation plan that describes the work to be done to reclaim the land or water resources. The plan shall include a description of how the plan is consistent with local physical, environmental, and climatological conditions and the measures to be taken during the reclamation to ensure the protection of water systems.

(6) An estimate of the total cost of the reclamation;

(7) An estimate of the timetables for accomplishing the reclamation;

(8) Any other requirements that the chief prescribes by rule. The chief shall approve, disapprove, or approve the

application with modifications concerning the proposed reclamation work. If the chief approves the application, the applicant may commence reclamation in accordance with the timetables included in the application. Upon the completion of the reclamation to the satisfaction of the chief, the chief shall issue a numbered reclamation tax credit certificate showing the amount of the credit and the identity of the recipient.

(B) The chief shall determine the amount of the credit in accordance wit[h] this section and rules adopted under it. The amount of the credit shall be equal to the cost that the division of mineral resource management would have expended from the reclamation forfeiture fund created in section 1513.18 of the Revised Code to complete the reclamation.

(C) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to administer this section. The rules shall establish all of the following:

(1) A procedure that the chief shall use to determine the amount of the credit issued under this section;

(2) A procedure by which the chief may obtain consent of the owners of land or water resources to allow reclamation work for purposes of this section;

(3) A procedure for delivery of notice to the owners of land or water resources on which the reclamation work is to be performed. The rules shall require the notice to include the date on which the reclamation work is scheduled to begin.

Section 1513.18(B) is revised by deleting the following words in the first sentence: "moneys transferred to it under this division from the unreclaimed lands fund created in section 1513.30 of the Revised Code, any." The first sentence is also revised by adding the following words following the phrase "reserve fund created in that section:" "investment earnings of the fund, fines collected under 1513.181." Additionally, the last sentence in the first paragraph is deleted. Finally, the last paragraph is deleted. As revised, section 1513.18(B) provides as follows:

(B) The fund shall consist of any moneys transferred to it under section 1513.181 [1513.18.1] of the Revised Code from the coal mining and reclamation reserve fund created in that section, investment earnings of the fund, fines collected under 1513.181 and moneys collected and reedited to it pursuant to section 5749.02 of the Revised Code. Disbursements from the fund shall be made by the chief for the purpose of reclaiming areas that an operator has affected by mining and failed to reclaim under a coal mining and reclamation permit issued under this chapter or under a surface mining permit issued under Chapter 1514. of the Revised Code.

The chief may expend moneys from the fund to pay necessary administrative costs, including engineering and design services, incurred by the division of mineral resources management in reclaiming these areas. Expenditures from the fund to pay such administrative costs need not be made under contract.

Section 1513.18(C) is revised in the last sentence by adding the words "or trustee, if the performance security is held in trust" between the words "hired by the surety" and the words "to complete reclamation."

Section 1513.18(D) is revised by deleting some language and adding a lot of new language to provide as follows:

(D) The chief shall expend money credited to the reclamation forfeiture fund from the forfeiture of the performance security applicable to an area of land to pay for the cost of the reclamation of the land. If the performance security for the area of land was provided under division (C)(1) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter. If the performance security for the area of land was provided under division (C)(2) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter. However, if the money credited to the reclamation forfeiture fund from the forfeiture of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code is not sufficient to complete the reclamation, the chief may expend money credited to the reclamation forfeiture fund under section 5749.02 of the Revised Code or transferred to the fund under section 1513.181 of the Revised Code to complete the reclamation. The chief shall not expend money from the fund in an amount that exceeds the difference between the amount of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code and the estimated cost of reclamation as determined by the chief under division (B) of that section.

Money from the reclamation forfeiture fund provided under division (C)(2) of section 1513.08 of the Revised Code shall not be used for reclamation of land or water resources affected by material damage from subsidence, mine drainage that requires extended water treatment after reclamation is completed under the terms of the permit, or coal preparation plants or coal refuse disposal areas not located within a permitted area of a mine.

Section 1513.18(E) is amended in the last sentence by deleting the word "bond" and replacing that word with the words "performance security."

Section 1513.18(H) is new and provides as follows:

(H) The treasurer of the state shall deposit any portion of the reclamation forfeiture fund not needed for immediate use in the same manner as and subject to all the laws with respect to the deposit of state funds by the treasurer of the state. All interest earned by such portion of the fund as is deposited under this section shall be collected by the treasurer of the state and placed in the reclamation forfeiture fund under section 1513.18 of the Revised Code and credited as performance security under division (C)(2) of section 1513.08 of the Revised Code.

Section 1513.181 is amended in the first paragraph by adding a new third sentence to provide as follows: "All investment earnings of the coal mining administration and reclamation reserve fund shall be credited to the fund." The fourth sentence (formerly third) is amended by deleting the following words: "or by surface mining under a surface mining permit issued under Chapter 1514. of the Revised Code." Additionally, the fourth sentence is amended by deleting the word "bond" and replacing that word with the words "performance security." The second paragraph is amended by deleting the phrase "coal mining administration and" and by deleting the word "reserve" and adding in its place the word "forfeiture." As amended, section 1513.181 provides as follows:

Sec. 1513.181. There is hereby created in the state treasury the coal mining administration and reclamation reserve fund. The fund shall be used for the administration and enforcement of this chapter. All investment earnings of the coal mining administration and reclamation reserve fund shall be credited to the fund. The chief of the division of mineral resources management may transfer not more than one million dollars annually from the fund to the reclamation forfeiture fund created in section 1513.18 of the

Revised Code to complete reclamation of lands affected by coal mining under a permit issued under this chapter, that the operator failed to reclaim and for which the operator's performance security is insufficient to complete the reclamation. Within ten days before or after the beginning of each calendar quarter, the chief may certify to the director of budget and management the amount of money needed to perform such reclamation during the quarter for transfer from the coal mining administration and reclamation reserve fund to the reclamation forfeiture fund.

Fines collected under division (E) of section 1513.02 and section 1513.99 of the Revised Code, and fines collected for a violation of section 2921.31 of the Revised Code that, prior to July 1, 1996, would have been a violation of division (G) of section 1513.17 of the Revised Code as it existed prior to that date, shall be paid into the reclamation forfeiture fund.

Section 1513.182 is new and provides as follows:

Sec. 1513.182. (A) There is hereby created the reclamation forfeiture fund advisory board consisting of five members. The Director of the Department of Natural Resources and the Director of the Department of Insurance shall be members. The governor shall appoint the remaining three members with the advice and consent of the senate. One member shall be a certified public accountant and two members shall be representatives of permittee's with permits covered by performance security provided in accordance with Section 1513.08(C)(2) of the Revised Code.

Of the three members originally appointed by the governor pursuant to this section, one shall serve an initial term of two years, one an initial term of three years, and one an initial term of four years. Thereafter, terms of office of the three members shall be for four years, each term ending on the same date as the original date of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A vacancy in an unexpired term shall be filled in the same manner as the original appointment. The Governor may remove any member pursuant to sections 3.04 and 3.05 of the Revised Code.

Board members representing the Department of Natural Resources and the Department of Insurance shall receive no compensation, but shall be reimbursed for actual and necessary expenses in the performance of their duties. The three remaining members of the board shall receive per diem compensation fixed pursuant to division (J) of section 124.15 of the Revised Code and actual and necessary expenses incurred in the performance of their duties.

For administrative purposes, the board is a part of the Department of Natural Resources.

(B) The Board shall annually elect from among its members a chairperson, a vice-chairperson, and a secretary to keep a record of its proceedings;

(C) The Board shall hold meetings as necessary at the call of the chairperson or a majority of the members.

(D) The Board shall adopt rules and procedures by which it shall elect a chairperson, vice-chair person, and secretary, and establish procedures for conduct of meetings.

(E) The Board shall:

(1) Review, in accordance with the applicable rules and regulations, collections and payments to and expenditures from the reclamation forfeiture fund;

(2) Authorize expenditures from the reclamation forfeiture fund necessary to carry out the responsibilities of the Board and the reclamation of land or water resources that have been adversely affected by past coal mining where the performance security was forfeited;

(3) Periodically employ a qualified actuary to perform an actuarial study of the reclamation forfeiture fund;

(4) Evaluate bond forfeiture collection, payments to the reclamation forfeiture fund, reclamation efforts at forfeiture sites, and compliance with reclamation plans;

(5) Provide a forum for discussion of issues relative to the reclamation forfeiture fund;

(6) Determine, based upon an actuarial study, the minimum and maximum amounts of the reclamation forfeiture fund and adjustments to the tax on the severance of coal that is levied under division (A)(8) of section 5749.02 of the Revised Code;

(7) Report to the Governor and the Joint Committee on Agency Rule Review ("JCARR") no less than biennially as to the financial status and adequacy of the reclamation forfeiture fund;

(8) Make recommendations to the Governor and the Joint Committee on Agency Rule Review ("JCARR") on alternative approaches and modifications to the reclamation forfeiture fund, the tax on severance of coal that is levied under division (A)(8) of section 5749.02 of the Revised Code, and the reclamation of land or water resources that have been adversely affected by past coal mining where the performance security was forfeited;

(9) Adopt, amend, and rescind rules for implementing, adjusting, collecting, and administering the tax imposed under section 5749.02(A)(8) of the Revised Code. The adoption, amendment, and rescission of rules under divisions (E)(9) of this section are subject to Chapter 119 of the Revised Code.

Section 1513.29 is amended in the third paragraph by combining the first and second sentences by deleting the words "at least four regular quarterly meetings each year" at the end of the first sentence, and deleting the word "Special" at the beginning of the second sentence. Additionally, the words "may be held" are deleted and the words "as necessary" are added in place of the deleted words. As amended, the third paragraph provides as follows:

The council shall hold meetings as necessary at the call of the chairperson or a majority of the members. The council shall annually elect from among its members a chairperson, a vice-chairperson, and a secretary to keep a record of its proceedings.

The fourth paragraph is amended by deleting the words "strip mining" before the word "reclamation"; adding the word "forfeiture" after the word "reclamation"; and by adding the phrase "created in section 1513.18 of the Revised Code." As amended, the fourth paragraph provides as follows:

The council shall gather information, study, and make recommendations concerning the number of acres, location, ownership, condition, environmental damage resulting from the condition, cost of acquiring, reclaiming, and possible future uses and value of eroded lands within the state, including land affected by strip mining for which no cash is held in the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

The fifth paragraph is amended by deleting the phrase "of the division of mineral resources management" from the last sentence. As amended, the last sentence provides as follows: "Expenses incurred by the council and compensation provided under this section shall be paid by the chief from the unreclaimed lands fund created in section 1513.30 of the Revised Code."

Section 1513.30 is amended by adding a new last sentence to the end of the first paragraph to read as follows: "All investment earnings of the

unreclaimed lands fund shall be credited to the fund."

Section 1513.30(B) is amended by deleting the second paragraph (starting with the words "At least two weeks") and the fourth paragraph (starting with the words "The controlling board").

Section 1513.37(C)(1)(b) is amended by adding the words "performance security" between the word "bond" and the words "or other form."

Section 1513.37(C)(3) is amended by adding the phrase "performance security, or other form of financial guarantee" in four locations. As amended, section 1513.37(C)(3) provides as follows:

(3) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for reclamation and restoration under this section after the release of the bond, performance security, or other form of financial guarantee for any such operation as provided under division (F) of section 1513.16 of the Revised Code. If the bond, performance security, or other form of financial guarantee for a surface coal mining operation on lands eligible for remining is forfeited, moneys available under this section may be used if the amount of the bond, performance security, or other form of financial guarantee for a surface coal mining operation on lands eligible for remining is forfeited, moneys available under this section may be used if the amount of the bond, performance security, or other form of financial guarantee is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant, the chief immediately shall exercise the authority granted under division (L) of this section.

Section 1513.371 is new and provides as follows:

Sec. 1513.371 There is hereby created in the state treasury the mined land set aside fund consisting of grants made by the United States secretary of the interior from the Federal abandoned mine reclamation fund pursuant to section 402(g)(6)(A), 30 U.S.C. 1232(g)(6)(A), of the "Surface Mining Control and Reclamation Act of 1977." 91 Stat. 445, 30 U.S.C. 1201. The chief of the division of mineral resources management shall administer the mined land set aside fund. Money in the fund shall be used solely to accomplish the purposes and priorities established in divisions (B)(1) to (4) of section 1513.37 of the Revised Code. All investment earnings of the mined land set aside fund shall be credited to the fund.

Section 1561.03 is amended by adding a new second paragraph to provide as follows:

For the purpose of establishing standards governing surface coal mines and surface work areas of underground coal mines, the chief shall incorporate by reference 30 CFR parts 47, 48, 50, 62, 71, 72, and 77, as amended.

Section 1567.35(E) is amended by deleting the word "worker's" and adding in its place the word "worker."

Section 1567.35(I) is amended by deleting the word "such" and adding the word "the" in its place. In addition, a new second paragraph is added to provide as follows:

Nothing in this section shall be construed to prohibit or impede the use of diesel equipment in an underground coal mine, approved for such use in accordance with Federal law.

Section 5749.02(A)(1) is amended by changing "Seven cents per ton of coal" to "Ten cents per ton of coal."

Section 5749.02(A)(8) is new and provides as follows:

(8) An additional Fourteen cents per ton of coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513 of the Revised Code for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code. Provided however, that:

(a) When at the end of any fiscal biennium, the balance in the reclamation forfeiture fund under section 1513.18 of the Revised Code reaches the maximum amount of ten million dollars ($10,000,000), the tax imposed by this section shall be reduced to Twelve cents per ton, until the balance in the reclamation forfeiture fund at the end of a subsequent fiscal biennium decreases to five million dollars ($5,000,000), at which point the tax imposed by this section shall be restored to Fourteen cents per ton;

(b) When at the end of any fiscal biennium, the balance in the reclamation forfeiture fund under section 1513.18 of the Revised Code is below the minimum amount of five million dollars ($5,000,000), the tax imposed by this section shall be increased to Sixteen cents per ton, until the balance in the reclamation forfeiture fund at the end of a subsequent fiscal biennium increases to five million dollars ($5,000,000), at which point the tax imposed by this section shall be restored to Fourteen cents per ton;

(c) If an actuarial study performed pursuant to section 1513.182(E) of the Revised Code indicates that the minimum amount necessary to operate a[n] actuarially sound reclamation forfeiture fund differs from five million dollars ($5,000,000), then the minimum and maximum amounts of the fund as provided in divisions (a) and (b) of this section shall automatically be adjusted to conform to the actuarial study.

(d) The reclamation forfeiture fund advisory board, established under section 1513.182 of the Revised Code, shall have authority to adopt, amend, and rescind rules for adjusting, collecting, and administering the tax imposed under this division (A)(8) of this section, including increasing or decreasing the amount of tax imposed based upon the fiscal year ending balance in the reclamation forfeiture fund under section 1513.18 of the Revised Code, an actuarial study performed pursuant to section 1513.182(E) of the Revised Code, and the fiscal requirements of the reclamation forfeiture fund to ensure sufficient revenues to provide adequate funds on an actuarial basis to provide performance security under division (C)(2) of section 1513.08 of the Revised Code. The adoption, amendment, and rescission of rules under divisions (A)(8) of this section are subject to Chapter 119 of the Revised Code.

Section 5749.02(B) is amended in the first sentence by deleting the phrase "six and three tenths" and adding in its place the word "five." In the first sentence, the following words are deleted, "fourteen and two tenths per cent shall be credited to the reclamation forfeiture fund created in section 1513.18 of the Revised Code, fifty seven and nine tenths" and replaced by the words "eighty-five." Also in the first sentence, the words "the remainder" are deleted and replaced by the words "ten per cent." The existing second sentence (starting with the words "When, at any time") is deleted. The second paragraph is amended by adding the words "created in section 1513.30 of the Revised Code" at the end of the sentence. Finally, a new paragraph is added at the end of section 5749.02(B). As amended, section 5749.02(B) provides as follows:

(B) Of the moneys received by the treasurer of state from the tax levied in division (A)(1) of this section, five per cent shall be credited to the geological mapping fund created in section 1505.09 of the Revised Code eighty-five per cent shall be credited to the coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code, and ten per cent shall be credited to the unreclained lands fund created in section 1513.30 of the Revised Code.

Fifteen per cent of the moneys received by the treasurer of state from the tax levied in division (A)(2) of this section shall be credited to the geological mapping fund and the remainder shall be credited to the

unreclaimed lands fund created in section 1513.30 of the Revised Code.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(3) and (4) of this section, seven and five-tenths per cent shall be credited to the geological mapping fund, forty-two and five-tenths per cent shall be credited to the unreclaimed lands fund, and the remainder shall be credited to the surface mining fund created in section 1514.06 of the Revised Code.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of this section, ninety per cent shall be credited to the oil and gas well fund created in section 1509.02 of the Revised Code and ten per cent shall be credited to the geological mapping fund. All of the moneys received by the treasurer of state from the tax levied in division (A)(7) of this section shall be credited to the surface mining fund.

Of the moneys received by the treasurer of state from the tax levied in division (A)(8) of this section, one-hundred percent shall be credited to the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

Section 5749.02(C) is amended by deleting the existing language and incorporating the language of subsection (D) that is not deleted.

Section 5749.02(D) is amended by deleting the first paragraph. In the second paragraph, the first sentence is amended by deleting the word "this" immediately before the word "division," and by adding the phrase "(A)(8) of this section" immediately after the word "division." Also, the first sentence is amended by deleting the word "such," adding the phrase "for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code," deleting the word "this," and adding the words "(A)(8) of this section." The second sentence in the existing second paragraph is amended by adding the words "levied under division (A)(8)" and by adding the following to the end of the sentence: "on coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code if the permittee has made tax payments under division (A)(8) of this section during each of the preceding five full calendar years." Finally, the existing designation "(D)" is deleted, so that its language is incorporated into subsection 5749.02(C). As amended, new subsection 5749.02(C) provides as follows:

(C) When, at the close of any fiscal year, the chief finds that the balance of the reclamation forfeiture fund, plus estimated transfers to it from the coal mining and reclamation reserve fund under section 1513.181 [1513.18.1] of the Revised Code, plus the estimated revenues from the tax levied by division (A)(8) of this section for the remainder of the calendar year that includes the close of the fiscal year, are sufficient to complete the reclamation of lands for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code, the purposes for which the tax under division (A)(8) of this section is levied shall be deemed accomplished at the end of that calendar year. The chief, within thirty days after the close of the fiscal year, shall certify those findings to the tax commissioner, and the tax levied under division (A)(8) of this section shall cease to be imposed after the last day of that calendar year on coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code if the permittee has made tax payments under division (A)(8) of this section during each of the preceding five full calendar years.

Section 5749.11 is new and provides as follows:

Sec. 5749.11. (A) There is hereby allowed a nonrefundable credit against the taxes imposed under divisions (A)(1), (C), and (D) of section 5749.02 of the Revised Code for any severer to which a reclamation tax credit certificate is issued under section 1513.171 of the Revised Code. The credit shall be claimed in the amount shown on the certificate. The credit shall be claimed by deducting the amount of the credit from the amount of the first tax payment due under section 5749.06 of the Revised Code after the certificate is issued. If a certificate is transferred under division (B) of this section, the credit shall be claimed by the transferee by deducting the amount of the credit from the amount of the transferee's first tax payment due after the certificate is transferred.

If the amount of the credit shown on a certificate exceeds the amount of the tax otherwise due with that first payment, the excess shall be claimed against the amount of tax otherwise due on succeeding payment dates until the entire credit amount has been deducted. The total amount of credit claimed against payments shall not exceed the total amount of credit shown on the certificate.

(B) A severer receiving a reclamation tax credit certificate issued under section 1513.171 of the Revised Code may transfer the certificate to any other severer that is subject to taxation under division (A)(1), (C), or (D) of section 5749.02 of the Revised Code and holds a license or permit issued under or referred to in section 5749.04 of the Revised Code. The transferee of a certificate may transfer the certificate to any other severer that is subject to such taxes and holds such a license or permit. A transfer of a certificate shall be made before the due date of the transferor's first tax payment occurring after the certificate is received by the transferor pursuant to issuance of the certificate by the chief of the division of mineral resources management in the department of natural resources or pursuant to a prior transfer.

Transfers may be made for consideration or pursuant to terms agreed to by the transferor and transferee. If the severer transfers a certificate, the severer shall provide to the tax commissioner written notification of the transfer in the form or manner prescribed by the tax commissioner. The notification shall include, at a minimum, the identity of the severer and the number of the certificate issued by the chief of the division of mineral resources management under section 1513.171 of the Revised Code. The tax commissioner shall maintain a record of all transfers of which the commissioner is notified.

(C) A severer claiming a credit under this section shall retain a reclamation tax credit certificate for not less than four years following the date of the last tax payment against which the credit allowed under that certificate was applied. Severers shall make tax credit certificates available for inspection by the tax commissioner upon the tax commissioner's request.

Section 2 of the amendment submittal provides as follows:

Section 2. That existing sections 303.211, 519.211, 1513.01, 1513.02, 1513.07, 1513.071, 1513.08, 1513.13, 1513.16, 1513.17, 1513.18, 1513.181, 1513.29, 1513.30, 1513.37, 1567.35, and 5749.02 of the Revised Code are hereby repealed.

Section 3 of the amendment submittal provides as follows:

Section 3. It is the intent of the General Assembly to appropriate five million dollars for the reclamation of land affected by the surface mining of coal.

Section 4 of the amendment submittal provides as follows:

Section 4. It is the intent of the General Assembly that a portion of the funds appropriated pursuant to this section be used to complete a management study of the financial resources of the coal regulatory program of the Division of Mineral Resources Management within the Department of

Natural Resources. The Chief of the Division of Mineral Resources Management shall, in consultation with a trade group representing the coal mining industry and a state-wide non-governmental environmental organization, shall develop the parameters for the management study. The cost of the study shall not exceed $50,000.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Appalachian Region office identified above may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. OH–250–FOR," your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Region office at (412) 937–2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time, on February 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) 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, to the extent allowable by law, 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 since each such 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. 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 a Federal program 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

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

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 has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

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, geographic regions, or Federal, State or local governmental agencies; 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 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 was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 2006.

Brent Wahlquist,

Regional Director, Appalachian Region.

[FR Doc. E6–1990 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[UT–043–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposes revisions to the Utah Administrative Rules concerning permit change, renewal, transfer, sale and assignment, cross sections and maps, processing and approval of extensions to the approved permit area, determining civil penalty amounts, and assessing daily civil penalties. Utah intends to revise its program to clarify and strengthen certain parts of the rules.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. March 15, 2006. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., m.s.t. on February 28, 2006.

ADDRESSES: You may submit comments, identified by docket number UT–043–FOR, by any of the following methods:

- E-mail: *jfulton@osmre.gov*. Include "UT–043–FOR" in the subject line of the message;
- Mail: James F. Fulton, Chief, Denver Field Division, Western Region, Office of Surface Mining, P.O. Box 46667, 1999 Broadway, Suite 3320, Denver, Colorado 80201–6667;
- Courier/Hand Delivery: James F. Fulton, Chief, Denver Field Division, Office of Surface Mining, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733: and
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number UT–043–FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Utah program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division. In addition, you may review a copy of the amendment during regular business hours at the following locations:

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733. Telephone: (303) 844–1400, extension 1424. E-mail: *jfulton@osmre.gov*.

John R. Baza, Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114–5801. Telephone: (801) 538–5340. Internet: *http://www.ogm.utah.gov*.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division; Telephone: (303) 844–1400, extension 1424; E-mail: *jfulton@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah 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 State 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 this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You also can find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Description of the Proposed Amendment

By letter dated November 28, 2005, Utah sent to us a proposed amendment to its program (Utah administrative record No. UT–1181) under SMCRA (30 U.S.C. 1201 *et seq.*). We received the amendment on December 28, 2005. Utah sent the amendment to make the changes at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specifically, Utah proposes to revise five sections of its rules. In a revision of Utah Administrative Rule (Utah Admin. R.) 645–301–160. the State proposes to add a heading that reads, "Permit change, renewal, transfer, sale, and assignment." Following that heading is a proposed reference to procedures to change, renew. transfer, assign, or sell existing coal mining and reclamation permit rights that are found at Utah Admin. R. 645–303.

The amendment also proposes to change Utah's permit application requirements for cross sections and maps at Utah Admin. R. 645–301–512.100. This change would allow preparation of certain cross sections and maps by a professional geologist or a qualified, registered, professional land surveyor. The State also proposes editorial changes to this section to make it read more clearly with the proposed substantive revisions described above.

A proposed revision to Utah Admin. R. 645–303–222 would allow applications for extensions to the approved permit area to be processed and approved using the procedural requirements of Utah Admin. R. 645–303–226 for review and processing of significant permit revisions. As part of this proposed change, the State also proposes to remove the requirement at Utah Admin. R. 645–303–222 that extensions to the approved permit area, except for incidental boundary changes, be processed and approved as new permit applications and not be approved under Utah Admin. R. 645–303–221 through R. 645–303–228.

Another revision proposed in this amendment would change Utah's schedule of points and corresponding dollar amounts for civil penalty assessments found at Utah Admin. R. 645–401–330. As proposed, the revision would result in civil penalty ranges of 1 through 64 points and $22 through $4,840, and remove the existing ranges of 1 through 87 points and $10 through $3,560.

Finally, the State's amendment proposes a change at Utah Admin. R. 645–401–410 that would require an assessment officer to assess a civil penalty for a minimum of two separate days for any violation that continues for two or more days and is assigned more than 64 points. This proposed change also would remove the existing threshold of 80 points.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. UT–043–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844–1400, extension 1424. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Denver Field Division.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others

present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) 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. 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 rule does not involve or affect Indian Tribes in any way.

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. 4321 *et seq.*).

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. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied on the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of 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 on the fact that the State submittal which is the subject of this rule is based on counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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 on the fact that the State submittal, which is the subject of this rule, is based on counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2006.

Allen D. Klein,

Regional Director, Western Region.

[FR Doc. E6–1974 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–034–FOR]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes revisions to and additions of rules about bond release (Rule Package 1–P) and highwall retention (Rule Package 1–T). Wyoming intends to revise its program to be consistent with the corresponding Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. March 15, 2006. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., m.s.t. on February 28, 2006.

ADDRESSES: You may submit comments, identified by "SATS No. WY–034–FOR" by any of the following methods:

- E-mail: *RBuckley@osmre.gov.* Include "SATS No. WY–034–FOR" in the subject line of the message.
- Mail/Hand Delivery/Courier: Richard W. Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601–1018. 307/261–6550. *RBuckley@osmre.gov.*
- Fax: 307/261–6552.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and SATS No. WY–034–FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket, to review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Richard W. Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601–1018. 307/261–6550. E-mail: *RBuckley@osmre.gov.*

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002. 307/777–7046. E-mail: *jcorra@state.wy.us.*

FOR FURTHER INFORMATION CONTACT: Richard Buckley, Telephone: 307/261–6550; E-mail: *RBuckley@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming 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 State 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 this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.11, 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated October 24, 2005, Wyoming sent us a proposed amendment to its program (administrative record No. WY–39–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

The provisions of Wyoming's Rules that Wyoming proposes to revise are:

Bond Release

Chapter 4, section 2(d)(ix), section 2(d)(x), section 2(d)(x)(E)(I) & (II), section 2(d)(ix)(E)(III) & (IV), and (F), section 2(d)(x)(J), and section 2(d)(xiv)

Chapter 15, section 1(a), section (b), Appendix A, subsection III.A, subsection VII.E, subsection VIII.A, subsection VIII.F; and

Highwall Retention

Chapter 4, subsections 2(b)(iv)(C)(1), (2), (3), (4), (5) & (6); and (iv)(D)

Specifically, Wyoming proposes to make the following additions or revisions to its rules:

Bond Release

Revise Chapter 4, section 2(d)(ix) to reflect the name change of the Soil Conservation Service to the Natural Resource Conservation Service.

Revise Chapter 4, section 2(d)(x) to remove the Grazing Demonstration in Wyoming's regulations that OSM has removed from its regulations and to develop a Vegetation Technical Standard for bond release evaluations.

Revise Chapter 4, section 2(d)(x)(E)(I) & (II) to reinstate the shrub goal rule for the postmining land use of grazingland and wildlife and to clarify that this is to be applied from May 3, 1978 to August 6, 1996.

Revise Chapter 4, section 2(d)(x)(E)(III), (E)(IV), & (F) to reflect the actual intent of the Federal regulations concerning the density of trees to be the number of trees on the affected lands rather than the number per unit area, and to change the section number.

Revise Chapter 4, section 2(d)(x)(J) to allow for an alternate method to evaluate revegetation success at the time of bond release, specifically, the development of technical standards for cover and production.

Revise Chapter 4, section 2(d)(xiv) to remove the language on controlling noxious weeds from five years to "until bond release".

Revise Chapter 15, section 1(a), the introductory paragraph, to ask that technical evaluations be done throughout the reclamation process and prior to bond release, and to allow the public an opportunity to be involved in the final decision-making process.

Revise Chapter 15, section 1(b)(vi) to alleviate a program deficiency identified in a 30 CFR 732.17 letter dated June 19, 1997, relating to the Federal requirement for a notarized statement as part of the bond release package. Section 1(d) is being proposed for revision to add the requirement that the publisher's affidavit and a copy of the notice be submitted to the Administrator (of the Wyoming Land Quality Division). Section 1(e)(iii) is proposed for elimination since it refers to the now nonexistent Wyoming Economic Development and Stabilization Board.

Revise Appendix A, subsection III.A to update it to reflect the previously-mentioned rule changes.

Revise Appendix A, subsection VII.E to reflect the removal of grazing as a bond release criteria.

Revise Appendix A, subsection VIII.A to reflect the removal of grazing as a bond release criteria and to attainment of the standards for two out of four years for those mines using a technical standard.

Revise Appendix A, subsection VIII.F to reflect the removal of grazing as a bond release criteria, although grazing as a husbandry practice is still encouraged.

Highwall Retention

Revise Chapter 4, section 2(b)(iv)(C), and delete (D), to add provisions on replacement features, static safety factor, hazard elimination, cover depth, contour with surrounding terrain, wildlife habitat and hydrologic conditions to be similar to those of New Mexico and Utah.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. WY–034–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6550. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Casper Field Office.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) 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. 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 rule does not involve or affect Indian Tribes in any way.

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

No environmental impact statement is required for this rule since agency decisions on proposed State regulatory program plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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. 3501 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of 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.

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 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 was not considered a major rule.

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 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.

List of Subjects in 30 CFR Part 950

Intergovernmental relations. Surface mining, Underground mining.

Dated: December 6, 2005.

Allen D. Klein,

Regional Director, Western Region.

[FR Doc. E6–1988 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0088, FRL–8008–3]

RIN 2060–AM90

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: The EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for new and existing refractory products manufacturing facilities, which were promulgated on April 16, 2003, under section 112(d) of the Clean Air Act (CAA). The proposed amendments would clarify testing and monitoring requirements, reflect recent changes to the NESHAP General Provisions, clarify startup and shutdown for batch processes, and make certain technical corrections to the final rule.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the revisions in the preamble to the direct final rule. If we receive no adverse comments, we will take no further action on the proposed amendments. If we receive adverse comment on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** indicating which amendments in the direct final rule will become effective and which amendments are being withdrawn due to adverse comment. If part or all of the direct final rule in the Rules and Regulations section of this **Federal Register** is withdrawn, all comments pertaining to the amendments will be addressed in a subsequent final rule based on the proposed amendments. We will not institute a second comment period on the subsequent final rule. Any

parties interested in commenting must do so at this time.

DATES: *Comments.* Comments must be received on or before March 15, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 23, 2006, a public hearing will be held within approximately 30 days following publication of this notice in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0088, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://docket.epa.gov/edkpub/index.jsp.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov* and *Fairchild.susan@epa.gov.*
- *Fax:* (202) 566–1741 and (919) 541–5600.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0088, 1200 Pennsylvania Ave., NW.. Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0088, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2002–0088. 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://docket.epa.gov/edkpub/index.jsp,* 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 EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. OAR–2002–0088, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://docket.epa.gov/edkpub/index.jsp.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, Docket ID No. OAR–2002–0088, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, NC, or an alternate site nearby. Persons interested in attending the public hearing should contact Janet Eck at (919) 541–7946 to verify that a hearing will be held and its location.

FOR FURTHER INFORMATION CONTACT: Susan Fairchild, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C–504–05), Research Triangle Park, NC 27711; telephone number: (919) 541–5167; fax number: (919) 541–5600; e-mail address: *fairchild.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS*	Examples of regulated entities
Industrial	327124	Clay refractories manufacturing plants.
Industrial	327125	Nonclay refractories manufacturing plants.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.9782 of the Refractory Products Manufacturing NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information to EPA through EDOCKET, 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/*. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Direct Final Rule. A direct final rule identical to the proposal is published in the Rules and Regulations section of today's **Federal Register**. If we receive any advers comment pertaining to the amendments in the proposal, we will publish a timely notice in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public comments concerning the withdrawn amendments in a subsequent final rule. If no relevant adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in the action.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of today's **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of today's **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 employees, according to Small Business Administration size standards established under the NAICS for the industries affected by today's rule; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule amendments on small entities, I certify that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities. The proposed rule amendments provide clarification and corrections to the NESHAP for refractory products manufacturing. This action includes minor corrections and clarifications to the Refractory Products Manufacturing NESHAP that do not add any additional requirements.

Although the direct final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the direct final rule amendments on small entities. The EPA has limited the amendments to changes that clarify ambiguities of the Refractory Products Manufacturing NESHAP, correct citations to the General Provisions, and clarify the complex batch testing requirements of the Refractory Products Manufacturing NESHAP. The EPA believes that the amendments will simplify the NESHAP and will not add additional burden to regulated entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 7, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–1217 Filed 2–10–06; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1621

Notice of Rulemaking Workshop—Request for Expressions of Interest in Participation

AGENCY: Legal Services Corporation.

ACTION: Notice of Rulemaking Workshop and Request for Expressions of Interest in Participation in Workshop.

SUMMARY: LSC is conducting a Rulemaking Workshop in connection with its rulemaking to consider revisions to its regulations on client grievance procedures at 45 CFR part 1621. LSC hereby solicits expressions of interest in participation in the Workshop from the regulated community, its clients, advocates, the organized bar and other interested parties.

DATES: Expressions of interest must be received by February 24, 2006.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President & General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; (202) 295–1620 (phone); 202–337–6831 (fax) or *vfortuno@lsc.gov*.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation ("LSC") has initiated a rulemaking to consider revisions to 45 CFR part 1621 (Client Grievance Procedure). As part of this rulemaking proceeding, LSC conducted a Rulemaking Workshop on January 18, 2006. LSC is convening a second Rulemaking Workshop prior to the development of a Draft Notice of Proposed Rulemaking. The Rulemaking Workshop will be held on March 23, 2006, from 9 a.m.–5 p.m, e.s.t. The Rulemaking Workshop will be held in LSC's Conference Center, on the 3rd floor of 3333 K St. NW., Washington, DC, 20007.

Under the LSC Rulemaking Protocol: Rulemaking Workshops [* * *] enable LSC Board members and staff to meet with stakeholders prior to the development of a draft NPRM to discuss, but not negotiate, LSC rules and regulations. LSC believes the Notice and Comment process, including Rulemaking Workshops, [* * *] allow for an effective dialog between LSC and its recipients and other interested parties, in those instances in which Negotiated Rulemaking is not used.

When the Board has decided to initiate a rulemaking and to conduct a Rulemaking Workshop, [LSC's Office of Legal Affairs] will work with the Board and staff to select a date for the Rulemaking Workshop and will invite participants from the interested stakeholder community. The Workshop will be a meeting at which the participants hold open

discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. The Workshop is not intended [to] develop detailed alternatives or to obtain consensus on regulatory proposals. Upon the conclusion of the Workshop, the Board shall provide LSC staff with policy guidance on the issues discussed to aid staff in the development of the Draft Notice of Proposed Rulemaking ("NPRM").

67 FR 69762, 69763 (November 19, 2002).

During the first workshop, the participants had a wide-ranging discussion and identified a number of issues. These can be summarized as follows:

- The importance of and reason for having a client grievance process, including how the client grievance process also can be an important part of a positive client/applicant relations program and serve as a source of information for programs and boards in assessing service and setting priorities;
- Whether programs can be more "proactive" in making clients and applicants aware of their rights under the client grievance procedure, but do so in a positive manner that does not create a negative atmosphere at the formation of the attorney-client relationship. It was noted that while informing clients of their rights can be empowering, suggesting at the outset that they may not like the service they receive is not conducive to a positive experience. Query whether an "ombudsman" position would be appropriate in this context;
- It is unclear how some complaints should be categorized. Is a complaint that a recipient refused to take an appeal for a client represented at the trial or initial hearing level a complaint about the manner or quality of service or a complaint about the denial of service?;
- The appropriate role of the governing body in the client grievance/client relations process;
- Challenges presented in providing proper notice of the client grievance procedure to applicants and clients who are served only over the telephone and/or email/internet interface;
- Application of the process to Limited English Proficiency clients and applicants;
- Whether and to what extent it is appropriate for the composition of a grievance committee to deviate from the approximate proportions of lawyers and clients on the governing body, e.g. by a higher proportion of clients than the governing body has generally;
- Challenges presented by a requirement for in-person hearing and what other options may be appropriate;
- Whether the limitation of the grievance process related to denials of service to the three enumerated reasons for denial in the current rule is too limited given the wide range of reasons a program may deny someone service;
- Whether the regulation appropriately addresses issues of client confidentiality in LSC access to complaint files;
- Whether the grievance process should include cases handled by non-staff such as PAI attorneys, volunteers, attorneys on assignment to the grantee (often as part of a law firm pro bono program);
- Whether and to what extent it is appropriate for a recipient to abrogate the client grievance process, *e.g.*, where the recipient is facing potential litigation requiring notification to the malpractice insurance carrier or where the complainant poses a reasonable threat to the health and safety of recipient employees or governing body members;
- When does an inquiry become an application for service for which there could be a denial and a grievance process? Sometimes a person who calls a program is not clear about whether they just want some information or are actually seeking legal assistance, and other times if a caller asks about something the program does not handle, they may hang up or be referred to another provider before ever going through an intake process;
- Whether and to what extent it is appropriate for a grantee to provide assistance to a client/applicant in the filing of a complaint; and
- Whether and to what extent is it appropriate for a grantee to provide assistance to a client at a grievance hearing.

With this notice, LSC is inviting expressions of interest from the interested stakeholder community to participate in a second Rulemaking Workshop. This second Workshop is intended to further explore issues identified during the first Workshop, along with identifying any issues which may not have been discussed in the first Workshop. LSC is particularly interested in soliciting further input from both client representatives and LSC programs, especially hotline-only programs and others programs where in-person contact between staff and clients/applicants is difficult or non-existent (such as in service areas with widely disbursed and rural client populations), on the issues and challenges presented by the client grievance procedure and regulation.

Expressions of interest should be forwarded in writing to Victor M. Fortuno, Vice President & General Counsel, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007. Such expressions of interest may be alternatively sent via e-mail to *vfortuno@lsc.gov* or via fax to 202–337–6831, but must be received by close of business on December 2, 2005. LSC will select participants shortly thereafter and will inform all those who expressed interest of whether or not they have been selected.

The Workshops will be open to public observation but only persons selected will be allowed to participate. Participants are expected to cover their own expenses (travel, lodging, etc.). LSC may consider providing financial assistance to participants for whom travel costs would represent a significant hardship and barrier to participation. Any such person should so note in his/her expression of interest for LSC's consideration.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E6–1928 Filed 2–10–06; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Island Marble Butterfly as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the island marble butterfly (*Euchloe ausonides insulanus*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific information indicating that listing the island marble butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species, and we will issue a 12-month finding to determine if the petitioned action is warranted. To assist and ensure that the review is comprehensive, we are soliciting information and data regarding this species.

DATES: The finding announced in this document was made on February 13, 2006. To be considered in the 12-month finding for this petition, data, information, and comments must be submitted to us by April 14, 2006.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive, SE., Suite 102, Lacey, WA 98503. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address, or via electronic mail at, *islandmarble@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, at the above address (see **ADDRESSES** section above), by telephone (360–753–4327), or by facsimile (360–753–9405). For more information, go to *http://www.fts.gsa.gov/frs*.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

This finding is based on information included in the petition and information readily available to us at the time of the petition review. Our review of a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific information" threshold. Our standard for substantial scientific information with regard to a 90-day listing petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)).

We have to satisfy the Act's requirement that we use the best available science to make our decisions. However, we do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Our finding considers whether the petition states a reasonable case for listing on its face. Thus, our 90-day finding expresses no view as to the ultimate issue of whether the species should be listed.

Petition

On December 11, 2002, we received a petition dated December 10, 2002, requesting that we list the island marble butterfly (*Euchloe ausonides insulanus*) as an endangered species, and that critical habitat be designated concurrently with the listing. The petition, submitted by the Xerces Society, Center for Biological Diversity, Friends of the San Juans, and Northwest Ecosystem Alliance, was clearly identified as a petition for a listing rule, and contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline and active imminent threats. We sent a letter, acknowledging receipt of the petition, to the Xerces Society on January 22, 2003. In our response we advised the petitioners that we had insufficient funds to respond to the petition at that time and that we would not be able to begin processing the petition in a timely manner.

On April 5, 2004, we received a 60-day notice of intent to sue for three butterfly species, the Taylor's checkerspot (*Euphydryas editha taylori*), the mardon skipper (*Polites mardon*), and the island marble. On October 18, 2004, a complaint for declaratory and injunctive relief was filed by the plaintiffs that specifically addressed conservation actions needed for the island marble butterfly. We negotiated a stipulated settlement agreement, dated February 28, 2005, to work cooperatively with our conservation partners to conduct surveys and to assess the ecological needs of the island marble during 2005. We also agreed to submit the petition finding to the **Federal Register** by February 5, 2006, and if the 90-day finding was found to be substantial, to submit a 12-month finding by November 5, 2006. This notice constitutes our 90-day finding for the petition to list the island marble butterfly.

Species Information

The island marble butterfly (island marble) is a member of the Pieridae family, subfamily Pirinae, primarily consisting of white and yellow butterflies. Prior to its rediscovery in 1998, at American Camp, a 1,223-acre (ac) (495-hectare (ha)) unit of the San Juan Island National Historic Park in Washington State, the last observation of the island marble was on Gabriola Island, British Columbia, in 1908. Island marble larvae are known to feed on two types of plants: (1) Nonnative annual mustards such as *Brassica campestris* (field mustard) and *Sisymbrium altissimum* (tall tumble-mustard) in the uplands and (2) *Lepidium virginicum* var. *menziesii* (native tall peppergrass) found at the edge of coastal lagoons just above the marine shoreline of San Juan Channel, north of American Camp (Lambert 2005a; Miskelly 2005).

Between April 13 and July 13, 2005, WDNR, the Service, and the Xerces Society conducted more than 225 surveys for the island marble at 110 sites in 6 counties of northwest Washington. Sites were selected based on proximity to known island marble occurrences and the presence of grassland vegetation containing host plants. Adult butterflies were observed from April 21 to June 6, eggs were observed from April 25 to June 14, and larvae were observed from May 8 to July 1 (Miskelly 2005). Based on the distribution of sites where island marble butterflies were found and the habitat linkages or barriers between these sites, it is believed that there are four populations of island marble butterflies, two on San Juan Island and two on Lopez Island (Miskelly 2005). At three of the four populations fewer than 10 adults were observed (Miskelly 2005). The largest and most concentrated population of island marbles was observed on the grasslands of American Camp and the adjacent Cattle Point Natural Resources Conservation Area (NRCA), owned by the WDNR, on San Juan Island. Pyle (2004) observed "at least 100 individuals" at American Camp in 2003, based on five site visits. Lambert (2005a, 2005b, 2005c) reported total transect counts at American Camp of 270 adults and 194 adults in 2004 and 2005, respectively.

Discussion

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five listing factors are: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial,

recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

The Service believes that substantial information exists that threats to the species exist under one or more of the five listing factors. Because so few populations and individuals exist, the species may be especially vulnerable to random natural events.

The petitioners state that many, if not most, insect populations normally experience large fluctuations in size (Ehrlich 1992; Schultz 1998) with weather, predation, and disease potentially causing annual changes in butterfly numbers of an order of magnitude or more. They go on to state that normal population fluctuations, coupled with habitat alteration or loss can result in population extirpations (Hanski *et al.* 1995). Based on this, the petitioners conclude that, with only one known population, this butterfly is extremely vulnerable to extinction.

At the time the petition was written, American Camp was the only area known to be occupied by island marbles. Extensive surveys conducted after the petition was submitted revealed 3 additional areas that were occupied (Miskelly 2005). Fewer than 10 adults were observed in each of these areas (Miskelly 2005). Miskelly (2005) suggests that the three satellite populations found in 2005 may not be self sustaining, and that conservation of the island marble is largely dependent on having a viable population at American Camp.

Finding

On the basis of our review, we find that the petition and information in our files presents substantial information indicating that listing of the island marble butterfly may be warranted. The small number of individuals remaining and their limited distribution increases extinction risk and makes the species especially vulnerable to threats that may exist under one or more of the five listing factors.

Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available science and commercial information, we are soliciting additional information on the island marble butterfly. We are requesting additional information, comments, and suggestions concerning the status of the island marble butterfly from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to our Western Washington Fish and Wildlife Office (*see* **ADDRESSES** section above).

Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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 above address (*see* **ADDRESSES** section above).

References Cited

A complete list of all references cited is available, upon request, from our Western Washington Fish and Wildlife Office (*see* **ADDRESSES** section above).

Author

The primary author of this notice is Ted Thomas, Western Washington Fish and Wildlife Office (*see* **ADDRESSES** section above).

Authority

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

Dated: February 3, 2006.

Marshall P. Jones,

Deputy Director, Fish and Wildlife Service.

[FR Doc. E6–1930 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 060201021–6021–01; I.D. 100405C]

RIN 0648–AT73

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes to amend the regulations governing the North and South Atlantic swordfish fisheries to modify the North and South Atlantic Swordfish quotas for the 2005 fishing year (June 1, 2005, through May 31, 2006) to account for updated landings information from the 2003 and 2004 fishing years. This action is necessary to ensure that current quotas are based on the most recent landings information and account for any underharvest from previous fishing years, consistent with the regulations at 50 CFR part 635. Additionally, this action proposes to implement a subsequent recommendation by the International Commission for the Conservation of Atlantic Tuna (ICCAT) (Recommendation 04–02), which extends the 2005 North Atlantic swordfish management measures. The recommendation specifies that the extension of the 2005 North Atlantic swordfish quota is through the 2006 fishing year, but this proposed action would extend the 2005 North Atlantic swordfish management measures until ICCAT provides a recommendation for a new U.S. allocation of the North Atlantic swordfish total allowable catch. ICCAT's Standing Committee for Research and Statistics (SCRS) plans to conduct a stock assessment for North Atlantic swordfish in 2006. If the stock assessment is completed as anticipated, ICCAT intends to review the results during the Fall 2006 meeting and develop new management recommendations. In the event that ICCAT does not recommend a new U.S. allocation, this action proposes to extend the 2005 North Atlantic swordfish management measures until such time as ICCAT provides the recommendation.

DATES: Written comments on the proposed rule must be received by 5 p.m. on March 30, 2006.

NMFS will hold two public hearings to receive comments from fishery participants and other members of the public regarding the proposed swordfish regulations. Additional public hearings will be considered upon request and must be received by 5 p.m. on March 1, 2006 (see **FOR FURTHER INFORMATION CONTACT**). The public hearing dates are:

1. Monday, March 13, 2006, 4–6 p.m., Silver Spring, MD.

2. Friday, March 17, 2006, 2–5:30 p.m., Gloucester, MA.

ADDRESSES: The public hearing locations are:

1. Gloucester - Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; and

2. Silver Spring - National Oceanic and Atmospheric Administration, SSMC IV, NOAA Auditorium, 1301 East West Highway, Silver Spring 20910.

Written comments on the proposed rule or the Draft Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (Draft EA/RIR/IRFA) may be submitted to Megan Caldwell, Fisheries Management Specialist, Highly Migratory Species Management Division, using any of the following methods:

- Email: *SF1.100405C@noaa.gov.*
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule to Adjust the North and South Atlantic Swordfish Quotas."
- Fax: 301–713–1917.
- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Include in the subject line the following identifier: I.D. 100405C.

Copies of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP)and other relevant documents are also available from the Highly Migratory Species Management Division website at *http://www.nmfs.noaa.gov/sfa/hms.*

FOR FURTHER INFORMATION CONTACT: Megan Caldwell, by phone: 301–713–2347; by fax: 301–713–1917; or by email: *Megan.Caldwell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 1999 FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

North Atlantic Swordfish Quota

Prior to the 2002 meeting, ICCAT conducted a stock assessment examining the North Atlantic swordfish population. The Standing Committee on Research and Statistics (SCRS) concluded that the stock could support an increase in the total allowable catch (TAC) of North Atlantic swordfish. According to the stock assessment, the biomass at the start of 2002 was estimated to be 94 percent of the biomass needed to produce maximum sustainable yield (MSY). The SCRS felt that there was a greater that 50–percent chance that a TAC of 14,000 metric tons (mt) whole weight (ww) would allow the stock to rebuild to MSY by the end of 2009. Based on this information, ICCAT recommended a TAC of 14,000 mt ww for 2003, 2004, and 2005, which is an increase from 10,400 mt ww in 2002. Of the 14,000 mt ww, the United States is allowed to catch 3,877 mt ww (2,915.0 mt dressed weight (dw)) in 2003 and 3,907 mt ww (2,937.6 mt dw) in 2004 and 2005 (Recommendation 02–02).

On November 23, 2004, NMFS published a final rule to implement the ICCAT recommendations for the North Atlantic swordfish quotas in 2003, 2004, and 2005 (69 FR 68090). Pursuant to 50 CFR 635.27(c)(3)(ii), total landings below the annual North Atlantic swordfish quota shall be added to the following year's quota. Any carryover is to be apportioned equally between the two semi-annual fishing seasons.

The 2003 preliminary reported landings were 1,509.0 mt dw, resulting in an underharvest of 2,517.8 mt dw. These preliminary landings were previously used to adjust the quota for the 2004 fishing year (November 23, 2004; 69 FR 68090). The final landings for 2003 were 1,822.5 mt dw, thus decreasing the 2003 underharvest to 2,275.1 mt dw.

This action would adjust the total available quota for the 2004 fishing year to account for the final 2003 landings information. The 2004 North Atlantic swordfish baseline quota was 2,937.6 mt dw. The baseline quota plus the final 2003 underharvest would result in a total 2004 quota of 5,212.7 mt dw. The preliminary landings for the 2004 directed and incidental fishery are 1,475.0 mt dw. In addition to these landings, the United States transferred 18.8 mt dw to Canada, resulting in an underharvest of 3,398.5 mt dw for the 2004 fishing year after deducting dead discards.

Under this action, the underharvest from the 2004 fishing year (3,398.5 mt dw) would be added to the 2005 baseline quota (2,937.6 mt dw) for an adjusted 2005 North Atlantic swordfish quota of 6,336.1 mt dw. The reserve category would be allocated 101.5 mt dw, the incidental category would be allocated 300 mt dw, and the remaining quota would be divided into two equal semiannual quotas of 2,967.3 mt dw for the periods of June 1, 2005, through November 30, 2005, and December 1, 2005, through May 31, 2006.

The 2002 ICCAT recommendations included management measures for the North Atlantic swordfish fishery from 2003, 2004, and 2005 with the expectation that a new stock assessment would be reviewed by the SCRS in 2005. The North Atlantic swordfish stock assessment has been postponed until 2006; therefore in 2004, ICCAT recommended that the 2005 North Atlantic swordfish quotas be extended until new stock status information is available (Recommendation 04–02). This action proposes to implement the 2004 ICCAT recommendation. Extending the 2005 North Atlantic swordfish management measures is not expected to have a significant impact on the stock because the quota has been underharvested for the past several years, restrictions on the pelagic longline fleet remain unchanged, and permits and effort continue to be low.

South Atlantic Swordfish Quota

The SCRS also conducted a stock assessment of South Atlantic swordfish in 2002. Due to discrepancies between several of the datasets, reliable stock assessment results could not be produced. However, the SCRS noted that the total reported catches have decreased since 1995. ICCAT set a South Atlantic swordfish TAC of 15,631 mt ww in 2003, 15,776 mt ww in 2004, 15,956 mt ww in 2005, and 16,055 mt ww in 2006. Of these amounts, the United States is allocated 100 mt ww (75.2 mt dw) in 2003, 2004, and 2005, and 120 mt ww (90.2 mt dw) in 2006 (Recommendation 02–03).

The November 2004 final rule also implemented the ICCAT recommendations for the South Atlantic swordfish fishery in 2003, 2004, 2005, and 2006 (68 FR 68090). As mentioned above, the regulations also require that landings below the annual South Atlantic quota shall be added to the following year's quota.

The 2004 South Atlantic swordfish landings were below the adjusted 2004 quota. Therefore, this action proposes to carry over the underharvest into the 2005 fishing year. There were no

directed South Atlantic swordfish landings during the 2004 fishing year. The adjusted quota for the 2004 fishing year was 334.3 mt dw (75.2 mt dw baseline plus 259.1 mt dw carried over from the 2003 fishing year). Therefore, this action proposes to combine 2005 baseline quota (75.2 mt dw) with the carryover from 2004 fishing year (334.3 mt dw), increasing the total 2005 South Atlantic swordfish quota to 409.5 mt dw. There is no incidental catch quota for South Atlantic swordfish.

Requests for Comments

NMFS will hold two public hearings (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Megan Caldwell at 301–713–2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. Consistent with 50 CFR 635.27 (c)(3)(ii) and (iii), this action proposes to adjust the 2005 North and South Atlantic swordfish annual quotas to account for the underharvest from previous fishing years. Additionally this action proposes to implement the 2004 ICCAT recommendation, which extends the 2005 North Atlantic swordfish management measures. The proposed quota for the North Atlantic swordfish fisheries would be apportioned equally between the two semi-annual fishing seasons in the North Atlantic region. The Assistant Administrator for Fisheries, NOAA, has preliminarily determined that the regulations contained in this rule are necessary to ensure continued progress toward the conservation goals of ICCAT, the Magnuson-Stevens Act, ATCA, and the FMP for Atlantic Tunas, Swordfish, and Sharks.

The measures proposed in this rule are not expected to alter fishing practices or fishing effort significantly and therefore should not have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the June 2001 Biological Opinion (BiOp) on Atlantic HMS Fisheries and the June 2004 BiOp for the HMS pelagic longline (PLL) fisheries. In the June 2001 BiOp, it was determined that the continued operation of the Atlantic HMS rod and reel fishery is not likely to jeopardize the continued existence of the right whale, humpback, fin, or sperm whales, or Kemp's ridley, green, loggerhead, hawksbill, or leatherback sea turtles. The June 2004 BiOp determined that the continued operation of the PLL fishery is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but is likely to jeopardize the continued existence of leatherback sea turtles.

NMFS has since promulgated regulations required by the 2004 BiOp to avoid jeopardy of leatherback sea turtles, such as sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with PLL gear onboard. In addition, NMFS has implemented regulations requiring PLL vessels to use only 18/0 hooks with whole mackerel and/or squid in the Northeast Distant (NED) Statistical Reporting Area, and 16/0 hooks and/or 18/0 hooks everywhere outside the NED using whole finfish or squid, and to possess and use sea turtle release equipment with specified sea turtle handling and release protocols. Handling and release guidelines are also required to be posted in the wheelhouse. NMFS has also implemented several time/area closures between 1999 and 2002, which in combination with the previously mentioned restrictions have contributed to the quota underages for both the North and South Atlantic swordfish quotas since 2000. In 2004, there were 390 commercial swordfish directed and incidental permit holders, but only 142 vessels reported commercial swordfish landings. Because NMFS is not altering the current restrictions on the PLL fishery, the increased quota is not expected to increase effort.

An additional short term consideration is the impact of Hurricanes Katrina and Rita on the pelagic longline fishing industry in the Gulf of Mexico. The effort in this area is not likely to increase during the 2005 fishing year.

Thus, NMFS feels that the current level of incidental takes of protected species is not likely to be impacted by this proposed change. Accordingly, no irreversible or irretrievable commitment of resources is expected from this proposed action as this proposed rule is not expected to adversely affect protected species.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This action proposes to modify the North and South Atlantic swordfish quotas for the 2005 fishing year to account for the underharvest in previous fishing years. Additionally, this action proposes to extend the 2005 North Atlantic swordfish management measures pursuant to a 2004 ICCAT (Recommendation 04–02). These actions are necessary to comply with the recommendations of ICCAT, the requirements of the Magnuson-Stevens Act and ATCA, and the measures in the FMP for Atlantic tunas, sharks, and swordfish.

The commercial swordfish fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear permit and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities. In 2004, there were 390 commercial permit holders and 142 vessels reported landing swordfish commercially. About 90 percent of the vessels reporting commercial swordfish landings used pelagic longline gear. In 2005, the commercial swordfish permit holders declined to 372 permits for directed, incidental, and handgear permits. In 2004, there were also 24,843 HMS Angling permit holders who could land swordfish recreationally (i.e., not for profit), and 4,113 charter/headboat permit holders authorized to land swordfish. Other sectors of highly migratory species fisheries, such as dealers, processors, bait houses, and gear manufacturers, could be indirectly affected by the final regulations.

The proposed increased quota could potentially result in revenue increases; however, U.S. fishermen have not met either the North or South Atlantic swordfish quotas since 2000. For example, in 2004, the North Atlantic swordfish fishery had an underharvest of 3,398.5 mt dw and the South Atlantic swordfish fishery had an underharvest of 334.2 mt dw. The proposed action would result in a quota that is greater than current catches. Thus, NMFS does not believe that the net benefits and costs would change significantly as a result of the proposed quota increases.

In the Final Regulatory Flexibility Analysis for the November 24, 2004, final rule (69 FR 68090), the criteria used to evaluate the potential impacts include analysis of gross revenues in recent years from pelagic longline logbook data. In future fishing years, the present value of gross and net revenues for the swordfish fishery at the ex-vessel level could increase, but that would depend on the extent to which fishermen can expand their effort to

catch the quota. For example, increasing the North Atlantic swordfish quotas by 3,398.5 mt dw could increase ex-vessel revenues by as much as $23.5 million if the entire adjusted quota were caught; and increasing the South Atlantic swordfish quota by 334.3 mt dw could increase the ex-vessel revenues by $2.3 million. Based on existing regulations, including time/area closures, minimum sizes, and permit restrictions, it is unlikely that there will be an increase in effort in the fishery. If effort is increased, U.S. fishermen would potentially experience positive benefits as a result of this proposed rule.

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

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: February 7, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

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

2. In § 635.27, paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year beginning June 1, 2004. The annual quota is subdivided into two equal semiannual quotas of 1,468.8 mt dw: one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

* * * * *

[FR Doc. E6–1980 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 29
Monday, February 13, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0015]

Availability of Environmental Assessment for a Proposed Field Trial of Genetically Engineered Pink Bollworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed field trial of pink bollworm genetically engineered to express green fluorescence as a marker. The Animal and Plant Health Inspection Service (APHIS) proposes to use this marked strain to assess the effectiveness of lower doses of radiation to create sterile insects for its pink bollworm sterile insect program. This program, using sterile insect technique, has been conducted by APHIS, with State and grower cooperation, since 1968. Data gained from this field experiment will be used to improve the current program. The environmental assessment is available to the public for review and comment.

DATES: We will consider all comments that we receive on or before March 15, 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–2006–0015 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–2006–0015, 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–2006–0015.

Reading Room: You may read the environmental assessment and any comments that we receive 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. Robyn Rose, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0489. To obtain copies of the environmental assessment, contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On April 8, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 05–098–01r) from APHIS's Plant Protection and Quarantine (PPQ) Center for Plant Health Science and Technology (CPHST) Decision Support and Pest Management Systems Laboratory in Phoenix, AZ, for a field trial using the pink bollworm (PBW), *Pectinophora gossypiella* (Lepidoptera: Gelechiidae), that has been genetically engineered to express an enhanced green fluorescent protein (EGFP) derived from the jellyfish *Aequora victoria*. A piggyBac transposable element derived from the plant pest cabbage looper (*Trichoplusia ni*) was used to transform the subject PBW, and expression of the EGFP is controlled through use of the *Drosophila melanogaster* heat shock protein (*hsp70*) promoter.

The subject transgenic PBW is considered a regulated article under the regulations in 7 CFR part 340 because the recipient organism is a plant pest. The proposed field test will evaluate the feasibility of using F1 sterility systems in a sterile insect program, which is designed to depress PBW populations. The transgenic PBW will be reared in the Phoenix PBW genetic rearing facility and treated with radiation levels suitable to induce F1 sterility. The irradiated insects will be released into no more than four 3-acre field sites of cotton that are adjacent to cotton expressing the Bt toxin, which is toxic to PBW. This release is part of CPHST's PBW sterile insect program. Information resulting from this research will be used in support of APHIS's efforts to eradicate the PBW in the United States.

Additional information on the PBW eradication plan for the United States may be found at *http://www.aphis.usda.gov/ppq/pdmp/cotton/pinkbollworm/eradication/eradication.pdf*. An environmental assessment (EA) prepared for the Southwest Pink Bollworm Eradication Program may be found at *http://www.aphis.usda.gov/ppd/es/pdf%20files/swpbwea.pdf*.

To provide the public with documentation of APHIS's review and analysis of any potential environmental impacts and plant pest risk associated with the proposed release of the

transgenic EGFP PBW, an EA has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS's NEPA Implementing Procedures (7 CFR part 372). Copies of the EA are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–1972 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0016]

Availability of Environmental Assessment for a Proposed Field Trial of Genetically Engineered Tall Fescue and Genetically Engineered Italian Ryegrass

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed field trial using three transgenic grass lines. The trial consists of tall fescue plants that are genetically engineered for hygromycin resistance and that express the marker beta-glucuronidase, Italian ryegrass plants that are genetically engineered for hygromycin resistance, and Italian ryegrass plants that are genetically engineered to lower the expression of the pollen allergen gene, *Lol p*1, and that are also hygromycin resistant and express the marker beta-glucuronidase. The purpose of the field trial is to study pollen viability, outcrossing, and hybridization between the two types of grasses. The study will also examine the effect of down-regulating the *Lol p*1 gene. Data gained from this field experiment will also be used to evaluate current confinement practices for these species of transgenic grasses. The environmental assessment is available to the public for review and comment.

DATES: We will consider all comments that we receive on or before March 15, 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–2006–0016 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–2006–0016, 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–2006–0016.

Reading Room: You may read the environmental assessment and any comments that we receive 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. Andrea Huberty, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0659. To obtain copies of the environmental assessment, contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On October 5, 2005, the Animal and Plant Health Inspection Service (APHIS) received permit applications (APHIS Nos. 05–278–01r and 05–278–02r) from the Samuel Robert Noble Foundation in Ardmore, OK, for a field trial using three strains of transgenic grasses. The two permit applications are for three lines of transgenic grasses to be used in a single field trial.

Permit application 05–278–01r describes a tall fescue line, *Festuca arundinacea*, that has been genetically engineered to express beta-glucuronidase (*gus*A) derived from *Escherichia coli*. Expression of this gene is controlled by cauliflower mosaic virus (CaMV) 35S gene promoter and terminator sequences and a rice tungro virus (RTBV) intron. This regulated article also contains a separate insertion of a hygromycin phosphotransferase (*hph*) gene that is regulated by the rice actin promoter and intron sequences and the terminator from the CaMV 35S gene.

Permit application 05–278–02r describes two transgenic lines of Italian ryegrass (*Lolium multiflorium*). Both lines have the same *hph* gene construct as the regulated article described in permit application 05–278–01r. One line of Italian ryegrass also contains an insertion of a second construct that codes for an antisense *Lol p*1 gene derived from perennial ryegrass (*Lolium perenne*), and a *gus*A gene derived from *E. coli*. The antisense *Lol p*1 gene is under the control of the *Zea mays* pollen specific *Zm* 13 promoter and a *nos* polyadenylation terminator sequence from *Agrobacterium tumefaciens*.

The subject transgenic grasses are considered regulated articles under the regulations in 7 CFR part 340 because they were created using donor sequences from plant pests. The purpose of this proposed introduction is for research on transgenic tall fescue and Italian ryegrass plants, particularly to investigate:

- The distance transgenic pollen can travel and still remain viable;

• The frequency of pollination at different distances from the pollen source;

• The probability/frequency of cross-hybridization between transgenic tall fescue, transgenic Italian ryegrass, and related species under field conditions; and

• The effects of down-regulation of a major pollen allergen on pollen dispersal in transgenic Italian ryegrass.

Additionally, the data gathered during this study will be used to assess the confined status of this field release and refine the confinement conditions necessary for future releases of these grass species.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with the proposed release of these transgenic grasses, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–1992 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2005–0046]

Codex Alimentarius Commission: 38th Session of the Codex Committee on Food Additives and Contaminants

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), United States Department of Health and Human Services, are sponsoring a public meeting on March 6, 2006, to provide information and receive public comments on agenda items that will be discussed at the meeting of the Codex Committee on Food Additives and Contaminants (CCFAC), which will be held in The Hague, The Netherlands, on April 24–28, 2006. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the agenda items that will be discussed at this forthcoming session of the CCFAC.

DATES: The public meeting is scheduled for Monday, March 6, 2006, from 2 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Auditorium (Room 1A–003), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland. Documents related to the 38th Session of the CCFAC will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the "Search for Open Regulations" box, select "Food Safety and Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select the FDMS Docket Number (FSIS–2005–0046) to submit or view public comments and to view supporting and related materials available electronically.

Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex Building, Washington, DC 20250.

Electronic mail: *sis.regulationscomments@fsis.usda.gov.* All submissions received must include the Agency name and docket number FSIS–2005–0046. All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION ABOUT THE 38TH SESSION OF THE CCFAC CONTACT: U.S. Delegate, Dr. Terry Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, FDA, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway (HFS–300), College Park, MD 20740, Phone: (301) 436–1700, Fax: (301) 436–2632, E-mail: terry.troxell@fda.hhs.gov.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Ellen Matten, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. Attendees are requested to pre-register as soon as possible by e-mail to *ccfac@cfsan.fda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international standard-setting organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

The Codex Committee on Food Additives and Contaminants (CCFAC) establishes or endorses maximum or guideline levels for individual food additives, for contaminants (including environmental contaminants), and for naturally occurring toxicants in foodstuffs and animal feeds. In addition the Committee prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); recommends specifications of identity and purity for food additives for adoption by the Commission; considers methods of analysis for the determination of food additives and contaminants in food; and considers and elaborates standards or

codes for related subjects such as the labeling of food additives when sold as such, and food irradiation. The Committee is chaired by The Netherlands.

Issues to Be Discussed at the Public Meeting

Items on the provisional agenda of the 38th session of CCFAC to be discussed during the public meeting:

1. Matters referred or of interest to the committee arising from the Codex Alimentarius Commission and other Codex committees, including the endorsement or revision of maximum levels for food additives and contaminants in Codex commodity standards.
2. Summary report of the 65th meeting of the JECFA and any actions required as a result of changes in the acceptable daily intake (ADI) status and other toxicological recommendations.
3. Consideration of the Codex General Standard for Food Additives (GSFA) including:
(i) Draft Revision of the Preamble of the GSFA,
(ii) Revisions to the CCFAC's working principles for the further elaboration of the GSFA, including incorporating the food additive provisions in Codex Commodity Standards into the GSFA,
(iii) Report of the electronic working group on the GSFA,
(iv) Draft and proposed draft food additives provisions requiring information on their use, and
(v) Proposed draft food additive provisions at Step 3 and proposals for new uses.
4. Discussion Paper on Food Additive Provisions on Glazes for Foods.
5. Discussion Paper on the Development of Guidelines for Flavouring Agents.
6. Updated Inventory of Processing Aids (IPA).
7. International Numbering System (INS) for Food Additives.
(i) Harmonization of Terms used by Codex and JECFA,
(ii) Proposals for revisions or additions to the INS.
8. Specifications for the Identity and Purity of Food Additives.
9. Consideration of the Codex General Standard for Contaminants and Toxins (GSCT) with proposed draft revisions.
10. Proposed Draft Appendix to the Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Tree Nuts to address additional measures for the prevention and reduction of aflatoxins in Brazil nuts.
11. Proposed draft Sampling Plan for Aflatoxin contamination in almonds, Brazil nuts, hazelnuts, and pistachios.
12. Proposed draft maximum levels for Aflatoxin in unprocessed and processed almonds, hazelnuts, and pistachios.
13. Discussion Paper on Aflatoxins in Brazil nuts.
14. Discussion Paper on Deoxynivalenol (DON).
15. Discussion Paper on maximum levels for Ochratoxin (OTA) in Wine.
16. Discussion Paper on Ochratoxin A Contamination in Coffee and Cocoa.
17. Draft maximum levels for Lead in Fish.
18. Discussion Paper on maximum levels for Lead in Fish
19. Draft maximum levels for Cadmium in polished rice, marine bivalve mollusks, and cephalopods.
20. Proposed draft Code of Practice for Source Directed Measures to Reduce Dioxin and Dioxin-like PCB Contamination of Foods and feeds.
21. Proposed draft Code of Practice for the Reduction of Chloropropanols during the Production of Acid Hydrolyzed Vegetable Protein (HVPs) and Products that Contain Acid HVPs.
22. Proposed draft maximum level for 3–MCPD in Liquid Condiments Containing HVPs and Discussion Paper on Acid-HVPs Containing Products and other Products containing Chloropropanols.
23. Proposed draft maximum levels for Tin in canned beverages and other canned foods.
24. Discussion paper on Acrylamide.
25. Discussion paper on Polycyclic Aromatic Hydrocarbons (PAH) contamination.
26. Discussion paper on Guideline Levels for Methylmercury in fish.
27. Proposed Draft revised Guideline Levels for Radionuclides in Foods for use in International Trade.
28. Priority list of food additives, contaminants, and naturally occurring toxicants proposed for evaluation by JECFA.
29. Discussion Paper on the Development of a Maximum Level for Aflatoxins in Dried Figs.

Each issue listed will be fully described in documents distributed, or to be distributed, by The Netherlands' Secretariat to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the March 6, 2006, public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 38th Session of the CCFAC, Dr. Terry Troxell (See **FOR FURTHER INFORMATION ABOUT THE 38TH SESSION OF THE CCFAC CONTACT**). Written comments should state that they relate to activities of the 38th Session of the CCFAC.

Additional Public Information

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update. which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meeting, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an antomatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices.

Done at Washington, DC on February 6, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E6–1991 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2005–0048]

Public Meeting on Advances in Post-Harvest Reduction of Salmonella in Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on *Salmonella* Interventions in Poultry Slaughter and Processing on February 23 and February 24, 2006, in Atlanta, Georgia. The meeting will consist of presentations on research and practical experiences aimed at reducing the presence of *Salmonella* and other enteric microorganisms in poultry slaughter and processing.

DATES: The public meeting is scheduled for Thursday, February 23, 2006, from 9 a.m. to 5:30 p.m. e.s.t., and Friday, February 24, 2006, from 8:30 a.m. to 1 p.m. e.s.t.

ADDRESSES: The meetings will be held at The Loudermilk Center, 40 Courtland Street, NE., Atlanta, GA 30303. A tentative agenda will be available on the FSIS Web site at *http://www.fsis.usda.gov/*. The official transcript of the meeting, when it becomes available, can be accessed in the FSIS Docket Room, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250 between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the "Search for Open Regulations" box, select "Food Safety and Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select the Docket Number FSIS–2005–0048 to submit or view public comments and to view supporting and related materials available electronically.

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex Building, Washington, DC 20250–3700.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov*.

All submissions received must include the Agency name and Docket Number FSIS–2005–0048. All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. William Shaw at (202) 205–0695. E-mail: *william.shaw@fsis.usda.gov* or Dr. Patty Bennett at (202) 205–0296. E-mail: *patricia.bennett@fsis.usda.gov*.

Pre-registration is encouraged for this meeting. To pre-register, contact Diane Jones at (202) 720–9692 or by e-mail at *diane.jones@fsis.usda.gov*. Persons requiring a sign language interpreter or other special accommodations should also contact Diane Jones using the contact information above as soon as possible.

This public meeting will also be available Live Online via NetMeeting. For questions regarding NetMeeting contact Sharon Randle at (202)690–6530.

SUPPLEMENTARY INFORMATION: The scientific community continues to work with establishments to investigate methods to reduce the presence of food safety hazards at federally inspected meat and poultry establishments through the use of antimicrobial interventions and enhanced sanitary dressing practices. A food safety hazard is defined in 9 CFR part 417 as any biological, chemical, or physical property that may cause a food to be unsafe for human consumption. Establishments are required to consider any hazards that could arise before, during, or after the slaughter and processing of meat and poultry products and develop a plan designed to prevent, eliminate, or minimize the likelihood that these hazards will occur. A prudent establishment will employ sound technologies, practices, and other means to control pathogen hazards at the pre-harvest stage, during slaughter, and during processing to minimize contamination of the edible tissue.

Future hazard reduction interventions will likely arise from approaches that are being researched or from new approaches that will be added to the scientific community's research agenda. It is important, therefore, for establishments to be aware of the research that is being conducted, so that they can (1) identify their needs, (2) highlight matters that are not under investigation, (3) provide input on the economic impact of implementing new practices in their facilities, and (4) explain the impact of food safety hazards on the marketability of their products.

Salmonella, a group of bacteria that can cause diarrheal illness in humans, is the most frequently reported cause of foodborne illness. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become contaminated.

FSIS Hazard Analysis and Critical Control Point (HACCP) verification testing for all meat and poultry product categories has shown a continuous decline in *Salmonella* positive samples for beef product classes. However, since 2002, FSIS has seen an increase in *Salmonella* positive samples for broiler production classes. Agency data show that *Salmonella* percent positive in "A" set verification sampling for broilers from establishments of all sizes increased from 11.5% in 2002 to 12.8% in 2003 to 13.5% in 2004. Although the overall percentage of positive samples in verification testing is still below the national baseline prevalence figures, the continuing upward trend in recent years is a source of significant concern.

Consequently, on August 25 and 26, 2005, FSIS held a public meeting on advances in pre-harvest reduction of *Salmonella* in poultry at the Russell Research Center in Athens, Georgia. FSIS is announcing that it will hold a second public meeting on *Salmonella* controls, focusing on interventions during broiler slaughter as well as further processing of ground chicken and turkey. This meeting will discuss interventions to reduce *Salmonella* on broilers, ground chicken, and ground turkey. The meeting will include technical presentations on the opportunities for affecting *Salmonella* levels at each step in the slaughter process, emphasizing aspects where biological hazards associated with *Salmonella* are critical and require interventions. There will also be panel discussions of the possible approaches that are presented and opportunities for the audience to ask questions of presenters and panelists. The meeting will conclude with presentations outlining FSIS policy initiatives to encourage reduction of *Salmonella* positive regulatory verification samples.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/index.asp.*

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Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on February 7, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. E6–1936 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Yaak SEIS; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) for the Northeast Yaak project. The Northeast Yaak project includes urban interface fuels treatments, vegetation management, watershed rehabilitation activities, wildlife habitat improvement, and access management changes, including road decommissioning. The project is located in the Northeast Yaak planning subunit on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, and northeast of Troy, Montana. The Notice of Availability of the Draft EIS for this project was published in the **Federal Register** (70 FR 14315) on March 25, 2005, and the notice of the Final EIS (70 FR 38131) on July 1, 2005. The Record of Decision on this project was administratively appealed to the Regional Forester per 36 CFR part 215. The Regional Forester reversed the decision on September 26, 2005, citing an inadequate cumulative effects analysis. A Supplemental EIS is being prepared to further address cumulative effects for the Northeast Yaak project.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the Draft EIS and the Final EIS, and the Forest Service is not inviting comments at this time.

ADDRESSES: The line officer responsible for this analysis is: Michael L. Balboni, District Ranger, Three Rivers Range District, 1437 Hwy 2, Troy, MT 59935.

FOR FURTHER INFORMATION CONTACT: Eric Dickinson, Team Leader, Three Rivers Ranger District, at (406) 295–4693.

SUPPLEMENTARY INFORMATION:

The Northeast Yaak project area approximately 26 air miles northeast of Troy, Montana, within all or portions of T37N, R29W–R32W, and T36N, R30W–R31W. PMM, Lincoln County, Montana.

The purpose and need for this project is to: (1) Reduce fuels and the potential for crown fires in the urban interface and other forested areas; (2) manage for more diverse and sustainable vegetative conditions; (3) improve conditions in old growth habitat; (4) improve growing conditions and long-term management of overstocked sapling/pole stands; (5) improve and maintain winter range conditions; (6) improve the quality of grizzly bear habitat; (7) provide for motorized access to National Forest resources for recreation and to meet management objectives, while maintaining wildlife security; (8) continue to decrease cumulative sediment introduction to streams from roads; and (9) contribute forest products to the economy.

The Northeast Yaak Record of Decision (ROD) was released at the same time as the Final EIS and the legal notice of decision was published in the newspaper of record on June 18, 2005. The ROD selected Alternative C-Modified which authorized the following: (1) Approximately 1,860 acres of commercial timber harvest to reduce fuels, improve forest conditions, and contribute products to the economy (13.5 MMBF/33,000 CCF); (2) an estimated 350 acres of non-commercial fuels reduction treatments; (3) pre-commercial thinning on 286 acres; (4) watershed rehabilitation activities, including decommissioning on approximately 22 miles of road, and another 6.6 miles of road stabilized before being placed in grizzly bear core; (5) opening of 4 miles of the Vinal Lake Road #746 to improve motorized loop access, with a seasonal restriction, and other access management changes; and (6) a project-specific Forest Plan amendment to allow fuels reduction harvest in designated old growth to maintain old growth habitat.

The SEIS is intended to provide additional documentation of the cumulative effects analysis to the public, including information relating to past, ongoing, and reasonably foreseeable actions and the cumulative effects to natural resources.

A Draft SEIS is expected to be available for public review and comment in March 2006; and a Final SEIS in May 2006. The comment period for the Draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections

are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final SEIS. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Bob Castaneda, Forest Supervisor of the Kootenai National Forest, 1101 U.S. Highway 2 West, Libby, MT 59923, is the Responsible Official for this project. The Record of Decision will identify the land management activities to be implemented in the project area including urban interface fuels treatments, vegetation management, watershed rehabilitation activities, wildlife habitat improvement, access management changes, including road decommissioning, monitoring, and whether or not a Forest Plan amendment is necessary. The Forest Supervisor will make a decision on this project after considering comments and responses, environmental consequences discussed in the Final SEIS, and applicable laws, regulations and policies. The decision and supporting reasons will be documented in a Record of Decision.

Dated: February 6, 2006.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 06–1298 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC); Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on February 27, 2006 starting at 8 a.m. in the DeArmond Room of the Deschutes Services building on 1300 Wall Street, Bend, Oregon. Agenda items will include Pac Status and Rechartering, Biomass and Utilization News, Travel Management Rule, Survey and Manage, Update on Current Litigation and Court Rulings, FERC Licensing, Administrative Site Activity, and Invasive Plant Management. The remainder of the day will include info sharing and a Public Forum from 2 p.m. till 2:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR 97754, Phone (541) 433–3216.

Cecilia R. Seesholtz,

Deputy Forest Supervisor.

[FR Doc. 06–1297 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Renewable Energy Systems and Energy Efficiency Improvements Grants and Guaranteed Loans

AGENCY: Rural Business-Cooperative Service (RBS), USDA.

ACTION: Notice.

SUMMARY: Rural Business-Cooperative Service (RBS) announces the availability of funds for fiscal year (FY) 2006 to purchase renewable energy systems and make energy efficiency improvements for agriculture producers and rural small businesses in eligible rural areas. The amount available for competitive grants is $11.385 million. Approximately $176.5 million in guaranteed loan authority is also available. Any guarantee loan funds that are not obligated by August 1, 2006, will be pooled and revert to the National Office reserve for grant use. USDA is currently in the process of evaluating the potential for a direct loan program to help finance renewable energy and energy efficiency projects for rural small businesses and agricultural producers. Therefore, for purposes of FY 2006, funding will be limited to grants and guaranteed loans.

For renewable energy systems, the minimum grant request is $2,500 and the maximum is $500,000. For energy efficiency improvements, the minimum acceptable grant request is $1,500 and the maximum is $250,000. The maximum amount of a guaranteed loan made to a borrower will be $10 million. For FY 2006, the guarantee fee amount is 1.0% (one percent) of the guaranteed portion of the loan and the annual renewal fee is 0.125% (one-eighth of one percent) of the guaranteed portion of the loan.

DATES: The United States Department of Agriculture (USDA) will conduct one competitive grant solicitation in 2006. Applications must be completed and submitted to the appropriate USDA Rural Development State Office postmarked no later than May 12, 2006. Grant applications postmarked after this date will be returned to the applicant with no action. Any guaranteed loan funds not obligated by August 1, 2006 will be made available for competitive grants under this notice. Guaranteed loans will be awarded on a continuous basis. Applications are due to the National Office for funding consideration by July 3, 2006. In accordance with RD Instructions 1940–G, all environmental assessments must be completed prior to submission to the National Office.

ADDRESSES: Submit applications to the USDA Rural Development State Office in the State where your project is located or, in the case of rural small businesses, where your business is headquartered. A list of the Rural Development State Offices and Energy Coordinators addresses and telephone numbers follow. For further information about this solicitation, please contact the applicable State Office. This document is available on our Web site at *http://www.rurdev.usda.gov/rbs/farmbill/index.html.*

USDA State Rural Development Offices

Alabama

Mary Ann Clayton, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3615.

Alaska

Dean Stewart, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7722.

Arizona

Alan Watt, USDA Rural Development, 230 N. First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8769.

Arkansas

Shirley Tucker, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280.

California

Joseph Choperena, USDA Rural Development, 430 G Street, 4169, Davis, CA 95616–4169, (530) 792–5826.

Colorado

Linda Sundine, USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2929.

Delaware-Maryland

James Waters, USDA Rural Development, 1221 College Park

Drive, Suite 200, Dover, DE 19904, (302) 857–3626.

Florida/Virgin Islands

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3482.

Georgia

J. Craig Scroggs, USDA Rural Development, 333 Phillips Drive, McDonough, GA 30253, (678) 583–0866.

Hawaii

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313.

Idaho

Brian Buch, USDA Rural Development, 725 Jensen Grove Drive, Suite 1, Blackfoot, ID 83221, (208) 785–5840, Ext. 118.

Illinois

Patrick Lydic, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6211.

Indiana

Jerry Hay, USDA Rural Development, 2411 N. 1250 W., Deputy, IN 47230, (812) 873–1100.

Iowa

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4447.

Kansas

F. Martin Fee, USDA Rural Development, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2744.

Kentucky

Scott Mass, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435.

Louisiana

Kevin Boone, USDA Rural Development, 3727 Government Street, Alexandria, LA 71302, (318) 473–7960.

Maine

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168.

Massachusetts/Rhode Island/ Connecticut

Sharon Colburn, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4303.

Michigan

Rick Vanderbeek, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5218.

Minnesota

Lisa Noty, USDA Rural Development, 1408 21st Avenue, Suite 3, Austin, MN 55912, (507) 437–8247 ext. 150.

Mississippi

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457.

Missouri

D Clark Thomas, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0995.

Montana

John Guthmiller, USDA Rural Development, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2540.

Nebraska

Cliff Kumm, USDA Rural Development, 201 North, 25 Street, Beatrice, NE 68310, (402) 223–3125.

Nevada

Dan Johnson, USDA Rural Development, 555 West Silver Street, Suite 101, Elko, NV 89801, (775) 738–8468, Ext. 112.

New Hampshire (See Vermont)

New Jersey

Michael Kelsey, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700, Ext. 7751.

New Mexico

Eric Vigil, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952.

New York

Scott Collins, USDA Rural Development, The Galleries of Syracuse, Suite 357, 441 South Salina Street, Syracuse, NY 13202–2541, (315) 477–6409.

North Carolina

H. Rossie Bullock, USDA Rural Development, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (910) 739–3349 Ext. 4.

North Dakota

Dale Van Eckhout, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2065.

Ohio

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424.

Oklahoma

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036.

Oregon

Don Hollis, USDA Rural Development, 1229 SE. Third Street, Suite A, Pendleton, OR 97801–4198, (541) 278–8049, Ext. 129.

Pennsylvania

J. Gregory Greco, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2289.

Puerto Rico

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251.

South Carolina

R. Gregg White, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5881.

South Dakota

Gary Korzan, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1142.

Tennessee

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1350.

Texas

Daniel Torres, USDA Rural Development, Federal Building, Suite 102101, South Main Street, Temple, TX 76501, (254) 742–9756.

Utah

Richard Carrig, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State

Street, Room 4311, Salt Lake City, UT 84111, (801) 524–4328.

Vermont/New Hampshire

Lyn Millhiser, USDA Rural Development, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6069.

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594.

Washington

Chris Cassidy, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7707.

West Virginia

Cheryl Wolfe, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4882.

Wisconsin

Mark Brodziski, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 131.

Wyoming

Milton Geiger, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 820, Casper, WY 82602, (307) 672–5820 Ext. 4.

SUPPLEMENTARY INFORMATION: This solicitation is issued pursuant to Section 9006 of the Farm Security and Rural Investment Act of 2002 (2002 Act), which established the Renewable Energy Systems and Energy Efficiency Improvements Program. The program is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the Nation's critical energy needs. The 2002 Act mandates the maximum percentage Rural Development will provide in funding for these types of projects. Rural Development grants under this program will not exceed 25 percent of the eligible project costs. Rural Development guaranteed loans will not exceed 50 percent of the eligible project costs. Rural Development combined grant and guaranteed loan funding packages will not exceed 50 percent of eligible project cost, with the grant portion not to exceed 25 percent of eligible project costs.

Information required to be in the application package is contained in 7 CFR 4280.111. Awards are made on a competitive basis using specific evaluation criteria contained in 7 CFR 4280.112(e). To ensure that projects are accurately scored by USDA, applicants are expected to tab and number each evaluation criteria and include in that section, its corresponding supporting documentation and calculations according to 7 CFR 4280.112. Only projects that have completed the environmental review process according to 7 CFR 4280.114(d), demonstrated project eligibility according to 7 CFR 4280.108, and demonstrated technical feasibility will be eligible for funding consideration.

State Offices will submit eligible funding requests, with the state score sheets, including supporting documentation to the National Office for funding consideration. The National Office will form a Second Tier Review Committee comprised of representatives from Rural Development State Offices, U.S. Forest Service National Office staff, the Department of Energy's National Renewable Energy Laboratory, and Environmental Protection Agency National Office staff. The Second Tier Review Committee will conduct independent reviews of proposals based on the grant evaluation criteria contained in 7 CFR 4280.112(e). These reviews will be conducted based on the information provided in the State Office request for funding. The Second Tier Review Committee will only award points when properly organized supporting documentation and fully understandable calculations are provided.

Final scores and ranking will be based on the reviews completed by the Second Tier Review Committee. To reduce scoring bias by technology and scale, a standard statistical normalization process will be applied to all scores. All applicants will be notified by the Rural Development State Offices of the Agency's decision on the awards.

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.755 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0570–0050.

Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: February 2, 2006.

Jackie J. Gleason,

Acting Administrator, Business and Cooperative Programs.

[FR Doc. E6–1923 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Chemical Weapons Convention, Amendment to the Export Administration Regulations (End-Use Certificates and Advanced Notifications and Annual Reports)

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before April 14, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230, or via Internet at *dhynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to Larry Hall, BIS ICB Liaison, Room 6703, Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC prohibits, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. This collection implements that following provision of the treaty:

Schedule 1 notification and report: Under Part VI of the CWC Verification Annex, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to implement the CWC, at least 30 days before any transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit annual reports to the OPCW on all transfers of Schedule 1 Chemicals.

End-Use Certificates: Under Part VIII of the CWC Verification Annex, the United States is required to obtain End-Use Certificates for transfers of Schedule 3 chemicals to Non-States Parties to ensure the transferred chemicals are only used for the purposes not prohibited under the Convention.

II Method of Collection

Written reports.

III. Data

OMB Number: 0694–0117.

Form Number: Not Applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 107.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 54 hours .

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

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 (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 be summarized and/or included in the request for OMB approval of this information collection: they will also become a matter of public record. .

Dated: February 7, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1937 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801, C–403–802]

Continuation of Antidumping and Countervailing Duty Orders: Fresh and Chilled Atlantic Salmon from Norway

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

SUMMARY: As a result of the determinations by the Department of Commerce (the "Department") and the International Trade Commission (the "ITC") that revocation of the antidumping duty ("AD") order on fresh and chilled Atlantic salmon ("salmon") from Norway would likely lead to continuation or recurrence of dumping; that revocation of the countervailing duty ("CVD") order on salmon from Norway would likely lead to continuation or recurrence of a countervailable subsidy; and that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of the continuation of these AD and CVD orders.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor (AD order), Tipten Troidl (CVD order), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4114 and (202) 482–1767, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2005, the Department initiated and the ITC instituted sunset reviews of the AD and CVD orders on salmon from Norway, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the "Act"), respectively. *See Notice of Initiation of Five-year ("Sunset") Reviews*, 70 FR 5415 (February 2, 2005). As a result of its reviews, the Department found that revocation of the AD order would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of subsidization, and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders revoked. *See Fresh and Chilled Atlantic Salmon From Norway: Final Results of the Full Sunset Review of Antidumping Duty Order*, 70 FR 77378 (December 30, 2005) and *Final Results of Expedited Sunset Review of Countervailing Duty Order: Fresh and Chilled Atlantic Salmon From Norway*, 70 FR 53345 (September 8, 2005) (collectively, "*Final Results*").

On February 1, 2006, the ITC determined that revocation of the AD and CVD orders on salmon from Norway would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time. *See Fresh and Chilled Atlantic Salmon From Norway*, 71 FR 5373 (February 1, 2006) ("*ITC Determination*") and USITC Publication 3835 (January 2006), entitled *Fresh and Chilled Atlantic Salmon from Norway* (Inv. Nos. 701–TA–302 and 731–TA–454 (Second Review)).

Scope of the Orders

The merchandise covered by the AD and CVD orders is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink") and Chum ("dog"). Atlantic salmon is a whole or nearly–whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh–water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 0302.12.0003 and 0302.12.0004. The HTSUS subheadings are provided for

convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would likely lead to continuation or recurrence of dumping or a countervailable subsidy, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD and CVD orders on salmon from Norway. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders is the date of publication in the **Federal Register** of this Notice of Continuation.

Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than January 2011.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: February 7, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–1983 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea

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

SUMMARY: On September 7, 2005, the Department of Commerce (the Department) published the *Preliminary Results* of the antidumping duty administrative review for certain corrosion–resistant carbon steel flat products (CORE) from the Republic of Korea (Korea). *See Certain Corrosion–Resistant Carbon Steel Flat Products from Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 53153 (September 7, 2005) (*Preliminary Results*). This review covers five manufacturers and exporters of the subject merchandise: Union Steel Manufacturing Co., Ltd. (Union); Pohang Iron & Steel Company, Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group); Hyundai HYSCO (HYSCO); Dongbu Steel Co., Ltd. (Dongbu) (collectively, respondents); and Dongshin Special Steel Co., Ltd. (Dongshin). The period of review (POR) is August 1, 2003, through July 31, 2004.

As a result of our analysis of the comments received, these final results differ from the *Preliminary Results*. For our final results, we have found that during the POR, the POSCO Group, Union and Dongbu sold subject merchandise at less than normal value (NV). We have also found that HYSCO did not make sales of the subject merchandise at less than NV (*i.e.*, it has a zero or *de minimis* dumping margin). Regarding Dongshin, because it failed to respond to the Department's questionnaire, we have preliminarily determined to resort to adverse facts available and assigned to Dongshin the "All Others" rate in effect for this order (17.70 percent), which is the highest margin upheld in this proceeding. *See Preliminary Results* at 53155–56. Since the publication of the *Preliminary Results*, we have not received any comments regarding Dongshin from interested parties that would warrant reconsideration of our finding. Therefore, we have continued to assign a rate of 17.70 percent to Dongshin. The final results are listed in the "Final Results of Review" section below. Furthermore, we rescinded the request for review of the antidumping order for SeAH Steel Corporation (SeAH) because neither SeAH nor its affiliates had exports or sales of subject merchandise to the United States during the POR. For more information, *see Preliminary Results* at 53154.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska (Union), Preeti Tolani (Dongbu), Victoria Cho (the POSCO Group), and Joy Zhang (HYSCO), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8362, (202) 482–0395, (202) 482–5075, and (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2005, the Department published the *Preliminary Results*. On December 5, 2005, the Department published the notice of extension of final results of the antidumping administrative review of CORE from Korea, extending the date for these final results to February 6, 2006. *See Corrosion Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Final Results of Antidumping Administrative Review*, 70 FR 72424 (December 5, 2005).

Comments from Interested Parties

We invited parties to comment on our *Preliminary Results*. On November 15, 2005, Mittal Steel USA ISG, Inc. (Mittal) filed a case brief concerning all respondents; United States Steel Corporation (US Steel) filed case briefs concerning the POSCO Group, HYSCO, and Union; and all respondents filed a case brief.[1] On November 22, 2005, Mittal and US Steel filed rebuttal briefs concerning all respondents, and all respondents also filed a rebuttal brief.

Scope of the Order

This order covers cold–rolled (cold–reduced) carbon steel flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030,

[1] The Nucor Corporation, another domestic interested party, did not submit a case brief or a rebuttal brief.

7217.90.5060, 7217.90.5090. Included in this order are corrosion–resistant flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin–free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal brief by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted–average margins exist:

Producer/Manufacturer	Weighted–Average Margin
Dongbu	2.26 %
Union	1.54 %
The POSCO Group	2.16 %
HYSCO	0.00 %
Dongshin	17.70 %

Assessment

The Department will determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) For companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 17.70 percent, the "All Others" rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Order

This notice also is 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 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 the terms of an APO is a sanctionable violation.

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

Dated: February 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Accompanying Issues and Decision Memorandum

A. General Issues

Comment 1: *Model–Match Methodology and Laminated Products*
Comment 2: *Adjustments to U.S. Prices for Duty Drawback Paid in Korea*
Comment 3: *Section D Costs As Weighted–Average Values for the Entire POR*
Comment 4: *Adjustments to the Difference–In-Merchandise (DIFMER) Calculation*

B. Company–Specific Issues

Dongbu Steel Co., Ltd.

Comment 5: *Treatment of Dongbu's Indirect Selling Expenses Incurred in Korea*
Comment 6: *Treatment of Dongbu's Constructed Export Price (CEP) Offset*
Comment 7: *Dongbu's Treatment of Short–term Interest Rate*

Hyundai HYSCO

Comment 8: *CEP Offset for HYSCO*
Comment 9: *U.S. Sales Reconciliation for HYSCO*
Comment 10: *U.S. Indirect Selling Expense Ratio for HYSCO*
Comment 11: *HYSCO's Indirect Selling Expenses Incurred in Korea*
Comment 12: *Customs Instructions for HYSCO*

Comment 13: *HYSCO's Home Market Sales of Non–prime Merchandise*

[FR Doc. E6–1984 Filed 2–10–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On August 8, 2005, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on saccharin from the People's Republic of China. *See Saccharin from the People's Republic of China: Preliminary Results and Partial Recession of Antidumping Duty Administrative Review*, 70 FR 45657 (August 8, 2005) ("*Preliminary Results*"). The period of review is December 27, 2002, through June 30, 2004.

We invited interested parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we have made certain changes to our calculations. Therefore, the final results differ from the *Preliminary Results*. The final weighted–average dumping margin for the reviewed company is listed in the "Final Results of the Review" section below.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the Department published the preliminary results of the administrative review of the antidumping duty order on saccharin from the People's Republic of China ("PRC"). *See Preliminary Results*. Since the publication of the preliminary results, the following events have occurred.

On August 29, 2005, Shanghai Fortune Chemical Co., Ltd. ("Shanghai Fortune") requested a hearing pursuant to 19 CFR 351.310(c). On December 22, 2005, Shanghai Fortune withdrew its request for a hearing. *See* Memorandum to the File from Ann Fornaro Through Blanche Ziv "Withdrawal of Hearing Request," dated December 22, 2005, which is available in the Central Records Unit ("CRU") in Room B–099 of the main Commerce building. As there were no other requests for a hearing, the Department did not hold a hearing in this proceeding.

On August 31, 2005, the Department received submissions on surrogate value data from the petitioner, PMC Specialties Group ("Petitioner"), and Shanghai Fortune. On September 12, 2005, the Department received timely filed information for rebuttal and clarification from Petitioner.

On August 22, 2005, Shanghai Fortune submitted its response to the remaining information requested by the Department in its supplemental questionnaire issued on July 22, 2005. The first portion of this supplemental questionnaire was submitted on July 26, 2005. *See* Shanghai Fortune's "Saccharin from the People's Republic of China; Submission of Shanghai Fortune's Seventh Supplemental Response," dated July 26, 2005.[1]

On December 5, 2005, the Department published a notice in the **Federal Register** extending the time limit for the final results until February 6, 2006. *See Notice of Extension of Time Limit for Final Results of Administrative Review: Saccharin From the People's Republic of China*, 70 FR 72424 (December 5, 2005).

On December 13, 2005, the Department received case briefs from the Petitioner and Shanghai Fortune. On December 20, 2005, the Department received rebuttal briefs from Petitioner and Shanghai Fortune.

On January 19, 2006, the Department placed updated surrogate value information on the record of this review in order to allow parties an opportunity to comment on the new information. *See* Memorandum to the File From Jennifer Moats "Updated Surrogate Value Information," dated January 19, 2006. On January 23, 2006, the Department received timely filed comments on surrogate values from Petitioner and Shanghai Fortune.

On January 19, 2006, the Department issued a supplemental questionnaire to Shanghai Fortune requesting information on certain by–products that it claimed to have produced and sold during the POR. On January 20, 2006, the Department issued an additional supplemental questionnaire to Shanghai Fortune requesting further information on certain by–products at issue. On January 24, 2006, the Department received a timely filed response to these supplemental questionnaires from Shanghai Fortune.

We have conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.213.

Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non–nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in

[1] For discussion of previous supplemental questionnaire responses, *see Preliminary Results*, 70 FR at 45658.

metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service ("CAS") Registry #128–44–44); (2) calcium saccharin (CAS Registry #6485–34–34); (3) acid (or insoluble) saccharin (CAS Registry #81–07–07); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray–dried powder, and liquid forms.

The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS") and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in the post–preliminary comments submitted by parties in this review are addressed in the Issues and Decision Memorandum, dated February 6, 2006, ("*Decision Memorandum*") which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the *Decision Memorandum* is attached to this notice as an Appendix. The *Decision Memorandum* is a public document which is on file in the CRU in Room B–099 of the main Commerce building and is accessible on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the memorandum are identical in content.

Partial Recession of Administrative Reviews

In the *Preliminary Results*, the Department issued a notice of intent to rescind the administrative reviews with respect to Daiwa Kenko Company Limited ("Daiwa–Kenko"), Kenko Corporation, and Productos Aditivos, S.A. ("Productos Aditivos") because we found no evidence that these companies made shipments of subject merchandise during the POR. *See Preliminary Results*, 70 FR at 45659. The Department received no comments on this issue, and we did not receive any further information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination. Therefore, the Department is rescinding this administrative review with respect to Daiwa–Kenko, Kenko Corporation, and Productos Aditivos.

Separate Rates

In our *Preliminary Results*, we determined that Shanghai Fortune met the criteria for the application of a separate rate. We determined that Suzhou Fine Chemicals Group Co. ("Suzhou Chemicals"), Kaifeng Xinghua Fine Chemical Factory ("Kaifeng Chemical"), Tianjin North Food, Tianjin Changjie Chemical Co., Ltd. ("Tianjin Changjie"), and Beta Udyog Ltd. ("Beta Udyog") did not qualify for a separate rate and, therefore, are deemed to be included in the PRC–entity rate. *See Preliminary Results*, 70 FR at 45660–62. The Department received no comments on this issue, and we did not receive any further information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, for the *Final Results*, the Department included Suzhou Chemicals, Kaifeng Chemical, Tianjin Changjie, and Beta Udyog in the PRC–entity.

The PRC–Wide Rate and Use of Adverse Facts Available

Suzhou Chemicals, Kaifeng Chemical, Tianjin North Food, Tianjin Changjie, and Beta Udyog

In the *Preliminary Results*, we determined that the PRC–entity did not respond to the questionnaire and, therefore, failed to cooperate to the best of its ability in this administrative review. Accordingly, we determined that the use of facts otherwise available in reaching our determination is appropriate pursuant to sections 776(a)(2)(A) and (B) of the Act and that the use of an adverse inference in selecting from the facts available is appropriate pursuant to section 776(b) of the Act. In accordance with the Department's practice, as adverse facts available, we assigned to the PRC–entity the rate of 329.33 percent. For detailed information on the Department's corroboration of this rate, *see Preliminary Results*, 70 FR at 45662. The Department received no further information or comments on this issue since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination. Therefore, we continued to assign the PRC–entity the rate of 329.33 percent for the *Final Results*.

Other Changes Since the Preliminary Results

Based on our analysis of information on the record of this review and comments received from the interested parties, we have made changes to the margin calculations for Shanghai Fortune.

We have also revalued several of the surrogate values used in the *Preliminary Results*. The values that were modified for these final results are those for ammonia water, liquid chlorine, steam coal, sulfur dioxide, and activated carbon. In the *Preliminary Results*, we determined that India is the preferred surrogate country for purposes of calculating the factors of production. *See* Section 773(c)(4) of the Act. While India remains our primary surrogate country for this review, we found the publicly available information in India for sulfur dioxide to be unreliable because of small quantities and aberrant values. As such, we used data from Indonesia to value this input. The use of a secondary source country when data from the primary surrogate country is unreliable is consistent with the Department's practice. *See Certain Hot–Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Dtuy Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 2, and *Chrome–Plated Lug Nuts from the PRC; Final Results of the Antidumping Duty Administrative Review*, 61 FR 58514, 58517–18 (November 15, 1996). For further details *see* "Factors Valuations for the Final Results of the Administrative Review," dated February 6, 2006.

In the *Preliminary Results*, because of the lack of clarity in Shanghai Fortune's responses as to whether its phthalic anhydride was supplied from a market economy, the Department used surrogate values to value all of Shanghai Fortune's reported factors. *See Preliminary Results* at 45664 and Memorandum to the File From Steve Williams Through Brian Ledgerwood "Preliminary Results of First Administrative Review of Saccharin from the People's Republic of China (PRC): Analysis of Shanghai Fortune Chemical Co., Ltd.," which is available in the CRU in Room B–099 of the main Commerce building. Subsequent to the Department's *Preliminary Results*, Shanghai Fortune clarified that the phthalic anhydride inputs used in its production of subject merchandise during the POR were, in fact, sourced from a market economy country and paid for in a market economy currency. *See* Shanghai Fortune's "Saccharin from the People's Republic of China; Submission of Publicly Available Data For Use As Surrogate Values," dated August 31, 2005, at page 13. When a

non–market economy producer purchases an input from market economy suppliers and pays for that input in a market economy currency, the Department normally uses the actual price paid for these inputs, where possible. *See* 19 CFR 351.408(c)(1). Because Shanghai Fortune provided sufficient documentation on the record of this review demonstrating that the phthalic anhydride used was sourced from a market economy and paid for in a market economy currency, we are using the actual average price paid by Shanghai Fortune for this input for the final results. For further details, *see* Issues and Decision Memorandum at Comment 3, and Memorandum to the File From Jennifer Moats Through Wendy Frankel "Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Saccharin from the People's Republic of China: Shanghai Fortune Chemical Co., Ltd. ("Shanghai Fortune Final Analysis Memo")," dated February 6, 2006, which is available in the CRU in Room B–099 of the main Commerce building.

Since our issuance of the *Preliminary Results*, we have reviewed our calculations of surrogate values and found some to contain clerical errors, which we have corrected for the *Final Results*. These values are for the products sulphuric acid, hydrochloric acid, sodium bicarbonate, sodium hypochlorite, cardboard drums and cartons, inner plastic bags, plastic film, and pallets. For further details, *see* "Factors Valuations for the Final Results of the Administrative Review," dated February 6, 2006.

For further information detailing all of the changes to Shanghai Fortune's calculations in the final results, *see* Shanghai Fortune Final Analysis Memo.

Final Results of the Review

The Department has determined that the following final dumping margins exist for the period December 27, 2002, through June 30, 2004:

SACCHARIN FROM THE PRC

Producer/Manufacturer/ Exporter	Weighted–Average Margin (Percent)
Shanghai Fortune Chemical Co., Ltd.	17.05%
PRC–Wide Entity[2]	329.33%

[2] The PRC-wide entity includes: Suzhou Fine Chemicals Group Co., Kaifeng Xinghua Fine Chemical Factory, Tianjin North Food, Tianjin Changjie Chemical Co., Ltd., and Beta Udyog Ltd.

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Duty Assessment and Cash–Deposit Requirements

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. For assessment purposes, we calculated exporter/importer (or customer)-specific assessment rates or values for merchandise subject to this review. Because Shanghai Fortune reported entered values, for these final results, we divided the total dumping margins for the reviewed sales by the total entered value for the reviewed sales for each applicable importer. For duty–assessment rates calculated on this basis, we will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the applicable importer's/customer's entries during the review period.

Further, the following cash–deposit requirements will be effective upon publication of these final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Shanghai Fortune, the cash–deposit rate will be 17.05 percent; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 329.33 percent; (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice 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 the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. *See* 19 CFR 351.306. Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. *See* 19 CFR 351.305(a)(3). Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(3) and 777(i) of the Act.

Dated: February 6, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix 1

Decision Memorandum

1. Bona Fides
2. By–Product Offset
3. Valuation of Phtalic Anhydride
4. Valuation of Brokerage and Handling
5. Valuation of Ammonia Water
6. Valuation of Liquid Chlorine
7. Valuation of Sulfur Dioxide
8. Valuation of Ocean Freight
9. Valuation of Steam Coal
10. Valuation of Activated Carbon

[FR Doc. E6–1985 Filed 2–10–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil

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

SUMMARY: On August 8, 2005, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of the administrative review of the order on silicon metal from Brazil. *See Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 45665 (August 8, 2005) ("*Preliminary Results*"). This review covers one manufacturer/exporter of the

subject merchandise, Camargo Correa Metais (CCM). The merchandise covered by this order is silicon metal from Brazil as described in the "Scope of the Order" section of this notice. The period of review ("POR") is July 1, 2003, through June 30, 2004. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we made changes to the margin calculation. Therefore, the final results have changed from the preliminary results of this review. The final weight–averaged dumping margin is listed below in the section titled "Final Results of Review."

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on August 8, 2005. *See Preliminary Results.* As provided in section 782(i) of the Tariff Act of 1930, as amended ("the Act"), we verified sales and cost information provided by CCM, from September 12, 2005, through September 23, 2005, using standard verification procedures such as the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of our verification reports, which are on file in the Central Records Unit ("CRU") in room B–099 of the main Commerce building. We invited parties to comment on the *Preliminary Results* and our verification findings. We received written comments on November 14, 2005, from Globe Metallurgical (the petitioner). On December 9, 2005, we received rebuttal comments from CCM, the respondent. On January 26, 2006, the Department held a public hearing concerning these final results. The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Order

The merchandise covered by this order is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this order is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States ("HTSUS") as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Administrative Review of Silicon Metal from Brazil ("Decision Memorandum"), dated February 6, 2006, which is hereby adopted by this notice. A list of the issues raised, all of which we have responded to in the Decision Memorandum, is appended to this notice. The Decision Memorandum is on file in the CRU in room B–099 of the main Commerce building, and can also 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.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the calculations for the final dumping margin. The changes are discussed in detail in the Decision Memorandum. Additional detail regarding these changes is provided in the Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, "Antidumping Duty Administrative Review of Silicon Metal from Brazil; Calculation Memorandum for the Final Results," dated February 6, 2006, and the Memorandum from Michael P. Harrison, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results," dated February 6, 2005.

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period July 1, 2003, through June 30, 2004:

Manufacturer/Exporter	Weighted- Average Margin (Percentage)
Camargo Correa Metais	0.00 percent

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales for each importer to the total entered value of the examined sales for that importer. Where the importer–specific assessment rate is above *de minimis*, we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise produced by CCM. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for CCM we will instruct CBP not to collect cash deposits; (2) for merchandise exported by producers or exporters not covered in this review but covered in the investigation, the cash deposit rate will continue to be the company–specific rate from the most recently completed review; (3) if the exporter is not a firm covered in this review, a prior review, or the investigation, but the producer is, the cash deposit rate will be that established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 91.06 percent, the "All Others" rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant

entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is 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 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 the terms of an APO is a sanctionable violation.

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

Dated: February 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX – Issues in Decision Memorandum

I. Programa de Integracao Social and Contribuicao do Financiamento Social Taxes

II. Per–Unit Cost Calculation
III. General & Administrative Expense/ Ratio

IV. Financial Expenses
V. Depreciation of Deferred Charges for Restarting Idled Furnaces
VI. Depreciation of Idled Assets
VII. Taxes Included in Constructed Value

[FR Doc. E6–1987 Filed 2–10–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On August 9, 2005, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and partial rescission of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. This review covers 16 manufacturers/exporters. The period of review (POR) is July 1, 2003, through June 30, 2004.

We provided interested parties with an opportunity to comment on the preliminary results of review. After analyzing the comments received, we made changes to the margin calculations for two respondents, Chia Far Industrial Factory Co., Ltd. (Chia Far) and Yieh United Steel Corporation (YUSCO). Therefore, the final results of review differ from the preliminary results of review. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3518 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events occurred after the Department published the preliminary results of the instant administrative review in the **Federal Register**. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 46137 (August 9, 2005) (*Preliminary Results*). In response to the Department's invitation to comment on the *Preliminary Results*, the petitioners[1] filed case briefs on September 8, 2005, and September 12, 2005. Chia Far filed case brief on September 12, 2005. YUSCO filed rebuttal brief on September 13, 2005, while the petitioners and Chia Far filed rebuttal brief on September 19, 2005. On November 16, 2005, the Department extended the time limit for completing the final results of review until February 5, 2006. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 70 FR 69514 (November 16, 2005).

Period of Review

The POR is July 1, 2003, through June 30, 2004.

Scope of the Order

The products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the scope of the order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel

[1] The petitioners are Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., United Steelworks of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization (collectively, "petitioners").

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium–cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of the order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[7]

Partial Rescission of Review

In the *Preliminary Results* notice, we stated that we were preliminarily rescinding the instant review with respect to Ta Chen Stainless Pipe Co.,

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Ltd. (Ta Chen), Yieh Mau Corp. (Yieh Mau), Chain Chon Industrial Co., Ltd. (Chain Chon), Tung Mung Development Co. Ltd. (Tung Mung), Tang Eng Iron Works Company, Ltd. (Tang Eng), Yieh Loong Enterprise Company, Ltd. (Yieh Loong), and China Steel Corporation (China Steel), because record evidence supported their claims that they made no shipments of subject merchandise (for Tung Mung, no U.S. sales through Ta Chen) during the POR. The record evidence relied upon by the Department included U.S. Customs and Border Protection (CBP) data and customs entry documents which the Department placed on the record. Parties did not comment on this evidence. Because the record evidence does not call into question the parties' no shipments claims, we are rescinding this administrative review with respect to Ta Chen, Yieh Mau, Chain Chon, Tung Mung, Tang Eng, Yieh Loong, and China Steel. See Comment 21 of the accompanying *Issues and Decision Memorandum*. We have already rescinded this review with respect to Emerdex Stainless Flat–Rolled Products, Inc., Emerdex Stainless Steel, Inc., and the Emerdex Group. See *Preliminary Results*, 70 FR 46137, 46140 and Comment 22 of the accompanying *Issues and Decision Memorandum*.

Analysis of Comments Received

All issues raised in the parties' case and rebuttal briefs commenting on this administrative review are addressed in the *Issues and Decision Memorandum* from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated February 3, 2006, which is hereby adopted by this notice. A list of the issues that parties have raised and to which we have responded, all of which are in the *Issues and Decision Memorandum*, 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 the public *Issues and Decision Memorandum* that is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Use of Facts Available

In the preliminary results of review, we assigned a dumping margin based on total adverse facts available (AFA) to the following companies because they failed to respond to the Department's questionnaire: PFP Taiwan Co., Ltd., Yieh Trading Corporation, Goang Jau Shing Enterprise Co., Ltd., and Chien Shing Stainless Steel Company Ltd. That margin, 21.10 percent, is the highest appropriate dumping margin from this or any prior segment of the instant proceeding. No parties commented on the Department's decision to apply total AFA to these companies. For the reasons noted in the *Preliminary Results* notice, we have continued to assign the above–mentioned companies an AFA rate of 21.10 percent.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in calculating the dumping margins for two respondents, Chia Far and YUSCO. For additional information, see Analysis Memorandum for Chia Far Industrial Factory Co., Ltd. for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan covering the period July 1, 2003, through June 30, 2004, dated February 3, 2006, and the Analysis Memorandum for Yieh United Steel Company Ltd. for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan covering the period July 1, 2003, through June 30, 2004, dated February 3 2006.

Final Results of Review

We determine that the following weighted–average percentage margins exist for the period July 1, 2003, through June 30, 2004:

Manufacturer/Exporter/Reseller	Weighted–Average Margin (percentage)
Yieh United Steel Corporation (YUSCO)	0.00
Chia Far Industrial Factory Co., Ltd. (Chia Far)	1.36
Goang Jau Shing Enterprise Co., Ltd.	21.10
PFP Taiwan Co., Ltd.	21.10
Yieh Trading Corporation	21.10
Chien Shing Stainless Steel Company Ltd.	21.10

Assessment

The Department has determined, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. § 351.212(b)(1), where possible, the Department calculated importer–specific assessment rates for merchandise subject to this review. Where the importer–specific assessment rate is above *de minimis*, we will instruct CBP to assess the importer–specific rate uniformly on the entered customs value of all entries of subject merchandise made by the importer during the POR. Since YUSCO did not report the entered value of its sales, we calculated per–unit assessment rates for its merchandise by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the per–unit duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent *ad valorem*), in accordance with the requirement set forth in 19 C.F.R. § 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on the export prices. For the respondents receiving dumping margins based upon AFA, the Department will instruct CBP to liquidate entries according to the AFA *ad valorem* rate. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed for the company in the "Final Results of Review" section above (except if the rate for a particular company is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 12.61 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

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 section 351.305 of the Department's regulations, 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 that is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: February 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I—Issues in the Issues and Decision Memorandum

List of Issues Discussed

A. Issues with Respect to Chia Far

Comment 1: Home Market Discounts
Comment 2: Home Market Credit Expenses

Comment 3: Export Sales Classified as Home Market Sales
Comment 4: U.S. Date of Sale
Comment 5: Home Market Warranty Expenses

Comment 6: Home Market Inventory Carrying Costs
Comment 7: U.S. Indirect Selling Expenses
Comment 8: Reimbursement of Dumping Duties
Comment 9: Affiliation with Lucky Medsup, Inc.
Comment 10: Identifying the Producer

B. Issues with Respect to YUSCO

Comment 11: Unreported Affiliates
Comment 12: Unreliable Financial Statements

Comment 13: Misclassified Home Market Sales
Comment 14: Use of Total Adverse Facts Available
Comment 15: U.S. Direct Selling Expenses

Comment 16: Home Market Rebates
Comment 17: Under–Reported Production Costs
Comment 18: General and Administrative (G&A) Expenses
Comment 19: Yieh Mau's Packing Expenses

Comment 20: Commercial Quantities

C. Issues with Respect to Other Respondents

Comment 21: Investigating No–Shipments Claims
Comment 22: Reviewing the Emerdex Companies and Their Affiliates

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On August 29, 2005, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (*Initiation Notice*). The period of review (POR) is July 1, 2004 to June 30, 2005. We are preliminarily rescinding this review because there were no entries of SSSSC for consumption in the United States during the POR that are subject to review.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, Office of 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) 482–4007 or (202) 482–4929, respectively.

SCOPE OF THE ORDER:

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written

description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note'" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1:35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or–minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium–cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0:43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[5]

SUPPLEMENTARY INFORMATION:

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Background

On July 1, 2005, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSSC from Japan for the period July 1, 2004 to June 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099. In accordance with 19 CFR 351.213(b)(1), on July 29, 2005, the petitioners (*i.e.*, Allegheny Ludlum Corporation, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers) requested a review of this order with respect to Kawasaki Steel Corporation (Kawasaki) and its alleged successor–in-interest, JFE Steel Corporation (JFE).[6] The Department initiated an administrative review and issued a questionnaire to Kawasaki and JFE on August 29, 2005. *See Initiation Notice*. On October 5, 2005, JFE notified the Department that it had not made sales or exported subject merchandise during the POR and requested that the Department rescind the review. However, information obtained from the U.S. Customs and Border Protection (CBP) import database indicated the possibility of an entry of merchandise subject to this review. On November 17, 2005, we issued a letter to JFE inquiring about this particular entry.[7] Also on this date, we released, subject to an administrative protective order (APO), the entry documentation obtained from CBP to counsel for JFE and counsel for the petitioners. JFE responded to our request for information on December 5, 2005. In this submission, JFE claimed that the record contained no evidence that JFE either knew or should have known of the U.S. destination of the SSSSC at issue at the time of the sale to the first unaffiliated customer.

[6] While the Department initiated this administrative review with respect to merchandise manufactured and/or exported by Kawasaki as well as its alleged successor-in-interest, JFE, due to Kawasaki/JFE's no-shipment claim, the Department did not have the opportunity to conduct a successor-in-interest analysis in order to confirm whether, for antidumping purposes, JFE is the successor-in-interest to Kawasaki with respect to the subject merchandise. However, both the petitioners and respondent have consistently referred to JFE as the successor-in-interest to Kawasaki in their submissions to the Department with respect to this and the previous review. *See Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 18369 (April 11, 2005).

[7] The results of the data query showed no entries of subject merchandise by Kawasaki.

Analysis

After analyzing the data contained in the CBP–provided customs entry documentation and JFE's comments, we find that there is no evidence on the record that the entry in question was shipped to the United States with JFE's knowledge at the time of sale. Although APO restrictions on the CBP entry documents prevented JFE's counsel from sharing the information with his client, the arguments and supporting documentation JFE placed on the record support the contention that JFE had no knowledge that the entry in question was destined for the United States. Specifically, a production document contained in the CBP entry documentation indicates the name of the customer to whom JFE sold the SSSSC in question, and JFE's name does not appear on any of the other entry documents. Furthermore, the record includes documentation submitted for prior segments of the proceeding that support counsel's contention that the distribution channel for the sale appears to be contrary to JFE's normal selling practices. For further discussion, *see* Memorandum to Irene Darzenta Tzafolias, Acting Director, Office 2, from Kate Johnson and Rebecca Trainor, Case Analysts, regarding Stainless Steel Sheet and Strip in Coils from Japan: Rescission Analysis Memorandum. We find that there is no evidence on the record that JFE had knowledge of the U.S. destination of the SSSSC shipment in question, and therefore, had no sales/shipments to the United States during this POR. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain In–Shell Raw Pistachios from Iran*, 70 FR 7470 (February 14, 2005), and accompanying Issues and Decision Memorandum, at Comment 1.

Preliminary Rescission of Review

Because neither Kawasaki nor JFE made shipments to the United States of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding this review of the antidumping duty order on SSSSC from Japan for the period of July 1, 2004, through June 30, 2005. If the recission is confirmed in our final results, we will instruct CBP to liquidate the entry in question at the All–Others rate, 40.18 percent, as it was made by an intermediary company (*e.g.*, a reseller) not covered in this review, a prior review, or the less–than-fair–value investigation. *See, Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). The cash deposit rate for Kawasaki and JFE will continue to be the rate established in the most recently completed segment of this proceeding.

Interested parties may submit comments for consideration in the Department's final results not later than 30 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on interested parties on the Department's service list in accordance with 19 CFR 351.303(f). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results, and will publish these results in the **Federal Register**. This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 7, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–1986 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–819]

Notice of Preliminary Affirmative Countervailing Duty Determination: Certain Lined Paper Products from Indonesia

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

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain lined paper products from Indonesia. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: David Layton or David Neubacher, 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) 482–0371 or (202) 482–5823, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The petitioner in this investigation is the Association of American School Paper Suppliers and its individual members (petitioner). The following events have occurred since the publication of the Department of Commerce's (the Department) notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigations: Certain Lined Paper Products from India (C–533–844) and Indonesia (C–560–819)*, 70 FR 58690 (October 7, 2005) (*Initiation Notice*).

On October 20, 2005, we issued the countervailing duty (CVD) questionnaire to the Government of Indonesia (GOI). The questionnaire informed the GOI that it was responsible for forwarding the questionnaire to producers/exporters of certain lined paper products (CLLP). The Department also provided courtesy copies of the questionnaire to PT. Pabrik Kertas Tjiwi Kimia Tbk (TK), an Indonesian company that entered an appearance at the Department and the International Trade Commission (ITC), on the same day.

On November 8, 2005, we published a postponement of the preliminary determination of this investigation until February 6, 2006. *See Certain Lined Paper Products from India and Indonesia: Extension of Time Limit for Preliminary Determinations in the Countervailing Duty Investigations*, 70 FR 67668 (November 8, 2005).

We received responses from the GOI and TK on December 5, 2005. On December 13, 2005, the petitioner submitted comments regarding these questionnaire responses. We issued supplemental questionnaires to the GOI and TK on December 23, 2005. We received responses to the supplemental questionnaires on January 12, 2006. We issued a second supplemental questionnaire to TK on January 23, 2006, and received a response to the questionnaire on January 30, 2006. As stated in the Department's January 23rd letter[1] to TK, due to time constraints, we were unable to use the response to our 2nd supplemental in our analysis for the preliminary determination. However, we will consider TK's submitted information for the final determination.

On October 20, 2005, the petitioner submitted several new subsidy allegations. The GOI filed comments on these new allegations on October 28, 2005. We addressed these subsidy allegations in a November 17, 2005, memorandum to Susan Kuhbach, Office Director, *New Subsidy Allegation ("November 17th New Subsidy Allegations Memo")*, which is on file in the Department's Central Records Unit in Room B–099 of the main Department building ("CRU"). Because we decided to include one of these newly-alleged programs, a loan guarantee, in our investigation (as discussed in the *November 17th New Subsidy Allegations Memo*), we issued a questionnaire to each of the respondents with respect to the new program on November 28, 2005. We received a response to these questionnaires on-December 28, 2005. We issued a supplemental questionnaire to the GOI and TK and received a response to the supplemental questionnaires on January 20, 2006.

On November 28, 2005, the petitioner in the above–referenced investigation requested that the Department make an expedited finding that critical circumstances exist with respect to imports of certain lined paper products from India, Indonesia, and the People's Republic of China (PRC). On February 1, 2006, the Department found that the petitioner's allegation does not in itself provide a sufficient factual basis for making an affirmative finding. *See* Memorandum from Susan H. Kubach, Melissa Skinner and Wendy Frankel to Stephen J. Claeys: Whether Critical Circumstances Exist with Respect to Imports of Certain Lined Paper Products (February 1, 2006). The Department determined that it will monitor imports of subject merchandise from all countries under investigation and will request that U.S. Customs and Border Protection (CBP) compile information on an expedited basis regarding entries of subject merchandise to determine at the earliest possible date whether the criteria for a finding of critical circumstances exist. As we found no indication that the respondent in the Indonesian case has received subsidies inconsistent with the WTO Subsidies Agreement, we stated in the memorandum that we would issue a negative preliminary determination of critical circumstances as part of this preliminary determination.

On December 23, 2005, the petitioner submitted additional new subsidy allegations. The GOI and TK did not comment on these new allegations. The Department is continuing to analyze these allegations. Finally, the petitioner submitted comments for consideration in the preliminary determination on January 26 and 27, 2006, and the GOI submitted a letter on February 1, 2006, in response to the petitioner's above submissions.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (POI), is calendar year 2004.

Scope of the Investigation

The scope of this investigation includes certain lined paper products, typically school supplies,[2] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[3] including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear–out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this petition whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated , included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this petition are:

[1] *See* Letter from Constance Handley, Program Manager to TK, Re: Countervailing Duty Investigation: Certain Lined Paper Products from Indonesia (January 23, 2006).

[2] For purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic.

[3] There shall be no minimum page requirement for looseleaf filler paper.

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
- three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as "fine business paper," "parchment paper, " and "letterhead"), whether or not containing a lined header or decorative lines;
- Stenographic pads ("steno pads"), Gregg ruled,[4] measuring 6 inches by 9 inches;

Also excluded from the scope of these investigations are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™.[5]
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[6]
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1" wide elastic fabric band. This band is located 2–3/8" from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.[7]
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[8]

Merchandise subject to this investigation is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090 of the Harmonized Tariff Schedule of the United States (HTSUS).[9] The tariff classifications are provided for convenience and CBP purposes; however, the written description of the scope of the investigation is dispositive.

Injury Test

Because Indonesia is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended, (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to, a U.S. industry. On October 31, 2005, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United states is materially injured by reason of imports from China, India, and Indonesia. *See Certain Lined Paper School Supplies From China, India and*

[4] "Gregg ruling" consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[5] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[8] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[9] During the investigation additional HTS codes may be identified.

Indonesia, 70 FR 62329 (October 31, 2005).

Critical Circumstances

On November 28, 2005, the petitioner in the above–referenced investigations requested the Department make an expedited finding that critical circumstances exist with respect to imports of certain lined paper products from India, Indonesia, and the PRC. Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, the Department will determine, on the basis of information available to it at the time, if there is a reason to believe or suspect the alleged countervailable subsidy is inconsistent with the Subsidies Agreement. We find no indication that the respondent in the Indonesian case has received subsidies inconsistent with the WTO Subsidies Agreement, *i.e.* export subsidies, and therefore, in accordance with section 703(e)(1) of the Act, we preliminarily determine that critical circumstances do not exist with respect to imports of CLPP from Indonesia.

Subsidies Valuation Information

Allocation Period

The average useful life ("AUL") period in this proceeding as described in 19 CFR 351.524(d)(2) is 13 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross–ownership exists between the companies, and (2) the cross–owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross–owned company.

According to 19 CFR 351.525(b)(6)(vi), cross–ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross–ownership standard. (*See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).) According to the *Preamble*, relationships captured by the cross–ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) * * * Cross–ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross–ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross–ownership.

See Preamble 63 FR at 65401. Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross–ownership exists.

The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F.Supp 2d, 593, 603 (CIT 2001).

Our preliminary findings regarding cross–ownership and attribution follow.

The relationships that exist between the responding company in this investigation, TK, who is the producer of the subject merchandise, and its affiliated suppliers present the Department with a novel situation. TK is the only known Indonesian producer/exporter of subject merchandise. *See* Letter from Arnold & Porter to Secretary of Commerce, the GOI's Response to the Department's October 20, 2005 Questionnaire, at 15 (December 5, 2005) (*GOI's December 5th Response*). Based on information submitted by TK and the GOI, TK is part of a group of pulp and paper and forestry companies linked by varying degrees of common ownership involving the Widjaja family. These companies and others are commonly referred to as the Sinar Mas Group (SMG).

TK has responded to the Department's questionnaire on behalf of itself and its subsidiaries, and its parent company, PT. Purinusa Ekapersada (Purinusa). TK acknowledges that it is cross–owned with its pulp suppliers, PT. Indah Kiat Pulp & Paper Tbk (IK) and Lontar Papyrus Pulp & Paper Industry (Lontar). However, TK has not responded on behalf of these cross–owned pulp suppliers because TK maintains that neither supplies an input which is primarily dedicated to the production of the subject merchandise (*see* 19 CFR 525(b)(6)(iv)). TK's position is explained more fully below.

In response to further questions from the Department, TK has provided certain information regarding IK, Lontar, Asia Pulp & Paper Company Ltd. (APP, the parent of Purinusa), PT. Ekamas Fortuna (Ekamas, another input supplier), PT. Pindo Deli Pulp and Paper Mills (Pindo Deli, Lontar's Parent), "to be as comprehensive as possible." *See* Letter from Arnold & Porter to Secretary of Commerce, TK's Response to the Department's December 23, 2005 Questionnaire, at 2 (January 12, 2006) (*TK's January 12th Response*). TK has acknowledged its affiliation with two forestry companies in Indonesia, PT. Arara Abadi (AA) and PT. Wirakarya Sakti (WKS). These companies harvest Indonesian timber and are the suppliers of logs to IK and Lontar. *See TK's January 12th Response* at 3.

The GOI has indicated on behalf of TK that the affiliated forestry companies, AA and WKS, supply all of the logs used by TK's two pulp suppliers, IK and Lontar, and the two pulp producers only produce pulp from the hardwood logs they purchase from these two logging companies. *See GOI's January 12 Response* at 1. The GOI reports that a third forestry company, PT. Satria Perkasa Agung (SPA), has a concession to cut public timber and sells logs to WKS.

Input Products

Both TK and the GOI have argued that TK does not have to report on behalf of IK, Lontar, AA, WKS or SPA because none of these companies produces an input product that is primarily dedicated to the production of the downstream product, as specified under 19 CFR 351.525(b)(6)(iv). Specifically, respondents argue that neither the logs produced by the forestry companies nor the pulp produced from those logs by IK and Lontar can be considered "primarily dedicated" to the production of downstream product, which TK

defines specifically as the subject merchandise, CLPP. TK maintains that the affiliates' pulp production is not primarily dedicated to the production of CLPP because it is also used for most of TK's other paper production as well as other paper production and pulp sales by the pulp producers.[10] Respondents additionally claim that the logs that IK and Lontar use to produce the pulp are not an input to CLPP at all because they are used to make pulp and not paper, and TK also states that TK never buys logs.

We preliminarily determine that the pulp logs harvested by AA, WKS, and SPA, and the pulp produced by IK and Lontar are input products whose production "is primarily dedicated to the production of the downstream product" within the meanings of 19 CFR 325(b)(6)(iv). Contrary to TK's claim, the issue is not whether the potentially subsidized inputs are used exclusively or nearly exclusively for the production of the subject merchandise. Rather, it is a question of whether the inputs are primarily dedicated to the production of the downstream product. In this case, pulp logs harvested by AA, WKS, and SPA, are turned into pulp by IK and Lontar. The pulp, in turn, is used by TK to make paper and paper products, including the subject merchandise. Because pulpwood is primarily dedicated to the production of pulp, and pulp is primarily dedicated to the production of paper, it is reasonable to conclude that a subsidy to pulpwood production also subsidizes pulp production and, in turn, paper production where the producers in this chain are cross–owned. (The cross–ownership between TK, IK, Lontar, AA, WKS, and SPA is discussed further below.)

Furthermore, although we have characterized our analysis above along these lines, it is important to note that the "primarily dedicated" regulation does not *require* that the "input" and the "downstream product" be directly connected or sequentially linked in the production process. In other words, in looking at the production process as a whole, it is reasonable to find that pulpwood is primarily dedicated to the production of paper, even though that primary input must be further processed through various intermediate steps (*e.g.*, turned into pulp) before it can ultimately be made into paper. Clearly, pulpwood is used primarily to make paper in a paper–making process which includes pulp–making as an intermediate step. Moreover, it is irrelevant to this "primarily dedicated" analysis that this overall paper–making production process may be segmented among separately–incorporated entities, as the analysis of the corporate structure is addressed under the cross–ownership prong of the regulation.

TK has pointed to prior determinations by the Department to argue that the input must be primarily dedicated to production of the subject merchandise, *i.e.*, that pulp must be primarily dedicated to the production of CLPP. While we acknowledge that the Department has referred to subject merchandise in prior cases, we believe such references merely described the facts of those particular cases. TK's reading of our practice is overly narrow and would inappropriately constrain our ability to take action against subsidies that benefit a limited group of products, such as paper products. (These precedents are discussed further below.) We note further that 19 CFR 351.525(b)(6)(iv) specifically refers to an input being primarily dedicated to a "downstream product." Thus, the regulation does not limit the Department to "the subject merchandise." Nor are we limited in our analysis to just those subsidies, received by the respondent, that are tied solely to the subject merchandise. The Department's regulations at 351.525(b)(3) indicate that normally the Department will attribute domestic subsidies received by the firm to all the products sold by the firm. We only attribute a firm's subsidy to a particular product produced by that firm if the subsidy is shown to be tied to that product alone. In this instance, as the respondent itself has noted, any subsidy from the subsidized pulpwood is not tied to the production of subject merchandise alone but, rather, would benefit all of the paper products that respondent produces.

In *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) and the accompanying Issues and Decision Memorandum at Comment 15 (*PET Film from India*) and in *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004), we described inputs covered by 19 CFR 351.525(b)(6)(iv) as inputs that were primarily dedicated to the production of the "subject merchandise." However, in neither case was the Department addressing the issue of whether subsidies on the production of the input product may have benefitted downstream products other than the subject merchandise. Instead, it appears that pasta and PET film were the downstream products as well as the subject merchandise.

In the case of this investigation, based on the information on the record, we preliminarily determine that the logs harvested by AA, WKS and SPA and sold to the pulp producers, IK and Lontar, are primarily dedicated to the production of pulp, and thus to the production of the TK's downstream product, paper, which includes CLPP. Therefore, we find the condition outlined in 19 CFR 351.525(b)(6)(iv) that the production of the input product is primarily dedicated to production of the downstream product is satisfied, and we now turn to the question of whether the input suppliers are cross–owned.

Cross–Ownership

Based on information currently on the record, we preliminarily find that cross–ownership exists between TK and Purinusa, IK, Lontar, APP, Pindo Deli, Ekamas, and SPA, in accordance with 19 CFR 351.525(b)(6)(vi). For the other two pulp log suppliers, AA and WKS, TK has failed to submit information that would allow the Department to determine whether these companies satisfy the criteria for cross–ownership outlined in 19 CFR 351.525(b)(6)(vi).

Section 776(a)(2) of the Act, provides that

> * * * if an interested party or any other person – (A) withholds information that has been requested by the administering authority * * *; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782 * * *; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this subtitle.

The statute requires that certain conditions be met before the Department may resort to the facts available (FA). Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an

[10] Letter from Arnold & Porter to Secretary of Commerce, TK's Response to the Department's October 20, 2005 Questionnaire, at Exhibit TK-A-2 (*TK's December 5th Response*).

opportunity to remedy or explain the deficiency.

If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

As described below, TK has withheld certain information, failed to respond to portions of the Department's requests for information by the deadlines established or provide the complete information required, and has impeded the investigation of allegations regarding subsidized inputs. Pursuant to section 782(d) of the Act, the Department advised TK of its deficiencies, but TK and its affiliates failed to respond to the Department's request that they report certain company- specific information on the forestry companies. By not providing the Department with the requested company–specific information, TK and its affiliates prevented the Department from conducting the analysis necessary to determine whether AA and WKS meet the criteria for establishing cross–ownership as outlined in 19 CFR 351.525(b)(6)(vi).

In the original October 20, 2005, questionnaire, we requested financial statements as well as information on their respective owners, boards of directors, and managers of companies that produced and supplied inputs for the production of CLPP. TK, on the basis of the position that such information was not relevant to the investigation because these inputs were not primarily dedicated to CLPP, declined to provide the requested information in its first response. In our supplemental questionnaire dated December 23, 2005, we specifically requested financial statements and background information on the owners, board members and managers for the affiliated pulp producers and forestry companies including AA, WKS and SPA. We also stated that if TK failed to cooperate, the Department might use information that is adverse to TK's interest. TK still declined to provide the information necessary to analyze the cross–ownership criteria.

We issued a second supplemental questionnaire regarding affiliation and stumpage on January 23, 2006, in which we repeated our request for specific information on AA and WKS, again warning that if TK failed to cooperate, the Department would consider the use of adverse information.[11]

The limited information on the record shows that the respondent has acknowledged some common ownership among TK, the pulp producers, and the forestry companies. Indeed, the IK and Lontar financial statements demonstrate that pulp producers IK and Lontar have long–term pulpwood purchase agreements with AA and WKS, which suggest a very close supplier relationship, including some financing commitments on the part of IK in AA's forestry operations. While this information indicates that cross–ownership is likely to exist, the information that TK has failed to provide, despite our repeated requests, is necessary to make a definitive finding. Therefore, section 776(a)(2) of the Act requires the use of FA.

Use of an Adverse Inference

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also Statement of Administrative Action (SAA)* accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994). The statute provides, in addition, that in selecting from among the FA the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

We find that the application of an adverse inference in this determination is appropriate, pursuant to section 776(b) of the Act. As discussed above, TK has failed to cooperate by failing to comply with repeated requests for company–specific information necessary to analyze the extent of affiliation and ascertain the costs of certain input suppliers. For the reasons described above, we believe that TK did not act to the best of its ability in responding to the Department's requests for information and that, consequently, an adverse inference is warranted under section 776(b) of the Act.[12]

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, we have drawn an adverse inference from the information supplied by TK in its questionnaire responses. To determine whether AA and WKS meet the definition of cross–owned companies in accordance 19 CFR 351.525(b)(6)(vi), we have considered a combination of facts available on the record, including proprietary information on common ownership,[13] the fact that the forestry companies are the exclusive suppliers of pulp logs to IK and Lontar, TK's conceded cross–ownership with IK and Lontar, and public information regarding the pulpwood purchase agreements between IK and AA and Lontar and WKS. As discussed above, these facts, taken on their face, may not be sufficient to establish that one or more of the corporations involved can manipulate the assets of the others. However, pursuant to section 776(b) of the Act, we preliminarily determine that cross–ownership exists between TK and AA and WKS.

Because information to which we apply the adverse inference is from the current segment of the proceeding, is provided by the respondent, and is, in part, from publicly–available audited financial statements, we find that there is no further need to corroborate this information pursuant to section 776(c) of the Act.

Consequently, because we have primarily determined that TK is cross–owned with the forestry companies AA and WKS, and that pulp logs harvested by these companies are primarily dedicated to pulp and paper, subsidies

[11] In the January 23, 2006 letter, we indicated that due to the proximity of the preliminary determination deadline, we may not have time to consider any information that TK provided in its response to the January 23, 2006, supplemental questionnaire in the preliminary determination analysis, the response to which was due only one week before this preliminary determination. This preliminary determination is based in information on the record prior to January 30, 2006.

[12] *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, (June 8, 1999) and accompanying Issues and Decision Memorandum at Comment 3 (sustained *Grupp Thyssen Nirosta Gmbh v. United States*, 24 CIT 666 (2000)), *see also Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum at Comment 24.

[13] *See TK's December 5th Response* at Exhibit TK–A

received are properly attributed to the sales of AA, WKS, IK, Lontar, and TK.

Based on record information and, in the case of AA and WKS, the application of adverse inferences regarding record information, we have a preliminarily determined that TK and the input suppliers AA, WKS, SPA, IK and Lontar meet the criteria of cross–ownership in accordance with 19 CFR 351.525(b)(6)(iv) and (vi).

Benchmark for Interest Rates

Pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the government–provided loan in question, has similarities in the structure of the loan (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loan (*e.g.*, short–term v. long–term), and the currency in which the loan is denominated. In instances where no applicable company–specific comparable commercial loans are available, 19 CFR 351.505(a)(3)(ii) permits the Department to use a national average interest rate for comparable commercial loans.

In the 1990's, the GOI set–up a joint venture forest plantation, PT. Riau Abadi Lestari (RAL), with AA, a cross–owned company of TK under the Hutan Tanaman Industria (HTI) Program, described in the "Analysis of Programs" sections below. Under the terms of the program, RAL was able to secure an interest–free loan from the GOI. Information on the record stated that RAL would begin repaying the loan ten years after the initial agreement, when the plantation started to have substantial harvest.

We have no information indicating whether RAL obtained loans from any other sources in the year it received the loan. Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we used a national average interest rate for comparable commercial loans, *i.e.*, the 1994/1995 national average interest rate on investment loans, taken from the Bank of Indonesia 1994/95 Annual Report.

Benchmark for Stumpage

Section 771(5)(E)(iv) of the Act and section 351.511(a) of the CVD regulations govern the determination of whether a benefit has been conferred from subsidies involving the provision of a good or service. Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration:

> shall be determined in relation to prevailing market conditions for the good or service being provided * * * in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale.

Section 351.511(a)(2) of the regulations sets forth three categories of comparison benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. This hierarchy reflects a logical preference for achieving the objectives of the statute.

The most direct means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import). This is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.

The Department has preliminarily found that there were no market–determined prices in Indonesia upon which to base a "first tier" benchmark. According to the GOI, it owns all harvestable forest land. The GOI controls and administers 57 million hectares of public harvestable forest land while only 1.6 million hectares of Indonesia forest land is reported to be in private hands. We have not identified any private sales of standing timber in Indonesia.

The "second tier" benchmark relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in–country purchaser. As discussed in the Preamble to the regulations, the Department will

> consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government–provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.

See "Explanation of the Final Rules" of *Countervailing Duties, Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*).

We note that we have insufficient evidence of world market prices for standing timber on the record of the investigation. Consequently, we are not able to conduct our analysis under tier two of the regulations and, consistent with the hierarchy, and are preliminarily measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles.

This approach is set forth in section 351.511(a)(2)(iii) of the regulations, which is explained further in the Preamble:

> Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price–setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination.

63 FR at 65378.

The regulations do not specify how the Department is to conduct such a market principle analysis. By its nature

the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case–by-case basis.

The information submitted by the parties regarding potential benchmarks consists of Malaysian log market prices for red meranti and some other species from a report published by the International Tropical Timber Association and an Australian stumpage price. We have also examined the GOI–calculated "reference prices" for logs which the GOI states represent an average of Indonesian and international market prices. Because these reference prices are at least in part based on domestic Indonesian prices in a market where the GOI has direct influence over the supply and pricing of almost all stumpage, we do not consider them to be market–determined. Regarding the Australian stumpage price, there is insufficient information about what the stumpage price represents.

It is generally accepted that the market value of timber is derivative of the value of the downstream products. The species, dimension and growing condition of a tree largely determine the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the products produced from these logs.[14]

As a result of the similarities of forest conditions, climate, geographic position and tree species in Indonesia and Malaysia, we have selected Malaysian log prices as the most appropriate basis for evaluating whether Indonesian pulp logs are priced consistent with market principles. *See* 19 CFR 351.511(a)(2)(iii). The petitioner proposed that we use red meranti log prices in Malaysia as our benchmark. Based on our understanding that red meranti is more commonly used in the production of flooring, paneling, furniture, joinery, mouldings, plywood, turnery and carving,[15] we have instead used as an alternative, the value of pulp log exports from Malaysia during the POI, as reported in the World Trade Atlas. Malaysian pulp log export prices provide the best available measure of consistency with market principles in this instance because the prices are from private transactions between Malaysian pulp log sellers and pulp log buyers in the international market and are, thus, market–determined prices.

We find that the species used for pulp logs in Malaysia are representative of the species used in Indonesia. The GOI has indicated that acacia and eucalyptus are species commonly harvested from HTI plantations for pulp and paper production in Indonesia. *See, e.g., GOI's January 12th Response* at 17–18. TK has also noted that AA, WKS and SPA harvest off of plantations. *See id.* at 15. The Malaysian export data we have used to calculate the benchmark covers the same two species specifically identified as providing plantation pulp logs in Indonesia, acacia and eucalyptus.

We adjusted the average unit value of the Malaysian pulp logs to reflect prevailing market conditions in Indonesia. We did this by deducting amounts for the Indonesian logging operation's extraction costs and profit. These amounts were taken from the petition, as the respondents did not provide information on their costs and profits. The result of these adjustments was a derived market stumpage price that is consistent with market principles.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. GOI Provision of Logs at Less Than Adequate Remuneration

According to the GOI all harvestable forest land in Indonesia is owned by the GOI. *See GOI's January 12th Response* at 17. Numerous products, timber and non–timber, are harvested from this land. *See id.* at 2. Timber can be harvested from the GOI land under two main types of licenses: licenses to harvest timber in the natural forest and licenses to establish and harvest from plantations. The latter licenses are known as "HTI licenses." *See GOI's January 12th Response* at 8.

TK and the GOI reported that AA, WKS and SPA, forestry companies that the Department preliminarily determines to be cross–owned with downstream producers TK, IK and Lontar, harvested pulp logs from public forest concessions under an HTI license. TK did not provide information on the charges and fees actually paid by these forestry companies during the POI or the costs of harvesting pulp logs. However, the GOI provided laws that outline the types of fees and royalties assessed for the harvest of public timber in Indonesia. The government also stated that HTI licenses require the holder of an HTI license to pay an initial license fee, cash stumpage fees and a tax for land use. *See GOI's December 12th Response* at 22.

Record information indicates that the license fee to which the GOI refers is the Forest Utilization Business Permit Fee or IIUPH, a one–time fee paid at the granting of each concession. *See, e.g.*, Letter form Wiley Rein & Fielding to Secretary of Commerce, Response to Request for Information by the U.S. Dept. of Commerce, at Exhibit VI (Indonesian Ministry of Forestry presentation on Forest Fiscal Reform (Ministry of Forestry presentation) (September 22, 2005) and GOI's *January 12th Response* at Exhibit GOI–S–2, GOI Regulations No. 34, 2002 Article 1, Item 20). The Ministry of Forestry presentation indicates that the IIUPH is calculated at U.S.$3–10 per hectare for the entire area of the concession granted. Based on the information submitted by the GOI regarding the land area and agreed duration of each of the three HTI concessions held by the cross–owned companies, we have calculated the IIUPH fee on these concessions during the POI. *See GOI's January 12 Response* at Exhibit GOI–S–5 for concession approval agreements. The cost per cubic meter was so small as to be immaterial. *See* Analysis Memo at Attachment 5.

The "cash stumpage fees" for the HTI licenses appear to be the PSDH royalty fee which is paid per unit of timber harvested and may include a per unit Rehabilitation Fee (Dana Reboisasi or DR) for the Ministry of Forestry Reforestation Fund. Alternatively, HTI license holders may incur the costs of reforestation. However, we are not able to quantify these costs using the evidence on the record. Based on the fee schedules provided by the GOI, we are able to calculate PSDH royalties and DR fees for specific types of timber. *See* GOI's *January 12th Response* at Exhibit GOI–S–2 (Government Regulation No. 59 1998 (PSDH Rates); Decree of the Ministry of Industry and Trade Republic of Indonesia No. 436/MPP/Kep/7/2004: The Reference Price Decision for PSDH (Forest Royalty) Calculation on Logs and Rattan (July 9, 2004), Government Regulation No. 92 1999 (DR Fees)).

We did not have sufficient information to estimate the land use tax.

[14] *See Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004) and accompanying Issues and Decision memorandum (*Lumber First Review*) (Issues and Decision Memorandum at 16).

[15] *See* Memo from David Layton and David Neubacher, International Trade Compliance Analysts, through Constance Handley, Program Manager, to the File, Re: Calculations for the Preliminary Determination for PT. Pabrik Kertas Tjiwi Kimia Tbk (February 6, 2006) (Analysis Memo) at Attachment 7.

We preliminarily find that the GOI's provision of a good, pulp logs, to the input suppliers of the pulp and paper producers confers a countervailable subsidy on TK. The provision of the pulp logs provides a financial contribution as described in section 771(5)(D)(iii) of the Act (providing goods or services other than general infrastructure). Moreover, we preliminarily determine that this good was provided for less than adequate remuneration. *See* 771(5)(E)(iv) of the Act and section 771(5)(D)(iii) above. We also preliminarily determine that there is a *de facto* limitation of stumpage benefit to a group of industries, namely pulp and paper mills, saw mills and remanufacturers. Therefore, the subsidy is specific as a matter of fact to this group of industries as they are the predominant users of timber and receive a disproportionate amount of the subsidy. *See* sections 771(5A)(D)(iii) (II) and (III) of the Act.

To determine the existence and extent of the benefit, we compare the estimated stumpage price of Indonesian pulp logs to the stumpage benchmark derived from the average unit value of 2004 exports of acacia and eucalyptus pulp logs from Malaysia, as reported in the World Trade Atlas. We calculated an estimated cost of Indonesian pulp log stumpage relying on information reported by the GOI and facts available because respondents did not provide the actual company–specific costs of the cross–owned forestry companies. The GOI has stated that the "small wood for chips and pulp that can be cultivated on HTI plantations is typically a particular type of acacia or eucalyptus." *See GOI's January 12th Response* at 18. As TK has informed us that the cross–owned forestry companies harvest their pulp logs from HTI plantations, we are using the published PSDH rate for acacia and eucalyptus from HTIs as our estimate of the unit stumpage price applicable to AA, WKS and SPA. *See* GOI's *January 12th Response* at Exhibit GOI–S–2 (Government Regulation No. 59 1998 (PSDH Rates); Decree of the Ministry of Industry and Trade Republic of Indonesia No. 436/MPP/Kep/7/2004: The Reference Price Decision for PSDH (Forest Royalty) Calculation on Logs and Rattan (July 9, 2004), Government Regulation No. 92 1999 (DR Fees)). Because the cross–owned forestry companies have not provided their actual costs for reforestation and other maintenance obligations in the HTI concessions, we are using as a surrogate, the published Rehabilitation Fee (DR) for chip wood (GOI defines chip wood as timber of any length whose diameter is less than 29 centimeters. *See GOI's January 12th Response* Exhibit GOI–LER–1) given that the GOI has indicated that this mix of species is also used as a pulp log source. *See GOI's January 12th Response* at 17 and Exhibit GOI–S–2 (Government Regulation No. 92 1999 (DR Fees)). We added the PSDH HTI royalty and the mixed tropical hardwood DR fee together to obtain the estimated unit cost of stumpage for the cross–owned input suppliers. We have not added the allocated cost of the one–time IIUPH fee for the forest utilization business permit because the cost is negligible.

To obtain an aggregate POI benefit for Indonesian stumpage, we multiplied the estimated unit stumpage cost times the estimated volume of the log harvest which we extrapolated from proprietary information on pulp production. We then multiplied the volume of the log harvest by the per unit benchmark to get an aggregate benchmark value. The difference between these aggregate values is the total benefit which we divided by the combined sales of the cross–owned corporations (excluding affiliated sales). This calculation yields an *ad valorem* rate of 33.30% for TK.

B. Government Ban on Log Exports

The GOI provided the Department with copies of the legislation concerning the log export ban and argued that the log export ban did not influence the price of pulp logs in Indonesia because wood fiber for paper production is more commonly shipped in chip form and the export of chips is allowed.

The information provided by the respondents and relied upon for this preliminary determination does not indicate whether TK's cross–owned forestry companies purchased logs from unaffiliated parties. However, for purpose of calculating any benefit for this preliminary determination the issue is moot. Because, in calculating the countervailable subsidy conferred by the GOI's provision of logs for a less than adequate remuneration, we were limited by the data on the record and necessarily treated all pulp used by TK as subsidized. Moreover, under the methodology proposed by the petitioner (*see* Letter from Wiley Rein & Fielding to Secretary of Commerce, Re: Response to the Request for Information by the U.S. Department of Commerce, at Table 3 (*petitioner's September 22nd submission*), the amount of the benefit to TK from stumpage and the log export ban is identical. Therefore, whether TK's cross–owned forestry companies harvested or purchased logs (or harvested and purchased logs), it would not change the benefit amount given the data available for this preliminary determination.[16]

If we determine that TK's cross–owned suppliers purchased Indonesian logs from other companies in Indonesia, we intend to issue an interim analysis of the log–export ban to allow parties an opportunity to comment before our final determination.

C. Subsidized Funding for Reforestation (HTI Program)

According to the GOI, in the 1990s the government decided to use money collected as reforestation charges to create public–private joint ventures with HTI holders. Through these joint ventures, the government could learn from the private sector and attract private companies into the business, while giving the government more direct control over operations. In addition, the government decided to start a policy of transmigration, moving populations from over–crowded cities in Java to less populated areas of Indonesia. The joint venture program was used to create jobs for these displaced people.

There were two types of participants in the joint venture program: private participants that chose to partner with the GOI, and other HTI holders that were required to shift a portion of their licensed area into a public–private joint venture. In the latter case, the private company was required to contribute 60 percent of the equity and the government was required to contribute 40 percent. Despite these ownership shares, control of the joint venture was not given to the private investor, according to the GOI. Instead, government officials were placed in key positions of the joint venture such as production director and president of the board of directors, and key decisions required government approval. The joint venture also had to provide monthly and annual reports to the government on its operations. and operational issues faced by the joint venture had to be resolved on a consensus basis between the government and the private partner. In addition to the government's equity contribution, the joint venture could also apply for interest–free loans from

[16] This is consistent with the Department's approach in the Canadian lumber investigation where we found that "any conceivable benefit provided through a log ban would already be included in the denominator of the stumpage benefit based upon our selected market-based benchmark prices for stumpage." *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) and Issues and Decisions Memorandum at page 26, footnote 5.

the Reforestation Fund to establish the plantation.

In our *Initiation Notice*, we stated that we were investigating interest–free loans provided under this program. The GOI has responded that neither WKS nor SPA participated in this program, but that AA did and was a mandatory participant. The public/private joint venture they formed is called RAL. As discussed above in the "Benchmark for Interest Rates" section, the GOI provided an interest–free loan to RAL.

We preliminarily determine that this loans confers a countervailable subsidy on TK. The loan is a financial contribution as described in section 771(5)(D)(i) of the Act, which gives rise to a benefit in the amount of the difference between what the borrower paid and what the borrower would have paid on a comparable commercial loan (section 771(5)(E)(ii)). The loan program is specific because within the meaning of section 771(5A)(D)(i) because it is limited to public/private joint venture tree plantations.

To calculate the benefit, we applied the benchmark interest rate described above to the average loan balance outstanding during the POI. We divided this by the combined POI sales of the cross–owned corporations (excluding affiliated sales). This calculation yields an *ad valorem* rate of 0.01% for TK.

In its submission dated January 26, 2006, the petitioner has alleged additional subsidies in the form of the GOI–provided equity to RAL as well as the equity provided by AA.[17] Regarding the latter, the petitioner alleges that AA was entrusted or directed to provide equity that normally would have been provided by the GOI.

For this preliminary determination, we find no benefit to the subject merchandise produced by TK from these alleged equity subsidies. First, petitioner's January 26th allegations relating to the equity investments are untimely filed (*see* 19 CFR 351.301(d)(4)(i)(A)). Second, while we recognize the Department's obligation to investigate subsidies discovered in the course of an investigation (*see* 19 CFR 351.311), the information on the record does not provide a basis for considering these investments to be subsidies. Specifically, there is no information indicating that the investments gave rise to a benefit as defined in 19 CFR 351.507(a)(1) and (4). For example, if the joint venture could be considered cross–owned with the respondents, the petitioner has not clearly articulated how an equity infusion by the respondent into the joint venture conferred a benefit on the respondent. Finally, the amounts would make no difference in the countervailing duty rate even if the entire amount of each were found to be a countervailable subsidy. (*See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products From Mexico*, 50 FR 10824 (March 18, 1985) and *Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 2204 (January 14, 1998)).

[17] *See* Letter from Wiley Rein & Fielding to Secretary of Commerce, RE: Comments on Stumpage Programs, at pages 24 - 26 (January 26, 2006).

II. Programs Preliminarily Determined to Be Not Countervailable

A. Accelerated Depreciation

The Indonesian tax code allows two options for calculating depreciation for tax purposes, straight line depreciation or double declining balance depreciation (DDBD). Companies elect which method to use. Also, according to the Indonesian tax code, all companies that have tangible capital assets with a useful life of more than one year are eligible for the DDBD. It is calculated using the GOI's issued tax depreciation schedule.

Two cross–owned companies, TK and Purinusa, used double declining balance depreciation on their 2004 tax returns.

With regard to the DDBD, we examined whether this program was specific within the meaning of section 771(5A) of the Act. Use of DDBD is not contingent upon exportation or import substitution (*see* sections 771(5A)(B) and (C) of the Act). Furthermore, as noted above, the DDBD was available to any company that had tangible capital assets with a useful life of one year or more. Therefore, there is no basis to find that the applied tax credit was *de jure* specific according to section 771(5A)(D)(i) of the Act.

We next examined whether the DDBD was *de facto* specific according to section 771(5A)(D)(iii) of the Act. The GOI stated that several industries (*e.g.*, oil and gas, mining, chemicals, cement, automobiles, textiles) used this standard provision. Accordingly, we preliminarily determine that the DDBD is also not *de facto* specific. We therefore find that this program is available to all Indonesian firms regardless of geographic location or type of industry. On this basis, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we preliminary determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable during the POI.

B. Government of Indonesia Loan Guarantee to Sinar Mas/APP

In 1999, SMG/APP's affiliated bank, Bank Internasional Indonesia (BII), qualified for a GOI recapitalization program run by the Indonesian Bank Restructuring Agency (IBRA). As part of the agreement, IBRA took a majority ownership of BII and all SMG/APP debt owed to BII was restructured. A subsequent debt restructuring agreement was signed by SMG/APP, BII and IBRA the following year. In February 2001, SMG/APP negotiated a new restructuring agreement on its debt to BII. The terms of the agreement stated that BII would retain SMG/APP's debt on its books, but the GOI extended a loan guarantee on the debt. SMG/APP also agreed to put up assets equaling 145 percent of the value of the debt as collateral.

The petitioner alleges that the loan guarantee conferred a benefit on APP because the company was uncreditworthy at the time and SMG/APP would not have been able to secure similar financial terms on a commercial loan.

Based on record information, BII transferred SMG/APP's debt to IBRA in November 2001. When this occurred, the loan guarantee ceased to exist, as the guarantor became the creditor on the debt, according to TK. Therefore, the guarantee was not outstanding during the POI and conferred no benefit on TK during the POI. *See* 19 CFR 351.506(a).

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each exporter/manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
PT. Pabrik Kertas Tjiwi Kimia Tbk.	33.31%
All Others	33.31%

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, we have set the "all others" rate as TK's rate because

it is the only exporter/manufacturer investigated.

In accordance with section 703(d)(1)(B) and (2) of the Act, we are directing the CBP to suspend liquidation of all entries of certain lined paper products from Indonesia which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 6, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–1993 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India

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

SUMMARY: On August 10, 2005, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on polyethylene terephthalate film, sheet, and strip from India for the period January 1, 2003, through December 31, 2003. *See Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483 (August 10, 2005) (*Preliminary Results*). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rates for Jindal Polyester Limited/Jindal Poly Films Limited of India (Jindal) and Polyplex Corporation Ltd. (Polyplex), as discussed in the "Memorandum from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary for Import Administration concerning the Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India" (Decision Memorandum) dated concurrently with this notice and hereby adopted by this notice. The final net subsidy rates for the reviewed company are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen at (202) 482–2769 or Drew Jackson at (202) 482–4406, AD/CVD Operations, Office 4, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, the Department published its *Preliminary Results* in the **Federal Register**. We invited interested parties to comment on the results. On September 12, 2005, Dupont Teijin Films, Mitsubishi Polyester Film of America, Toray Plastics (America) and SKC America, Inc. (collectively, the petitioners), the Government of India (the GOI), as well as Polyplex and Jindal, filed case briefs. Polyplex, Jindal, and the petitioners filed rebuttal briefs on September 19, 2005.

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Jindal and Polyplex, and evaluates sixteen programs. The period of review ("POR") is January 1, 2003, through December 31, 2003.

Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Decision Memorandum. A list of the issues contained in the Decision Memorandum

is attached to this notice as Appendix I. 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 in room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly at http://www.ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual subsidy rates for the producer/exporters, Jindal and Polyplex, subject to this review. We determine the net subsidy for Jindal to be 15.07 percent *ad valorem*, and the net subsidy for Polyplex to be 9.24 percent *ad valorem*.

Assessment and Cash Deposit Instructions

We will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as indicated above. The Department will instruct CBP to collect cash deposits of estimated countervailing duties as detailed above, based upon the f.o.b. invoice price on all shipments of the subject merchandise from the producer/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India*, 67 FR 44179 (July 1, 2002). These rates shall apply to all non–reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 2003, through December 31, 2003, the assessment rates applicable to all non–reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

In the *Preliminary Results* we determined that Jindal Polyester Limited had changed its name to Jindal Poly Films Limited. We stated that if we found no reason to reverse this decision, we would update our instructions to CBP to reflect this name change. No parties commented on this and no other new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding. Thus we plan to issue instructions to CBP to reflect this name change.

This notice also serves as a 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.

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

Dated: February 6, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

I. List of Issues

Comment 1: Whether the Advance License Program Provides a Countervailable Subsidy

Comment 2: Sales Tax Incentives

Comment 3: Whether the Department Should Exclude an IDBI Loan in Calculating the Short–Term Benchmark

Comment 4: Whether the Department Should Consider a Certain EPCGS License as a Grant or as an Interest–Free Loan

Comment 5: Calculation of the Countervailing Duty Rate Under the Advance License Program

Comment 6: Interest Rates Used to Calculate the Countervailing Duty Rate Under the EPCGS Program

Comment 7: The Proper Allocation of EPCGS and EOU Benefits

Comment 8: Whether the Cash Deposit Rate Should Include the 80 HHC Tax Exemption Countervailing Duty Rate

Comment 9: Inclusion of Benefits Received by Non–Producing Units in Calculating Jindal's EOU Countervailing Duty Rate

Comment 10: Calculation of Jindal's Countervailing Duty Rate Under the EOU Program

II. Background Information and Subsidies Valuation Information

III. Subsidies Valuation Information

IV. Analysis of Programs

A. Programs Conferring Subsidies

1. Pre–Shipment and Post–Shipment Export Financing
2. Duty Entitlement Passbook Scheme (DEPS)
3. Export Promotion Capital Goods Scheme (EPCGS)
4. Income Tax Exemption Scheme 80 HHC
5. Capital Subsidy
6. Sales Tax Incentives

I. State of Uttaranchal/Uttar Pradesh

II. State of West Bengal

III. State of Gujurat

IV. State of Madhya Pradesh

V. State of Maharashtra

VI. State of Himachal Pradesh

B. Programs Determined to Be Not Used

1. Export Oriented Units Programs not used

A. Duty Drawback on Furnace Oil Procured from Domestic Oil Companies

2. Duty Entitlement Passbook Scheme (DEPS)
3. The Sale and Use of Special Import Licenses (SILs) for Quality and SILs for Export Houses, Trading Houses, Star Trading Houses, or Superstar Trading Houses (GOI Program)
4. Exemption of Export Credit from Interest Taxes
5. Loan Guarantees from the GOI
6. Capital Incentive Schemes (SOM and SUP Program)
7. Waiving of Interest on Loan by SICOM Limited (SOM Program)
8. Infrastructure Assistance Schemes (State of Gujarat Program)

V. Analysis of Comments

[FR Doc. E6–1989 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020706A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of exempted fishing permit (EFP) application; announcement of the intent to issue the EFP; request for comments.

SUMMARY: NMFS announces the receipt of applications, and the intent to issue EFPs for vessels participating in an observation program to monitor the incidental take of salmon and groundfish in the shore-based component of the Pacific whiting fishery. The EFPs are necessary to allow trawl vessels fishing for Pacific whiting to delay sorting their catch, and thus to retain prohibited species and groundfish in excess of cumulative trip limits, until the point of offloading. These activities are otherwise prohibited by Federal regulations.

DATES: Comments must be received by February 28, 2006. The EFPs will be effective no earlier than March 15, 2006, and would expire no later than May 31, 2007, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

ADDRESSES: Send comments or requests for copies of the EFP applications to Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115 0070 or e-mail *2006WhitingEFP.nwr@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10 megabyte file size.

FOR FURTHER INFORMATION CONTACT: Becky Renko at (206)526 6110.

SUPPLEMENTARY INFORMATION: This action is authorized by the Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745, which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited. At the November 2005 Pacific Fishery Management Council (Pacific Council) meeting in San Diego, California, the Pacific Council received applications for these EFPs from Del Mar Seafoods, Inc. and the States of Washington, Oregon, and California. An opportunity for public testimony was provided during the Pacific Council meeting. The Pacific Council recommended that NMFS issue the EFPs, as requested by Del Mar Seafoods Inc. and the States, and forwarded the EFP applications to NMFS. NMFS is working with Del Mar Seafoods, Inc., the States, and participants who will be fishing under the EFP to resolve funding, retention, and monitoring issues affecting this EFP.

Issuance of these EFPs, to about 40 vessels, will continue an ongoing program to collect information on the incidental catch of salmon and groundfish in whiting harvests delivered to shore-based processing facilities by domestic trawl vessels. Because whiting flesh deteriorates rapidly once the fish are caught, whiting must be minimally handled and immediately chilled to maintain the flesh quality. As a result, many vessels dump catch directly or near directly into the hold and are unable to effectively sort their catch.

The issuance of EFPs will allow vessels to delay sorting of groundfish catch in excess of cumulative trip limits and prohibited species until offloading. These activities are otherwise prohibited by regulation. In 2004 and 2005, NMFS provided electronic monitoring systems to catcher vessels fishing under the whiting EFP as part of a pilot study to evaluate if these systems would be useful tools to verify retention and/or document discard at sea. Based on the results from the 2004 and 2005 pilot studies, electronic monitoring systems may be useful tools to monitor retention and discard at sea. NMFS will continue to evaluate the usefulness of electronic monitoring tools during the 2006 whiting EFP and once again intends to provide electronic monitoring systems to participating vessels.

Delaying sorting until offloading will allow samplers located at the processing facilities to collect incidental catch data for total catch estimates and will enable whiting quality to be maintained. Without an EFP, groundfish regulations at 50 CFR 660.306(a)(2) require vessels to sort their prohibited species catch and return them to sea as soon as practicable with minimum injury. Similarly, regulations at 50 CFR 660.306(a)(10) prohibit the retention of groundfish in excess of the published trip limits.

In addition to providing information that will be used to monitor the attainment of the shore-based whiting allocation, information gathered through these EFPs is expected to be used in a future rulemaking. In the near future, NMFS is considering implementing, through Federal regulation, a monitoring program for the shore-based Pacific whiting fleet. The Pacific Council recommended using EFPs only until a permanent monitoring program could be developed and implemented. NMFS is developing a preliminary draft Environmental Assessment that includes a range of alternative monitoring systems for the shore-based Pacific whiting fishery. At its June 2004 meeting, the Pacific Council considered a preliminary range of alternatives for a shore-based fishery monitoring program. Based on information learned during the 2004 and 2005 EFPs, NMFS is revising that range of alternatives and is tentatively scheduled to present a revised range of alternatives to the Pacific Council at their April 2006 meeting. Provided the Pacific Council adopts the revised range of alternatives for public review in April, the Pacific Council is tentatively expected to make final recommendations to NMFS regarding this monitoring program at its June 2006 meeting. NMFS would then publish a proposed rule, which would include a public comment period, followed by a final rule implementing a monitoring program before the start of the 2007 shore-based primary Pacific whiting season.

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

Dated: February 7, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–1916 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020206A]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization (LOA) to take 3 species of marine mammals incidental to missile launch operations from San Nicolas Island, CA (SNI) has been issued to the Naval Air Warfare Center Weapons Division (NAWC-WD), Point Mugu, CA.

DATES: This authorization is effective from February 3, 2006, through February 2, 2007.

ADDRESSES: The application and LOA are available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead or Layne Bolen, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to target missile operations on San Nicolas Island, CA, were published on September 2, 2003 (68 FR 52132), and remain in effect until October 2, 2008.

Pursuant to these regulations, NMFS has issued an LOA to the NAWC-WD. Issuance of the LOA is based on findings made in the preamble to the final rule that the total takings by this project will result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, given the implementation of the mitigation requirements contained in the LOA, the resultant incidental harassment will have no more than a negligible impact on the affected marine mammal stocks or habitats and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring and reporting requirements. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements and receipt of reports required by the LOA.

Dated: February 3, 2006.

James H. Lecky,

Director Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–1975 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013006B]

International Whaling Commission; 58th Annual Meeting; Nominations

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

ACTION: Notice; request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the June 2006 International Whaling Commission (IWC) annual meeting. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

DATES: All written nominations for the U.S. Delegation to the IWC annual meeting must be received by March 6, 2006.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Bill Hogarth, U.S. Commissioner to the IWC, and sent via post to: Cheri McCarty, National Marine Fisheries Service, Office of International Affairs, 1315 East West Highway, SSMC3 Room 12603, Silver Spring, MD 20910. Prospective Congressional advisors to the delegation should contact the Department of State directly.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, 301–713–9090, ext. 183.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

The IWC is hosting its 58th annual meeting from June 16–20, 2006, in St. Kitts & Nevis.

Dated: February 7, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–1977 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020706B]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Snapper Grouper Committee, Ecosystem-Based Management Committee, Scientific and Statistical Selection Committee (CLOSED SESSION), Advisory Panel Selection Committee (CLOSED SESSION), Protected Resources Committee, Joint Executive/Finance Committees, Information and Education Committee, and a meeting of the full Council.

DATES: The meeting will be held on February 27 through March 3, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Jekyll Island Club, 371 Riverview Drive, Jekyll Island, GA 31527; telephone: (1–800) 535–9547 or (912) 635–2600, fax: (912) 635–2818.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407- 4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Snapper Grouper Committee Meeting: February 27, 2006, 1:30 p.m. – 5:30 p.m. and February 28, 2006, from 8:30 a.m. – 12 noon

The Snapper Grouper Committee will receive a report and recommendations from the Law Enforcement Committee and Advisory Panel regarding Amendments 14 and 15 to the Snapper Grouper Fishery Management Plan. Amendment 14 addresses the use marine protected areas for deepwater snapper grouper species; Amendment 15 addresses rebuilding schedules for snowy grouper, golden tilefish, black sea bass, and red porgy; recreational sale; permit issues (incorporation and 60-day renewal), size limits for queen triggerfish, and fishing year changes for golden tilefish.

The Committee will develop recommendations on the final list of alternatives for both draft Amendment 14 and draft Amendment 15. In addition, the Committee will review and revise appointments to the Oculina Evaluation Team and receive presentations from NOAA's National Marine Fisheries Service regarding the use of electronic logbooks in the snapper grouper fishery, and evaluation of paper logbooks versus trip tickets in both the snapper grouper and mackerel fisheries.

2. Ecosystem-Based Management Committee Meeting: February 28, 2006, 1:30 p.m. – 6 p.m. and March 1, 2006, 8:30 a.m. – 12 noon

The Ecosystem-Based Management Committee will receive an update on the development of the Fishery Ecosystem Plan (FEP), and presentations on the following:

Mapping data from the Atlantic Coastal Cooperative Statistics Program (ACCSP), ocean observing systems and fisheries oceanography, NOAA's Ocean Exploration Program, and the Council's Habitat and Ecosystem web page and internet mapping system. The Committee will participate in an interactive demonstration of the Council's Ecosystem/Internet Mapping website. In addition, the Committee will review and revise a list of items to be included in the Council's FEP Comprehensive Amendment.

3. Advisory Panel Selection Committee Meeting: March 1, 2006, 1:30 p.m. – 3:30 p.m. (CLOSED SESSION)

The Advisory Panel Selection Committee will meet to review applications for open seats on the advisory panels and develop recommendations for Council.

4. Scientific and Statistical Selection Committee Meeting: March 1, 2006, 3:30 p.m. until 5 p.m. (CLOSED SESSION)

The Scientific and Statistical Selection Committee will meet to review policy recommendations, review applications for members of the SSC, and develop recommendations for the Council.

5. Protected Resources Committee Meeting: March 2, 2006, 8:30 a.m. until 10:30 a.m.

The Protected Resources Committee will receive a presentation on the feasibility of offshore wind energy production off the coast of Georgia, receive an update from NOAA Fisheries Southeast Regional Office's Protected Resources Division, and an update on the Council's accomplishments.

6. Joint Executive/Finance Committee Meeting: March 2, 2006, 10:30 a.m. – 12 noon

The Executive Committee will meet jointly with the Finance Committee and receive updates on the Council's Calendar Year (CY) 2006 budget and activities schedule and the President's Fiscal Year 2007 budget. The Committees will also review a draft Regional Operating Agreement between the Council and NOAA's National Marine Fisheries Service's Southeast Regional Office regarding fishery management plan development teams. The Committees will also discuss attendance at upcoming workshops for the Southeast Data, Assessment, and Review (SEDAR) stock assessment process.

7. Information and Education Committee Meeting: March 2, 2006, 1:30 p.m. – 3 p.m.

The Information and Education Committee will meet to review and develop recommendations on the Council's website redesign and upgrade and review the Council's current newsletter regarding options for printing and distribution.

8. Council Session: March 2, 2006, 3 p.m. – 5:30 p.m. and March 3, 2006, 8:30 a.m. – 12 noon

From 3 p.m. – 3:15 p.m., the Council will call the meeting to order, adopt the agenda, and approve the December 2005 meeting minutes.

From 3:15 p.m. – 4:15 p.m., the Council will receive a presentation from the U.S. Coast Guard regarding the use of Automatic Identification Systems (AIS) and the mandatory use aboard commercial fishing vessels.

From 4:15 p.m. – 5 p.m., the Council will receive a presentation regarding a proposed Navy sonar range off the coast of North Carolina.

From 5 p.m. – 5:15 p.m., the Council will hear a report from the Protected Resources Committee and take other action as appropriate.

From 5:15 p.m. – 5:30 p.m., the Council will hear a report from the Ecosystem-Based Management Committee and take action as appropriate.

Council Session: March 3, 2006, 8:30 a.m. – 12 noon.

From 8:30 a.m. – 9 a.m., the Council will receive a report from the Snapper Grouper Committee and take action as appropriate.

From 9 a.m. – 9:30 a.m., the Council will receive a report from the Joint Executive/Finance Committees and take action as appropriate.

From 9:30 a.m. – 9:45 a.m., the Council will receive a report from the Scientific and Statistical Selection Committee and take action as appropriate.

From 9:45 a.m. – 10 a.m., the Council will receive a report from the Advisory Panel Selection Committee and take action as appropriate.

From 10 a.m. – 12 noon, the Council will receive a report on the Council Chairmen's/NMFS Leadership meetings and receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 24, 2006.

Dated: February 8, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–1968 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 060202024–6024–01; I.D. 012506C]

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notice.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2006, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

DATES: Effective February 13, 2006.

ADDRESSES: Office of International Affairs, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, (301) 713–9090.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2005 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2006 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2006 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: February 7, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–1973 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 001215353–6012–06]

Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT): Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: Pursuant to the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting Facilities, Planning and Construction Funds account.

DATES: Applications must be received on or before 5 p.m. Eastern Standard Time, March 15, 2006. Applications submitted by facsimile or electronic means are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Time, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after the deadline.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4096, U.S. Department of

Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

Electronic Access

The full funding opportunity announcement for the PEACESAT Fiscal Year (FY) 2006 grant cycle is available through *http://www.Grants.gov* or by contacting the PTFP office at the address noted above. Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/otiahome/peacesat.html*).

Funding Availability

Funding for the PEACESAT Program is provided pursuant to the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Public Law 109–108 and Public Law 106–113, "The Consolidated Appropriations Act, Fiscal Year 2000." Public Law 106–113 provides "That, hereafter, notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds."

The Congress has appropriated $20 million for FY 2006 Public Telecommunications Facilities Program (PTFP) and PEACESAT awards. Of this amount, NTIA anticipates making a single award for approximately $500,000 for the PEACESAT Program in FY 2006. For FY 2005, NTIA issued one award for the PEACESAT project in the amount of $499.415.

Statutory and Regulatory Authority

The PEACESAT Program was authorized under Public Law 100–584 (102 Stat. 2970) and also Public Law 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Applications submitted in response to this solicitation for PEACESAT applications are exempt from the PTFP regulations at 15 CFR part 2301.

Catalog of Federal Domestic Assistance: N/A.

Eligibility

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Evaluation and Selection Process

Each eligible application is evaluated by three outside reviewers who have demonstrated expertise in the programmatic and technological aspects of the application. The reviewers will evaluate applications according to the criteria in the following section and provide individual written ratings of each application.

State Single Point of Contact (SPOC) offices, per Executive Order 12372, may provide recommendations on applications under consideration.

The Public Broadcasting Division (PBD) administers the PEACESAT Program and places a summary of applications received on the Internet. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. Listing does not preclude subsequent return of the application or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

The reviewer's ratings are provided to the PBD staff and a rank order is prepared according to score. The PBD program staff prepares summary recommendations for the Director of the Public Broadcasting Division. These recommendations incorporate the outside reviewers' ratings and incorporate analysis based on the degree to which a proposed project meets the PEACESAT Program purposes and cost eligibility. Staff recommendations also consider (1) project impact, (2) the cost/benefit of a project, and (3) whether the reviewers consistently applied the evaluation criteria. The analysis by program staff is provided to the Director of the Public Broadcasting Division in writing.

The Director considers the summary recommendations prepared by program staff in accord with the funding priorities and selection factors referenced in the next section and recommends the funding order of the applications for the PEACESAT Programs in three categories: "Recommended for Funding," "Recommended for Funding If Funds Are Available," and "Not Recommended for Funding." The Director presents recommendations to the Associate Administrator, Office of Telecommunications and Information Applications (OTIA), for review and approval.

Upon review and approval based on the funding priorities and selection factors referenced in the next section by the Associate Administrator of the Office of Telecommunications and Information Applications (OTIA), the Associate Administrator's and the Director's recommendations are presented to the Selecting Official, the Assistant Secretary for Communications and Information, who is the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award, taking into consideration the outside reviewers' ratings, the Director's recommendations, and the degree to which the slate of applications, taken as a whole, satisfies the PEACESAT Programs' stated purposes.

The selected applications are negotiated between NTIA staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what NTIA is considering funding. Negotiation does not ensure that an award will be made. When the negotiations are completed, the Director recommends final selections to the NTIA Administrator, applying the same selection factors described above. The Administrator then makes the final award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the stated purposes for the PEACESAT Program.

Funding Priorities and Selection Factors

The PBD Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the OTIA Associate Administrator for review and approval. The Director's recommendations and the OTIA Associate Administrator's review and approval will take into account the following selection factors:

(1) The program staff evaluations, including the outside reviewers.

(2) Whether the applicant has any current NTIA grants.

(3) The geographic distribution of the proposed grant awards.

(4) The availability of funds.

Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator.

The Administrator makes final award selections taking into consideration the

Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes.

No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

After final award selections have been made, the Agency will notify the applicant of one of the following actions:

(1) Selection of the application for funding, in whole or in part;

(2) Deferral of the application for subsequent consideration;

(3) Rejection of the application with an explanation and the reason, if an applicant is not eligible or if the proposed project does not fall within the purposes of the PEACESAT program.

Evaluation Criteria

Each eligible application that is timely received, is materially complete, and proposes an eligible project will be considered under the evaluation criteria described here. The first three criteria—1. Meeting the Purposes of the PEACESAT Program, 2. Extent of Need for the Project, and 3. Plan of Operation for the Project—are each worth 25 points. Criterion 4, Budget and Cost Effectiveness, is worth 20 points. Criterion 5, Quality of Key Personnel, is worth 5 points.

Criterion 1. Meeting the Purposes of the PEACESAT Program, including (i) how well the proposal meets the objectives of the PEACESAT Program and (ii) how the objectives of the proposal further the purposes of the PEACESAT Program.

Criterion 2. Extent of Need for the Project. The extent to which the project meets the needs of the PEACESAT Program, including consideration of: (i) The needs addressed by the project; (ii) how the applicant identifies those needs; (iii) how those needs will be met by the project; and (iv) the benefits to be gained by meeting those needs.

Criterion 3. Plan of Operation for the Project, including (i) the quality of the design of the project; (ii) the extent to which the plan of management is effective and ensures proper and efficient administration of the project; (iii) how well the objectives of the project relate to the purposes of the PEACESAT Program; (iv) the quality of the applicant's plan to use its resources and personnel to achieve each objective; and (v) how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapped condition.

Criterion 4. Budget and Cost Effectiveness. The extent to which (i) the budget is adequate to support the project; and (ii) costs are reasonable in relation to the objectives of the project.

Criterion 5. Quality of Key Personnel the applicant plans to use on the project, including (i) the qualifications of the project director if one is to be used; (ii) the qualifications of each of the other key personnel to be used in the project; (iii) the time that each person will commit to the project; and (iv) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapped condition. In this section, "qualifications" refers to experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

Cost Sharing Requirements

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the December 13, 2005 Notice regarding the PTFP Program.

Intergovernmental Review

PEACESAT applications are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the first two pages of the Application Form, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The names and addresses of the SPOC offices are listed on the PTFP web site and at the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Universal Identifier

All applicants (nonprofit, state, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000 **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) is applicable to this solicitation.

Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PEACESAT application form has been approved under OMB Control Nos. 0348–0040, 0348–0043, and 0348–0034.

Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. E6–2007 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

February 8, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a petition for a determination that certain 100 percent cotton, 3- or 4-thread twill weave, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA..

SUMMARY: On February 7, 2006, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of B*W*A of New York, New York, alleging that certain 100 percent cotton, 3- or 4-thread twill weave, flannel fabrics, of yarn-dyed, combed and ring spun single yarns, of the specifications detailed below, classified in subheading 5208.43.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that woven cotton shirts, blouses, and dressing gowns of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by February 28, 2006 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Maria K. Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On February 7, 2006, the Chairman of CITA received a petition on behalf of B*W*A of New York, New York, alleging that certain 100 percent cotton, 3- or 4-thread twill weave, flannel fabrics, of yarn-dyed, combed and ring spun single yarns, of the specifications detailed below, classified HTSUS subheading 5208.43.0000, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for woven cotton shirts, blouses and dressing gowns that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Fiber Content:	100% Cotton
Weight:	98 - 150 g/m2
Thread Count:	39 - 66 warp ends per centimeter; 27 - 39 filling picks per centimeter;
Yarn Number:	84 - 86 metric warp and filling, ring spun, combed;
Weave:	3- or 4-thread twill;
Finish:	Of yarns of different colors; plaids, checks and stripes, napped on both sides, and pre-shrunk.

The petitioner emphasizes that the fabrics in question are made of yarn dyed with fiber reactive dyes, that are combed and ring spun, and that the finished fabric must be napped on both sides, and pre-shrunk.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than February 28, 2006. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th St. N..W. and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in Room 3100 in the Herbert Hoover Building, 14th St. N.W. and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.06–1370 Filed 2–9–06; 2:29 pm]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, February 23, 2006; 10 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Flammability Standard for Upholstered Furniture—The Commission staff will brief the Commission on regulatory options to address residential upholstered furniture flammability.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: February 9, 2006.

Todd A. Stevenson,

Secretary.

[FR Doc. 06–1372 Filed 2–9–06; 2:35 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–HA–0015]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In accordance with Seciton 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 14, 2006.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to TRICARE Management Activity—Aurora, Program Requirements Division, 16401 E. Centretech Parkway, ATTN: John Leininger, Aurora, CO 80011–9066 or call TRICARE Management Activity, Program Requirements Division at (303) 676–3613.

Title Associated Form, and OMB Number: CHAMPUS Claim Form—Patient's Request for Medical Payment; DD Form 2642; OMB Number 0720–0006.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program. The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and reimbursement for the medical services received.

Affected Public: Individual or households.

Annual Burden Hours: 600,000.

Number of Respondents: 2,400,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by beneficiaries under the TRICARE Program. TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty Uniform Services members and decreased sponsors, retirees and their dependents, dependents of Department of Homeland Security (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. DD Form 2642 is used solely by TRICARE/CHAMPUS beneficiaries to file for reimbursement of costs paid to provider and suppliers for authorized health care services or supplies.

Dated: January 30, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1268 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–HA–0014]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the extension of an existing public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 14, 2006.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Assistant Secretary of Defense for Health Affairs (OASD), Tricare Operations Division, ATTN: Colonel Gary Martin, 5111 Leesburg Pike, Falls Church, VA 22041–3206, or call TRICARE Operations Division, at 703–681–0947.

Title; Associated Form; and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0222.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Business or other profit; Not-for-profit institutions.

Annual Burden Hours: 42,500.

Number of Respondents: 850,000.

Responses Per Respondent: 1.

Average Burden Per Response: 3 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical professionals who provide dental services to the general public. Members of the Armed Forces of the United States are the recipients of the dental examination. The Armed Forces Reserve component members must maintain their dental health at a predetermined level so problems do not occur when they are deployed to a military operation. Reserve component members usually receive their dental care from civilian dentists; therefore it would be civilian dentists who would complete the form. Following a routine dental examination, the dentist would review the categories listed on the form and circle the number corresponding to the condition that best describes the dental health of the patient. If dental problems can be identified, they are indicated on the form. Once the form is complete and the dentist signs it, the members take the form back to the organization to which they belong. The information on the form is logged into a databse. The form is kept in the health record until no longer needed and then it is destroyed.

Dated: January 30, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1269 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. USAF–2006–0002]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 15, 2006.

Title and OMB Number: Air Force Recruiting Information Support System (AFRISS); OMB Control Number 0701–0150.

Type of Request: Extension.

Number of Respondents: 1,300,000.

Responses Per Respondent: 1.

Annual Responses: 1,300,000.

Average Burden Per Response: 64 minutes (approximately).

Annual Burden Hours: 1,386,413.

Needs and Uses: Air Force Recruiting Service requires the collection of specific information on prospective Air Force enlistees (prospective Air Force enlistees include Active, Guard, and Reserve) entering the Air Force. The information is used to create the initial personnel record, prescreen and qualify enlistees fit for service and ultimately induction. The information is also collected to process security clearances and to record metrics to be used for demographics/market research and system performance.

Affected Public: Individuals or households.

Frequency: On occasion.

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

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 30, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1270 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0010]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 15, 2006.

Title, Form and OMB Number: Applicant Background Survey; NGA

Form 1020–1; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 5,000.

Responses Per Respondent: 1.

Annual Responses: 5,000.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 25,000.

Needs and Uses: This information collection requirement is necessary to obtain and record pertinent information on applicants to determine if our recruitment efforts are reaching all segments of the country, as required by law. This information is not available from other sources. The information is used for evaluating recruitment only and plays no part in the selection process.

Affected Public: Individuals or households; Federal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit concerns, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposed should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: February 6, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1271 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2006–OS–0011]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 15, 2006.

Title, Form and OMB Number: Applicant Background Questionnaire; NSA Form XXX; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 2,500.

Responses Per Respondent: 1.

Annual Responses: 2,500.

Average Burden Per Response: 8 minutes.

Annual Burden Hours: 20,000.

Needs and Uses: This information collection requirement is necessary to obtain and record pertinent information on applicants to determine if our recruitment efforts are reaching all segments of the country, as required by law. This information is not available from other sources. The information is used for evaluating recruitment only and plays no part in the selection process.

Affected Public: Individuals or households; Federal government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: February 6, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1272 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0012]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 15, 2006.

Title and OMB Number: Department of Defense Education Activity (DoDEA) Evaluation and Program Implementation Surveys—Generic; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 21,644.

Responses per Respondent: 1.

Annual Responses: 21,644.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 3,607.

Needs and Uses: The Department of Defense Education Activity (DoDEA) is a DoD field activity operating under the direction, authority, and control of the Deputy Under Secretary of Defense, Military Community and Family Policy. The DoDEA operates 223 schools in 16 districts located in 13 foreign countries, seven states, Guam, and Puerto Rico. The DoDEA has a need to do one time evaluations of students and sponsors in the areas of educational program implementation, education school based decisions (i.e., school calendar), and general school functions. Collection of this data will be conducted through paper-pencil surveys, interviews, focus groups, and online surveys.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: February 6, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1273 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0013]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 15, 2006.

Title, Form, and OMB Number: Appointment of Chaplains for the Military Services; DD Form 2088; OMB Control Number 0704–0190.

Type of Request: Extension.

Number of Respondents: 200.

Responses Per Respondent: 5.

Annual Responses: 1,000.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 750.

Needs and Uses: The information collection will provide certification that a Religious Ministry Professional is professionally qualified to become a chaplain.

Affected Public: Not-for-profit institutions.

Frequency: On occasion; Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submission available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: February 6, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1274 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Federal Acquisition Regulation; Information Collection; Novation/Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning novation/change of name requirements. This OMB clearance expires on June 30, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 14, 2006.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Respondents: 1,000.
Responses Per Respondent: 1.
Annual Responses: 1,000.
Hours Per Response: .458.
Total Burden Hours: 458.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: February 6, 2006.

Gerald Zaffos

Director, Contract Policy Division.

[FR Doc. 06–1287 Filed 2–10–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149]

Federal Acquisition Regulation; Information Collection; Subcontract Consent

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontract Consent. This OMB Clearance expires on June 30, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 14, 2006.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective to consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Number of Respondents: 4,252.
Responses Per Respondent: 3.61.
Total Responses: 15,349.
Average Burden Hours Per Response: .87.
Total Burden Hours: 13,353.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: February 7, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 06–1300 Filed 2–10–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Public Meeting of the Defense Advisory Committee on Military Compensation

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: On Tuesday, February 28, 2006, from 10 a.m. to 12 p.m., the Committee will discuss various aspects of the military pay and benefits system, such as compensation that recognizes danger, risk, and hardship that members experience; the appropriate balance between in-service and post-service compensation; the appropriate balance between cash and non-cash compensation; and the structure, level, and relevance of compensation for the Reserve and Guard, considering their changed utilization. Members of the Public may attend but participation in Committee discussions by the Public will not be permitted. Written submissions of data, information, and views may be sent to the Committee contact person at the address shown. Submissions should be received by close of business February 27, 2006 to allow time for distribution to the committee members prior to the meeting. Persons attending are advised that the Committee is not responsible for providing access to electrical outlets.

DATES: Tuesday, February 28, 2006, from 10 a.m. to 12 p.m.

Location: Hyatt Regency Crystal City at Reagan National Airport, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: LTC Janet Fenton at 703–699–2700, Designated Federal Official, Defense Advisory Committee on Military Compensation, 2521 S. Clark Street, Suite 755, Arlington, VA 22202.

Name of Committee: The Defense Advisory Committee on Military Compensation (DACMC).

Committee Membership: Chairman: ADM (Ret) Donald L. Pilling, Members: Dr. John P. White; Gen (Ret) Lester L. Lyles; Mr. Frederic W. Cook; Dr. Walter Oi; Dr. Martin Anderson; and Mr. Joseph E. Jannotta.

General Function of the Committee: The Committee will provide the Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness), with assistance and advice on matters pertaining to military compensation. The Committee will examine what types of military compensation and benefits are the most effective for meeting the needs of the Nation.

Dated: February 7, 2006.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 06–1266 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Inspector General (OIG) is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 15, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General,

Department of Defense, 400 Army-Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 7, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files (June 16, 2003, 68 FR 35636).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: "Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: "5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, as amended; DoD 5400.11–R, Department of Defense Privacy Program; 5 U.S.C. 552, The Freedom of Information Act, as amended; DoD 5400.7–R, DoD Freedom of Information Act Program; DoD IG Instruction 5400.7; and DoD IG Instruction 5400.7; and DoD IG Instruction 5400.11."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: "Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704."

* * * * *

NOTIFICATION PROCEDURE:

Delete first paragraph and replace with: "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General DoD, 400 Army Navy Drive, Arlington, VA 22202–4704."

* * * * *

RECORD ACCESS PROCEDURES:

Delete first paragraph and replace with: "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704."

* * * * *

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files.

SYSTEM LOCATION:

Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Office of the Inspector General (OIG), DoD and other activities receiving administrative FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act requests and/or records have been referred by other Federal agencies to the OIG for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subject of such requests and appeals, and/or the OIG personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, i.e., original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 5 U.S.C. 552, as amended; DoD 5400.11–R, Department of Defense Privacy Program; 5 U.S.C. 552, The Freedom of Information Act, as amended; DoD 5400.7–R, DoD Freedom of Information Act Program; DoD IG Instruction 5400.7; and DoD IG Instruction 5400.11.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing FOIA and Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; for amendment to records made under the Privacy Act and to document OIG actions in response to these requests; and for assisting the Office of the Inspector General, DoD in carrying out any other responsibilities under the FOIA.

Also, information may be provided to the appropriate OIG element when further action is needed to verify assertions of the requester or to obtain permission to release information obtained from sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be provided to other Federal agencies and state and local agencies when it is necessary to coordinate responses or denials.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name, subject matter, date of document, and request number.

SAFEGUARDS:

Records are stored in locked security containers accessible only to authorized personnel.

RETENTION AND DISPOSAL:

FOIA and Privacy Act paper records that are granted in full are destroyed 2 years after the date of reply. Paper records that are denied in whole or in part, no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated, are destroyed 6 years after final FOIA action and 5 years after final Privacy Act action, or three years after final adjudication by courts, whichever is later. Electronic records are deleted within 180 days or when no longer needed to support office business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individuals on whom records are maintained and official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA or Privacy Act case record, Office of the Inspector General hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 06–1263 Filed 2–10–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 15, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6503.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 7, 2006.

L.M. Bynum,

OSD **Federal Register** *Liaison Officer, Department of Defense.*

A0055 USEUCOM

SYSTEM NAME:

Europe Command Travel Clearance Records (August 23, 2004, 69 FR 51817).

CHANGES:

* * * * *

SYSTEM NAME:

Delete system identifier and replace with: "A0055 USEUCOM DoD".

* * * * *

A0055 USEUCOM DoD

SYSTEM NAME:

Europe Command Travel Clearance Records.

SYSTEM LOCATION:

Headquarters, United States European Command, Computer Network Operations Center, Building 2324, P.O. Box 1000, APO AE 09131–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, DoD civilians, and non-DoD personnel traveling under DoD sponsorship (e.g., contractors, foreign nationals and dependents) and includes temporary travelers within the United States European Command's (USEUCOM) area of responsibility as defined by the DoD Foreign Clearance Guide Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel requests, which contain the individual's name; rank/pay grade; Social Security Number; military branch or department; passport number; Visa Number; office address and telephone

number, official and personal e-mail address, detailed information on sites to be visited, visitation dates and purpose of visit.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; DoD 4500.54–G, Department of Defense Foreign Clearance Guide; Public Law 99–399, Omnibus Diplomatic Security and Antiterrorism Act of 1986; 22 U.S.C. 4801, 4802, and 4805, Foreign Relations and Intercourse; E.O. 12333, United States Intelligence Activities; Army Regulation 55–46, Travel Overseas; and E.O. 9397 (SSN).

PURPOSE(S):

To provide the DoD with an automated system to clear and audit travel within the United States European Command's area of responsibility and to ensure compliance with the specific clearance requirements outlined in the DoD Foreign Clearance Guide; to provide individual travelers with intelligence and travel warnings; and to provide the Defense Attache and other DoD authorized officials with information necessary to verify official travel by DoD personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State Regional Security Officer, U.S. Embassy officials, and foreign police for the purpose of coordinating security support for DoD travelers.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retiring, accessing, retaining, and disposing of records.

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by individual's surname, Social Security Number and/or passport number.

SAFEGUARDS:

Electronic records are located in the United States European Command's Theater Requirements Automated Clearance System (TRACS) computer database with build in safeguards. Computerized records are maintained in controlled areas accessible only to authorized personnel with an official need to know access. In addition, automated files are password protected and in compliance with the applicable laws and regulations. Another built in safeguard of the system is records are access to the data through secure network.

RETENTION AND DISPOSAL:

Records are destroyed 3 months after travel is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant for Security Matters, Headquarters, United States European Command, Unit 30400, P.O. Box 1000, APO AE 09131–1000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Special Assistant for Security Matters, Headquarters, United States European Command, Unit 30400, P.O. Box 1000, APO AE 09131–1000.

Requests should contain individual's full name, Social Security Number, and/or passport number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves that is contained in this system of records should address written inquiries to the Special Assistant for Security Matters, Headquarters, United States European Command, Unit 30400, P.O. Box 1000, APO AE 09131–1000.

Requests should contain individual's full name, Social Security Number, and/or passport number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–1265 Filed 2–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Supplement Draft Environmental Impact Statement for the Proposed Everglades Agricultural Area (EAA) A–1 Reservoir Located in Palm Beach County, FL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) is issuing this notice to advise the public that a Supplement Draft Environmental Impact Statement (EIS) has been completed and is available for review and comment.

DATES: In accordance with the National Environmental Policy Act (NEPA), we have filed the Supplemental Draft EIS with the U.S. Environmental Protection Agency (EPA) for publication of their notice of availability in the **Federal Register**. The EPA notice officially starts the 45-day review period for this document. It is the goal of the USACE to have this notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for comments on the Supplemental Draft EIS. Comments on the Supplemental Draft EIS must be submitted to the address below under **FOR FURTHER INFORMATION CONTACT** and must be received no later than 5 p.m. eastern standard time, Monday, March 27, 2006.

ADDRESSES: The Supplemental Draft EIS can be viewed online at *http://www.saj.usace.army.mil/pao/hotTopics/hot_topics_acceler8.htm* (follow the link to New Information). Copies of the Supplemental Draft EIS are also available for review at the following libraries:

Belle Glade Branch Public Library, 530 S. Main Street, Belle Glade, FL 33430

Palm Beach County Main Library, 3650 Summit Blvd., W. Palm Beach, FL 33406

Clewiston Public Library, 120 W. Osceola Ave., Clewiston, FL 33440

Pahokee Branch Public Library, 525 Bacom Point Rd., Pahokee, FL 33476

Legislative Library, 701 The Capitol, Tallahassee, FL 32399–1300

Glades County Public Library, PO Box 505, Riverside Dr., Moorehaven, FL 33471

South Bay Public Library, 375 SW. 2nd Ave., South Bay, FL 33493

FOR FURTHER INFORMATION CONTACT: Ms. Tori White, U.S. Army Corps of

Engineers, Jacksonville District, 1400 Centrepark Suite 750, West Palm Beach, Florida 33410, Telephone: 561–472–8888.

SUPPLEMENTARY INFORMATION: The proposed action by the South Florida Water Management District (SFWMD) is a 16,768-acre water supply reservoir located north of Stormwater Treatment Area 3/4 and between the Miami and North New River Canals in the EAA in Palm Beach County, Florida. The purpose of the EAA Reservoir A–1 is to store water from stormwater runoff and releases from Lake Okeechobee at any given time. As part of the USACE's review process, this Supplemental Draft EIS has been prepared.

The SFWMD's proposed project, identified as Cell A–1, is the same footprint as a portion of the Selected Plan, identified in the USACE's September 2005 Draft Project Implementation Report (PIR) / EIS for the Comprehensive Everglades Restoration Plan (CERP) EAA Storage Reservoirs project, which features a two-cell reservoir impoundment with a maximum normal pool storage depth of 12 feet at approximately 31,000 acres of above ground surface area storage. The SFWMD proposes to construct the EAA Reservoir A–1 project prior to implementation of any federal EAA Storage Reservoirs project. The USACE is proceeding with two separate and independent but related actions, the regulatory evaluation of the SFWMD's proposed EAA Reservoir A–1 project and the planning evaluation of the federal CERP EAA Storage Reservoirs project, both of which are described in the September 2005 Draft PIR/EIS (See the Executive Summary, pages 16–17 and Section 8, Plan Implementation, pages 1–2 and pages 12–13). The USACE and SFWMD had anticipated that the SFWMD would accelerate construction and achievement of benefits of certain CERP projects by obtaining required permits and initiating construction upon completion of the Final EIS for the federal CERP project. Because of delays in completion of the Final EIS for the CERP EAA Storage Reservoirs project, the SFWMD is pursuing a Department of the Army permit prior to completion of the CERP EAA Storage Reservoirs Final EIS. Accordingly, this separate Supplemental Draft EIS has been prepared by the Regulatory Division to address the environmental impacts of the SFWMD's proposed project. The Regulatory Division of the USACE will evaluate the SFWMD's proposed EAA Reservoir A–1 while the USACE Civil Works Planning Process continues with a separate and independent evaluation of the CERP project. Any regulatory decision on the SFWMD's proposed project will not affect the planning process and consideration of alternatives for the federal CERP EAA Storage Reservoirs project. The SFWMD's Acceler8 project may ultimately be a component of the federal CERP EAA Storage Reservoirs project. If it is not a part of the federal recommended plan, it will be considered as a locally preferred plan.

Dated: February 6, 2006.

Erik L. Stor,

MAJ(P), Corps of Engineers, District Commander.

[FR Doc. E6–1950 Filed 2–10–06; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. 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 2, 2006. 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–107, Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO, 80021; telephone (303) 966–7855; fax (303) 966–7856.

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:

1. Public hearing on the Landfill Monitoring and Maintenance Plan and Post-Closure Plan for the Rocky Flats Environmental Technology Site Present Landfill.
2. Approval of recommendation on the Proposed Plan for Rocky Flats.
3. Other Board business may be conducted as necessary.

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 Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions 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 office of the Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO, 80021; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.html.*

Issued at Washington, DC on February 6, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–1969 Filed 2–10–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 28, 2006, 10 a.m. to 5 p.m. Wednesday, March 1, 2006, 8:30 a.m. to 12 noon.

ADDRESSES: The Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland, 20887, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The major purpose of the

meeting is for the Fusion Energy Sciences Advisory Committee (FESAC) to hear the report of its Committee of Visitors that has dealt with the program's large experimental facilities, diagnostics, and Enabling R&D program, and to prepare a letter transmitting the report and the Committee's recommendations to the Department.

Tentative Agenda: Tuesday, February 28, 2006 (10 a.m.–5 p.m.).

- Office of Science Perspective.
- Office of Fusion Energy Sciences Perspective.
- Presentation by the Committee of Visitors on Large Facilities, Diagnostics and Enabling R&D.
- Public Comments.

Wednesday, March 1, 2006 (9 a.m.–12 Noon).

- Status of ITER Agreement.
- Status of U.S. ITER Project.
- Burning Plasma Program Office Organization.
- Status of the National Ignition Facility Project.
- Prepare letter to DOE transmitting the COV Report.
- Adjourn.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 6, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–1970 Filed 2–10–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 6, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER05–977–000.
Applicants: Union Power Partners, LP.
Description: Union Power Partners, LP and Entergy Services, Inc on behalf of the Entergy Operating Companies submit the Partial Settlement Agreement resolving all issues for the period of May 18, 2005 thru October 31, 2005.
Filed Date: January 30, 2006.
Accession Number: 20060131–0107.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–431–001.
Applicants: Progress Energy Services Company, LLC.
Description: Florida Power Corp dba Progress Energy Florida, Inc amends Exhibit A to reflect the retirement of delivery points re its December 29, 2005 filing of a Contract for Interchange Service with Reedy Creek Improvement District.
Filed Date: January 30, 2006.
Accession Number: 20060202–0112.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–519–000.
Applicants: Louisville Gas & Electric Company, Kentucky Utilities Co.
Description: Louisville Gas & Electric Co et al submit an agreement with East Kentucky Power Cooperative.
Filed Date: January 20, 2006.
Accession Number: 20060124–0074.
Comment Date: 5 p.m. Eastern Time on Friday, February 10, 2006.

Docket Numbers: ER06–553–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp submits the cover page showing the designation service agreement numbers, issued and effective dates to be added to their December 1, 2005 filing of a Letter Agreement with Cinergy Services, Inc.
Filed Date: January 30, 2006.
Accession Number: 20060131–0106.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–556–001.
Applicants: New England Power Company.
Description: New England Power Co resubmits their Fifth Revised Service Agreement No. 20 to correct errors.
Filed Date: January 30, 2006.
Accession Number: 20060203–0466.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–561–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc, on behalf of Southern Companies, submit a Service Agreement for Network Integration Transmission Service with Georgia Transmission Corp.
Filed Date: January 30, 2006.
Accession Number: 20060201–0148.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–562–000.
Applicants: Georgia Power Company.
Description: Southern Company Services, Inc agent for Georgia Power Co submit the Integrated Transmission System Investment Responsibility Reconciliation Agreement with Georgia Transmission Corp.
Filed Date: January 30, 2006.
Accession Number: 20060201–0149.
Comment Date: 5 p.m. Eastern Time on Tuesday. February 21, 2006.

Docket Numbers: ER06–563–000.
Applicants: Select Energy, Inc. *et al.*
Description: Northeast Utilities Service Co et al submit a Notice of Cancellation of NU Operating Companies Rate Schedule No. 20, reflecting the cessation of service by Select etc.
Filed Date: January 30, 2006.
Accession Number: 20060202–0007.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–564–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp as designated agent for AEP Operating Companies submit Service Agreement for Interconnection and Local Delivery with the Village of Shiloh, Ohio.
Filed Date: January 30, 2006.
Accession Number: 20060202–0008.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–565–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp as designated agency for AEP Operating Companies submit Service Agreement for Interconnection and Local Delivery with the Village of Bloomdale, Ohio.
Filed Date: January 30, 2006.
Accession Number: 20060202–0009.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–566–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp as designated agent for AEP Operating Companies submit interconnection & local delivery service agreement with the Village of Carey, Ohio.

Filed Date: January 30, 2006.

Accession Number: 20060202–0011.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–567–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp as designated agent for AEP Operating Companies submit interconnection & local delivery service agreement with the City of Clyde, Ohio.

Filed Date: January 30, 2006.

Accession Number: 20060202–0010.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–568–000.

Applicants: American Electric Power Service Corporation.

Description: The American Electric Power Service Corp as designated agent for AEP Operating Companies submit Service Agreement for Interconnection and Local Delivery with the Village of Deshler, OH.

Filed Date: January 30, 2006.

Accession Number: 20060201–0145.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–569–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp as designated agent for AEP Operating Companies submit an interconnection and local delivery service agreement with the Village of Greenwich, Ohio.

Filed Date: January 30, 2006.

Accession Number: 20060201–0116.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–570–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp as designated agent for AEP Operating Companies submit an interconnection & local delivery service agreement with the Village of Plymouth, OH.

Filed Date: January 30, 2006.

Accession Number: 20060201–0146.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–571–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp as designated agent for AEP Operating Companies submit an interconnection and local delivery service agreement with the Village of Wharton, OH.

Filed Date: January 30, 2006.

Accession Number: 20060201–0115.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–572–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits Amendment No. 1 to the Osceola Facility Parallel Operating Agreement with Seminole Electric Cooperative, Inc.

Filed Date: January 30, 2006.

Accession Number: 20060201–0114.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–573–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Co of New Mexico submits two executed agreements with Texas-New Mexico Power Co under PNM Resources Operating Companies OATT.

Filed Date: January 30, 2006.

Accession Number: 20060201–0113.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–574–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Co of New Mexico submits an executed Service Agreement b/w PNM Transmission Development and Contracts and PNM Wholesale Marketing.

Filed Date: January 30, 2006.

Accession Number: 20060201–0118.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–575–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits its annual update filing of the Transmission Access Charge Balancing Account Adjustment.

Filed Date: January 30, 2006.

Accession Number: 20060202–0042.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER06–576–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services Inc agent for Alabama Power Co et al submit an Agreement for Network Integration Transmission Service & Network Operating Agreement with Alabama Municipal Electric Authority.

Filed Date: January 30, 2006.

Accession Number: 20060201–0117.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1929 Filed 2–10–06; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Closed Meeting of the Board of Directors

TIME AND DATE: A closed meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, February 15, 2006.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

STATUS: The meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE MEETING: Periodic Update of Examination Program Development and Supervisory Findings.

FOR FURTHER INFORMATION CONTACT: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

By the Federal Housing Finance Board.
Dated: February 8, 2006.

John P. Kennedy,

General Counsel.

[FR Doc. 06–1321 Filed 2–8–06; 4:01 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Mark B. Richardson, Thetford Center, Vermont; to acquire additional voting shares of Oakwood Bancorp, Inc., Springfield, Illinois, and thereby indirectly acquire additional voting shares of United Community Bank, Oakwood, Illinois.

Board of Governors of the Federal Reserve System, February 8, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–1958 Filed 2–10–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Security Bank Corporation, Macon, Georgia; to merge with Neighbors Bancshares, Inc., Alpharetta, Georgia, and thereby indirectly acquire voting shares of Neighbors Bank, Alpharetta, Georgia.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. RCB Holding Company, Inc., Claremore, Oklahoma; to acquire 100 percent of the votings shares of Pioneer Bancshares, Inc., Ponca City, Oklahoma, and thereby indirectly acquire voting shares of Pioneer Bank and Trust, Ponca City, Oklahoma, and Bank of Nichols Hills, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, February 8, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–1957 Filed 2–10–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–196 State Temporary Assistance for Needy Families Financial Report.

OMB No.: 0970–0247.

Description: This information collection is authorized under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This request is for renewal of approval to use the Administration for Children and Families' (ACF) 196 form for periodic financial reporting under the Temporary Assistance for Needy Families (TANF) program. Approval of this information collection expired on January 30, 2006.

States participating in the TANF program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs, and to prepare budget submissions required by Congress. Financial reporting under the TANF program is governed by 45 CFR part 265.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: February 6, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1293 Filed 2–10–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation: Rhode Island 15-Month Survey Amendment.

OMB No.: 0970–0276.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on previous and ongoing research by rigorously testing a wide variety of approaches to promote employment and improve family functioning and child well-being. The HtE project will "conduct a multi-site evaluation that studies the implementation issues, program design, net impact and benefit-costs of selected programs" [1] designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low income parents who are hard-to-employ. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) of the Administration for Children and Families (ACF), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor (DOL).

The evaluation involves an experimental, random assignment design in four sites, testing a diverse set of strategies to promote employment for low-income parents who face serious obstacles to employment. The four include: (1) Intensive care management to facilitate the use of evidence-based treatment for major depression among parents receiving Medicaid in Rhode Island; (2) job readiness training, worksite placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term TANF participants in Philadelphia; and (4) home- and center-based care, enhanced with self-sufficiency services, for low-income families who have young children or are expecting in Kansas and Missouri.

Materials for follow-up surveys for each of these sites were previously submitted to OMB and were approved on April 29, 2005. The purpose of this submission is to introduce an addition to the OMB-approved follow-up survey effort in the Rhode Island site that will be used to collect follow-up data on children's development.

The additional content we propose for the follow-up survey effort will be used to address two questions: (1) What are the effects of a telephonic care management intervention for parents' depression on parents' parenting and on children's health, behavior, and development; and (2) To what extent can intervention effects on children's development be attributed to changes in maternal depressive symptomatology that result from the intervention?

Two follow-up surveys are included in this submission:

1. A 15-month follow-up *parent* survey that will supplement other information already collected from parents by addressing questions about parenting and children's well-being.

2. 15-month follow-up youth survey will be administered to up to two of the older focal children of these parents.

3. Additionally, a 15-month follow-up direct child assessment for up to two younger children will be conducted. This assessment will consist of cognitive and behavioral assessments conducted directly with the children. These procedures are described in the OMB Supporting Statement.

Respondents: The respondents to these follow-up surveys will be low-income parents and their children from the Rhode Island site currently participating in the HtE Project. As described in the prior OMB submission, these parents are Medicaid recipients between the ages of 18 and 45 receiving Medicaid through the managed care provider United Behavioral Health (UBH) in Rhode Island who meet study criteria with regard to their risk for depression. Children are the biological, adopted, and step-children of these parents, between the ages of 1 and 17 years of age.

Prior to this follow-up survey, all parents will have completed a more detailed baseline survey, which is required to establish baseline measures of depression and related conditions, in addition to providing critical demographic data. The baseline survey was previously approved by OMB.

The annual burden estimates are detailed below.

[1] From the Department of Health and Human Services RFP No.: 233–01–0012.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burde hours
RI 15-month, parent child add-on survey	400	1	45 minutes or .75 hrs.	300
RI 15-month, youth survey	298	1	45 minutes or .75 hrs.	223.5
RI 15-month, direct child assessment	164	1	45 minutes or .75 hrs.	123

Estimated Total Annual Burden Hours: 646.5.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail: *Katherine_T._Astrich@omb.eop.gov.*

Dated: February 7, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1294 Filed 2–10–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0353]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Pharmaceutical Development Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 15, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Pharmaceutical Development Study

FDA's Office of Pharmaceutical Science of the Center for Drug Evaluation and Research is proposing collaboration under a Cooperative Research and Development Agreement (CRADA) with Conformia Software, Inc., of Redwood City, CA (hereafter referred to as "CRADA Partner"), to collect information using focus group discussions with firms to determine what factors may influence pharmaceutical development. These factors include development information bottlenecks, pilot plant information management, manufacturing science, information retrieval, quality systems and preclinical development challenges.

FDA has introduced three new initiatives to help manufacturers develop higher quality drugs faster and cheaper. These initiatives include, but are not limited to, the following:

- Challenge and Opportunity on the Critical Path to New Medical Products (commonly referred to as the "Critical Path Initiative")
- Pharmaceutical cGMPs for the 21st Century—A Risk Based Approach
- International Conference on Harmonisation (ICH) Steering Committee Guidelines—Pharmaceutical Development, ICH Q8 (Defining the Design Space)

The proposed study is designed to augment and support these initiatives by providing practical industry experience and feedback to help FDA refine these initiatives. The scope of the proposed collaboration is aligned with FDA's "Critical Path" of development; specifically, the area between selection of drug candidates and commercial manufacturing.

Gathering information through this collaboration represents an opportunity for FDA to gain insights into current industry practices and provide the opportunity to better understand the specific factors that contribute to drug development difficulties. There is a perceived reluctance by industry to share information with regulatory bodies (outside of the formal review processes). Therefore, obtaining necessary and timely information through this collaboration will help the Critical Path Initiative progress.

The information collected will be used to create a clearer picture of current developmental bottlenecks, identify current State practices, highlight potential improvements in production, and provide feedback to FDA on the impact of current regulatory guidance.

Use of information: The three groups who will be involved with the study may benefit by the collection of this information as follows:

- Industry—Participants will compare current drug development practices and processes identified in the study with current FDA guidance. Companies will be able to gain a better understanding of the steps needed to achieve the operational goals introduced through the Critical Path, ICH-Q8, and Pharmaceutical cGMPs for the 21st Century.

• FDA—In its Critical Path Initiative, FDA has called for better tools and techniques to be developed to help facilitate and improve productivity. The information gained will provide a better understanding of what steps will be needed to achieve this goal: To help companies reduce time spent in pharmaceutical development and speed the adoption of new technologies aimed at producing higher quality products at reduced costs.

• CRADA Partner—In collaboration with FDA, the CRADA Partner will use research findings to better understand informational requirements of companies in the area of pharmaceutical development, particularly as they relate to accomplishing the goals of the three FDA initiatives described previously in this document. This includes tools that may be utilized within the company environment to reduce bottlenecks and enhance communication of key pharmaceutical information, as well as tools that may assist FDA in the review of pharmaceutical development submissions.

Thus the study will assist all three party's understanding of the requirements to address the current state in dealing with pharmaceutical development challenges.

Confidentiality of respondents: The CRADA Partner will provide an "Informed Consent" form to all companies that participate in the study. This form highlights and assures all participants that company-specific responses (or responses unique to a specific company) will not, under any circumstances, be divulged to other participants or FDA without the company's prior consent. The CRADA Partner will also provide a confidential disclosure agreement to all participants, assuring them confidentiality of disclosed information and adherence to the Privacy Act.

Participation in the study: The CRADA Partner will post on its Web site an invitation for industry to participate in the study. It will also fax the invitation to 20 of the top pharmaceutical companies and 20 of the top biotech companies. The invitation will be sent to the offices of regulatory affairs, research and development, and information management. FDA will also post the CRADA abstract on its Web site along with instructions on how to participate in the study. Within each company separate, small focus groups will be formed for the three offices. Company management in consultation with the CRADA Partner will determine the actual makeup of the focus groups, but the objective is to have a cross-functional representation of experienced employees from each office.

Method of study: The CRADA Partner will conduct a preliminary phase of the study with individual representatives of nine firms (through dialogue with the Vice President (VP) of Development), who volunteer for participation in the study. VP of Development and the CRADA Partner will determine the specific representation from each company jointly, but the objective will be to include representatives from the office of regulatory affairs, research and development, and information technology. The results of these preliminary interviews will be used to refine the full study agenda, which will be used to conduct focus group discussions from 25 companies. Both the preliminary phase and the final study agenda will include review and comment by FDA technical and regulatory experts and CRADA Partner personnel.

The CRADA Partner will summarize interview findings for the full study and will remove references to specific firms, or information that could be used to identify specific firms, before sharing information with FDA. Followup questions will be identified by consultation between FDA and CRADA Partner personnel and these questions will be addressed in subsequent focus group interviews. Although companies are strongly encouraged to participate in these followup interviews, they may discontinue participation at any time.

As an incentive for companies to participate in the study, the CRADA Partner will prepare a confidential report that contrasts practices in each company in comparison with aggregated information from other companies. At all times, the identity of a participating firm will be limited to the company itself and to the CRADA Partner. This blinded methodology is an industry standard methodology for other areas of current State best practices research.

FDA personnel in collaboration will review final results with the CRADA Partner to determine appropriate next steps. These next steps may include training sessions with industry to increase industry awareness of pharmaceutical development practices and opportunities for improving these in conjunction with FDA's manufacturing and related industrialization initiatives; industry workshops to discuss and explore findings of the study; a publication or publications summarizing the study results; additional studies to further expand FDA's understanding of particular aspects of pharmaceutical development that may benefit from regulatory reform and steamlining; and adjustments to FDA's regulatory strategy to help remove unnecessary or unintended burdens on industry.

In the **Federal Register** of September 14, 2005 (70 FR 54388), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
25	1	25	25	500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 6, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–1918 Filed 2–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Title V Application/Annual Report, OMB No. 0915–0172: Revision

The Health Resources and Services Administration (HRSA) proposes to revise the *Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Application/Annual Report.* The guidance is used annually by the 50 States and 9 jurisdictions in making application for Block Grants under Title V of the Social Security Act, and in preparing the required annual report. The proposed revisions follow and build on extensive consultation received from a workgroup convened to provide suggestions to improve the guidance and forms. In addition, the proposed revisions are editorial and ttechnical revisions based on the experience of the States and jurisdictions in using the guidance and forms since 2003.

Two new performance measures were developed (obesity in children aged 2 to 5 years; and smoking in the last trimester of pregnancy) and two existing performance measures were either removed entirely (low birth weight) or incorporated into an existing health status capacity indicator (eligible children receiving services under Medicaid). This will result in no net increase in the number of performance measures. In addition, the directions in the guidance for the Health Systems Capacity Indicators (HSCI) were expanded to enhance clarification. This proposed change will make it easier for the States to report on these indicators.

The existing electronic system used by the States to submit their Block Grant Application and Annual Report has also been enhanced. First, using the electronic system, the narrative from the prior year's submission is available online in the system so that the applicant need only edit those sections that have changed. This feature reduces burden by avoiding duplicating material. For national performance measures 2–6, the data obtained from the National Survey of Children with Special Health Care Needs are pre-populated which eliminates the need to retrieve and enter data from this survey, unless the States choose to use another data source. Also, notes from the prior year's submission are available to the States allowing for more efficient updating through edits rather then recreating them. Data are entered once (in a data entry field on a given form), and where those data are referenced elsewhere, the value is copied and displayed. The electronic system includes an automatic character counter that tells the user how many characters the States have left. This eliminates the need to independently track entries against the Maternal and Child Health Bureau's limits for each section to ensure compliance. The electronic system includes forms status checker and data alerts, which conduct automated checks on data validity, data consistency, and application completeness, as well as value tolerance checks. This feature facilitates application review and eliminates much of the previously required data cleaning activity. Also, this allows the user to obtain an immediate update at any point in time on the completeness and compliance of the application, reducing the need to conduct a review of the application. Data are saved directly to the HRSA server so that no manual transmission is required. Finally, the automatic commitment of data to the HRSA server eliminates the need for version control or data migration.

The estimated average annual burden per year is as follows for the Annual Report and Application without the Needs Assessment:

Type of respondent	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
States	50	1	297	14,868
Jurisdictions	9	1	120	1,077
Total	59			15,945

Burden in the 3 Year Reporting Cycle for the Annual Report and Application with Needs Assessment is:

Needs assessment	Number of respondents	Burden hours per response	Responses per respondent	Total burden hours
States/Jurisdictions	59	378.5	1	22,303
Total Average Burden for 3 year cycle				18,064

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management

and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 6, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–1921 Filed 2–10–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Healthy Start Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

BACKGROUND: This notice supplements the 2005 HRSA announcement of the availability of fiscal year (FY) 2006 funding for new and competing continuation applications for Healthy Start. Healthy Start, authorized under section 330H of the Public Health Service Act, strengthens communities to effectively address the causes of infant mortality, low birth weight and other poor perinatal outcomes for women and infants. Recently, new guidance became available with regards to funding FY 2006 Healthy Start programs.

SUMMARY: The Conference Report (H.R. Rep. No. 109–337) accompanying the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006, indicates concurrence with the Senate report language regarding the recompetition of Healthy Start programs. Following the Senate Committee's recommendation in Senate Report 109–103, the Health Resources and Services Administration (HRSA) will give preference during the FY 2006 competition "to current and former grantees with expiring or recently expired project periods. This should include grantees whose grant applications were approved but not funded during fiscal year 2005."

FOR FURTHER INFORMATION CONTACT: Maribeth Badura, Director, Division of Healthy Start and Perinatal Services, Maternal and Child Health Bureau, HRSA, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–0543; e-mail *MBadura@hrsa.gov*.

Dated: February 6, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. 06–1282 Filed 2–10–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Clinical Science II.

Date: March 21, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Martina Schmidt, PhD, Scientific Review Administrator, Office of Scientific Review, Nat'l Center for Complementary and Alt Medicine, 6707 Democracy Blvd, Suite 401, Bethesda, MD 20892. 301–594–3456. *schmidma@mail.nih.gov.*

Dated: February 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1257 Filed 2–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Basic Science.

Date: March 9–10, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale L. Birkle, PhD., Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd, Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Loan Repayment Program.

Date: April 24, 2006.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Laurie Friedman Donze, PhD., Scientific Review Administrator, Office of Scientific Review, NCCAM, National Institutes of Health, Suite 401, MSC 5475, 6707 Democracy Blvd., Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: February 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1260 Filed 2–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Centers 1.

Date: March 3, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Henry J. Haigler, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608. 301/443–7216. *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Centers 2.

Date: March 14, 2006.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Henry J. Haigler, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608. 301/443–7216. *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1258 Filed 2–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, December 20, 2005, 8:30 p.m. to December 21, 2005, 5 p.m., Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on December 21, 2005, FR70: 75826.

The meeting will be held February 8–9, 2006 from 8 a.m.–5 p.m. both days at the Bethesda Marriott (5151 Pooks Hill Road, Bethesda, MD 20814). The meeting is closed to the public.

Dated: February 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1259 Filed 2–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: March 16–17, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, Fifteenth & M Streets, NW., Washington, DC 20005.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6898. *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1261 Filed 2–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Pediatrics Subcommittee.

Date: March 8, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1262 Filed 2–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov and http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210. 615–255–2400.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299. 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road. Lenexa, KS 66215–2802. 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913. 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302. 319–377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare, Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715. 608–267–6225.

Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121. 800–882–7272. (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122. 206–923–7020/800–898–0180. (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.;

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing too have an active role in the performance testing and laboratory inspection process. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory **Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

MedExpress/National Laboratory Center).
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449. 715–389–3734/800–331–3734.
MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905–817–5700. (Formerly: NOVAMANN (Ontario), Inc.).
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive. Minneapolis, MN 55417. 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, 123 International Way. Springfield, OR 97477. 541–341–8092.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7897x7.
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210. 913–339–0372/800–821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340. 770–452–1590/800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063. 800–824–6152. (Moved from the Dallas location on March 31, 2001; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated , 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412. 702–733–7866/800–433–2750. (Formerly: Associated Pathologists Laboratories, Inc.).
Quest Diagnostics Incorporated, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (Formerly: LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173. 800–669–6995/847–885–2010. (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405. 818–989–2520/800–877–2520. (Formerly: SmithKline Beecham Clinical Laboratories).
Quest Diagnostics Incorporated, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120. 801–606–6301/800–322–3361. (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x276.
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915. 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166. 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. E6–1945 Filed 2–10–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan for Sherburne National Wildlife Refuge, Sherburne County, Minnesota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Final Comprehensive Conservation Plan (CCP) is available for Sherburne National Wildlife Refuge, Minnesota.

The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

ADDRESSES: Copies of the Final CCP are available on compact disk or hard copy. You may access and download a copy via the planning Web site at *http://www.fws.gov/midwest/planning/sherburne/index.html* or you may obtain a copy by writing to the following address: U.S. Fish and Wildlife Service, Sherburne National Wildlife Refuge, 17076 293rd Ave., Zimmerman, MN 55398.

FOR FURTHER INFORMATION CONTACT: Anne Sittauer, at (763) 389–3323.

SUPPLEMENTARY INFORMATION: The 30,575-acre Sherburne National Wildlife is located in central Minnesota at the juncture of the northern boreal forest, the eastern deciduous forest, and the tallgrass prairie. It was established in 1965 under the general authority of the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715d). The Refuge attracts over 230 species of birds each year to its diverse habitats. Of these, over 120 are known to nest in the area. The Refuge wetlands provide habitat for about 30 nesting pairs of Greater Sandhill Cranes and serve as a staging area for thousands of cranes during fall migration. During fall and spring migration, the Refuge wetlands also support thousands of waterfowl.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*), requires the Service to develop a CCP for each national wildlife refuge. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for

achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Management of the refuge for the next 15 years will focus on: (1) Changes in the water impoundment system and upland management to create a diversity of wetland types and historic upland plant communities; (2) increased opportunities for all types of wildlife-dependent recreation; and (3) outreach, private lands, and partnership activities that will emphasize natural processes, including native habitat restoration and conservation, to form ecologically functioning connections to and from the Refuge.

Dated: November 23, 2005.

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. E6–1947 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following application to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before March 15, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (we) solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–115370

Applicant: Gage Dayton, Moss Landing, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) and the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Santa Cruz and Monterey Counties in California for the purpose of enhancing their survival.

Permit No. TE–115373

Applicant: Darin Busby, San Diego, California.

The applicant requests a permit to take (capture and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–115725

Applicant: Ellen Howard, San Diego, California.

The applicant requests a permit to take (capture and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–797999

Applicant: Merkel & Associates, Inc., San Diego, California.

The permittee requests an amendment to take (harass by survey, tag, collect tissue, mark by toe-clipping, and release) the desert slender salamander (*Batrachoseps aridus*) and the arroyo southwestern toad (*Bufo microscaphus californicus*), take (harass by survey, capture, handle, collect, release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*), take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and take (locate and monitor nests, capture, handle, weigh, band, and release) the California least tern (*Sterna antillarum browni*) and the light-footed clapper rail (*Rallus longirostris levipes*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–117075

Applicant: Richard Stabler, Santa Rosa, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) and the California freshwater shrimp (*Syncaris pacifica*) in conjunction with surveys in Sonoma County, California for the purpose of enhancing their survival.

Permit No. TE–795934

Applicant: Jones and Stokes Associates, Inc., Sacramento, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout its range in California for the purpose of enhancing its survival.

Permit No. TE–117947

Applicant: Kevin B. Clark, San Diego, California.

The applicant requests a permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), take (locate and monitor nests, capture, handle, and release) the California least tern (*Sterna antillarum browni*), and the southwestern willow flycatcher (*Empiconax traillii extimus*) in conjunction with surveys throughout the range of each species in California, Arizona, and New Mexico for the purpose of enhancing their survival.

Permit No. TE–118371

Applicant: K2 Environmental LLC, Bend, Oregon.

The applicant requests a permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–118338

Applicant: Jana Johnson, Winnetka, California.

The applicant requests a permit to take (captively rear) the Palos Verdes blue butterfly (*Gaucopsyche lygdamus palosverdesensis*) in conjunction with a breeding program in Los Angeles County, California, for the purpose of enhancing its survival.

Permit No. TE–118356

Applicant: Olofson Environmental, Inc., Oakland, California.

The applicant requests a permit to take (harass by survey, locate and monitor nests) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with demographic studies throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–068072

Applicant: Philippe Vergne, Ramona, California.

The permittee requests an amendment to take (capture, handle, mark, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with demographic studies throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: January 19, 2006.

Michael B. Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–1939 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability for the Renewal of an Expired Section 10(a)(1)(B) Permit for Incidental Take of the Golden-Cheeked Warbler in Travis County, Texas (Hunt)

SUMMARY: On July 21, 1999, the U.S. Fish and Wildlife Service (Service) issued a section 10(a)(1)(B) permit, pursuant to section 10(a) of the Endangered Species Act (Act), for incidental take of the golden-cheeked warbler (GCW) (*Dendroica chrysoparia*) to James (Jim) Hunt. The permit (TE–010556–0) was for a period of five years and expired on July 21, 2004. The requested permit renewal by Jim Hunt will extend the permit expiration by five years from the date the permit is reissued.

DATES: To ensure consideration, written comments must be received on or before March 15, 2006.

ADDRESSES: Persons wishing to review the request for extension, former incidental take permit, or other related documents may obtain a copy by written or telephone request to Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512/490–0057 ext. 224). Documents will be available for public inspection by written request, or by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Fish and Wildlife Service Austin Office. Comments concerning the request for renewal should be submitted in writing to the Field Supervisor at the above address. Please refer to permit number TE–010556–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the U.S. Fish and Wildlife Service Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057 ext. 224), or by e-mail, *Scott_Rowin@fws.gov*.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the GCW. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: Jim Hunt plans to construct a single family residence (SFR) on his 10-acre lot located adjacent to City Park Road in Austin, Travis County, Texas. The construction of a SFR on approximately one acre of the 10-acre lot will eliminate less than one acre of GCW habitat and indirectly impact less than four additional acres of habitat. The original permit included, and the Applicant continues to propose to compensate for incidental take of the GCW by providing $1,500 to the Balcones Canyonlands Preserve, and placing a perpetual conservation easement on the remaining approximately nine acres to the Balcones Canyonlands Preserve. Since this property is located within the acquisition boundaries of the Balcones Canyonlands Preserve, it will add additional acreage to the preserve. The Applicant has agreed to follow all of the existing permit terms and conditions. If renewed, all of the permit terms and conditions will remain the same, and no additional take will be authorized.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E6–1941 Filed 2–10–06; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application and Availability of an Environmental Assessment for an Incidental Take Permit for Construction of a School and Adjacent Roads in Volusia County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Public Works Department of Volusia County and the Volusia County School Board (Applicants) request incidental take permits (ITP) each with 5-year term, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants jointly prepared a single Habitat Conservation Plan (HCP) identifying anticipated impacts to the Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) associated with road construction (Public Works Department) and construction of a new high school and its supporting infrastructure (School Board) within sections 10 and 15, Township 18 South, Range 30 East, Volusia County, Florida.

The Applicants' HCP describes the mitigation and minimization measures proposed to address the effects of road and school construction on the Florida scrub-jay. These measures are outlined

in the **SUPPLEMENTARY INFORMATION** section below. We announce the availability of the ITP applications and HCP and an environmental assessment.

DATES: Written comments on the ITP applications, HCP, and environmental assessment should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before April 14, 2006.

ADDRESSES: Persons wishing to review the applications, HCP, and environmental assessment may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit numbers TE107069–0 and/or TE107070–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE107069–0 and/or TE107070–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation that has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by agricultural land conversions and urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils that previously supported scrub-jay habitat. Based on existing soils data, much of the current scrub-jay habitat of east-central Florida occurs in what was once the coastal sand dunes created over the millennia due to rising and falling oceans. These ancient dunes are most prevalent in western Volusia County and much of Marion County. Relict dunes along the east-central Florida Atlantic coast also provide some scrub-jay habitat. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire that is needed to maintain xeric uplands in conditions suitable for scrub-jays.

The Applicants have not proposed to minimize impacts to scrub-jays for a variety of reasons. At the school site, alternative site plans were considered, but none substantially reduced impacts to scrub-jays. Avoidance of impacts on the school site could not be achieved because of geological considerations and local requirements for stormwater retention, parking, and safety considerations regarding the juxtaposition of roads and school property. Alternative road alignments were considered, but due to the sighting requirements for the school, alternative alignments that minimized impacts to occupied scrub-jay habitat were not practicable.

To mitigate the effects of take, the Applicants propose to utilize scrub-jay "credits" available pursuant to a previous Memorandum of Understanding (MOU) between the Service and Applicants. The MOU established a scrub-jay conservation area at the 357-acre Lyonia Preserve in Volusia County and required specific long-term land management criteria be met for the benefit of scrub-jays and other scrub endemics. About 60 scrub-jay credits are currently available for use by the Applicants under the terms of the MOU. As defined by the MOU, a "credit" corresponds to acres of scrub-jay habitat. Two "credits" of mitigation at Lyonia Preserve are required to mitigate each acre of proposed impact. Construction of the proposed roads will require use of about 11.5 credits, while school construction will require about 13.4 credits.

These projects were combined under one HCP because construction and operation of the completed school would require that new roads be built for access. Separate permit applications were submitted because two different local authorities would be involved in carrying out the road and school projects. Road construction would destroy about 5.7 acres of occupied scrub-jay habitat, while construction of the school will eliminate about 6.7 acres of occupied scrub-jay habitat. Combined, these two projects would be expected to result in the take of three scrub-jay families over a requested permit term of five years.

The Service has made a preliminary determination that issuance of the requested ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of National Environmental Policy Act. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the issuance criteria requirements of section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*). By conducting an intra-Service section 7 consultation the Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP would comply with section 7 of the Act. The results of this consultation, in

combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs. This notice is provided pursuant to Section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: January 27, 2006.

Cynthia K. Dohner

Acting Regional Director, Southeast Region.

[FR Doc. E6–1949 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Florida Scrub-Jay Resulting From the Proposed Construction of a Single-Family Home in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Carlos Bigord (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant anticipates taking over a one-year permit term, about 0.23 acre of Florida scrub-jay (*Aphelocoma coerulescens*)(scrub-jay) foraging, sheltering, and possibly nesting habitat, incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Charlotte County, Florida (Project).

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service announces the availability of the HCP for the incidental take application.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before March 15, 2006.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE111605–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, South Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida, 32960–3559.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mark Salvato, Fish and Wildlife Biologist, South Florida Ecological Services Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 772–562–3909, ext. 340.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE111605–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please submit comments over the Internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (mostly consisting of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in west-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal west-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded, due to the interruption of the natural fire regime which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

The scrub-jays using the subject residential lot and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in Charlotte County. The project site represents a portion of an isolated scrub-jay territory. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long term, scrub-jays are unlikely to persist in urban settings, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

Construction of the Project's infrastructure and facilities would result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. The destruction of 0.23 acre of habitat associated with the proposed residential construction would reduce the availability of foraging, sheltering, and possible nesting habitat for one family of scrub-jays. As minimization, however, the Applicant proposes to conduct clearing activities outside of the nesting season.

The Applicant proposes to mitigate the take of scrub-jays through contribution of $14,458 to the appropriate scrub-jay conservation fund. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and management.

The Service has determined that the HCP is a low-effect plan that is categorically excluded from further National Environmental Policy Act (NEPA) analysis, and does not require the preparation of an Environmental Assessment or Environmental Impact Statement. This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicants' HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. The Service does not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1).

The Service has determined that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1, and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared. This notice is provided pursuant to Section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an ITP.

Dated: January 27, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–1962 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed Campo Solid Waste Landfill Facility on the Campo Indian Reservation, San Diego County, CA; Reopening of Comment Period

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) is reopening the comment period on its Supplemental Environmental Impact Statement (SEIS) for the Proposed Campo Solid Waste Landfill Facility on the Campo Indian Reservation in San Diego County, California, for an additional 30 days. The Notice of Intent to prepare the SEIS, published in the **Federal Register** on November 8, 2005 (70 FR 67738), announced a closing date for comments of December 9, 2005.

DATES: Written comments for the new comment period must arrive by March 17, 2006.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address and the caption, "SEIS, Campo Solid Waste Landfill Facility Proposal," on the first page of your written comments.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The proposed action is to approve a lease and sublease to allow a 1,150-acre portion of the Campo Indian Reservation to be used for the construction and operation of an approximately 600-acre solid waste landfill facility, with a buffer zone. Details on the proposed action and previous environmental analysis may be found in the above-referenced Notice published in the **Federal Register** on November 8, 2005.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Authority

This notice is published in accordance with sections 1503.1, 1506.6 and 1508.22 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: January 31, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 06–1292 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–W7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Fee-to-Trust Conveyance of Property for the Cayuga Indian Nation of New York, Cayuga and Seneca Counties, New York

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the cooperation of the Cayuga Indian Nation (Nation), intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the conveyance into trust of 125± acres of land currently held in fee by the Nation. The purpose of the proposed action is to create a tribal land base and to help meet the Nation's socio-economic needs. This notice also announces a public scoping meeting to identify potential issues, alternatives and content for inclusion in the EIS.

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by March 15, 2006.

The public scoping meeting will be held March 1, 2006, from 6:30 to 9:30 p.m., or until the last public comment is received.

ADDRESSES: You may mail, hand carry or telefax written comments to Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, Telefax (615) 564–6701. Please include your name, return address and the caption, "DEIS Scoping Comments, Cayuga Indian Nation of New York Trust Acquisition Project," on the first page of your written comments.

The public scoping meeting will be held at the New York Chiropractic College, 2360 State Route 89, Seneca Falls, NY 13148.

FOR FURTHER INFORMATION CONTACT: Kurt G. Chandler, (615) 564–6832.

SUPPLEMENTARY INFORMATION: The proposed action is BIA approval of the conveyance of 125± acres currently held in fee by the Nation into trust status for the benefit of the Nation. The property is in seven (7) separate parcels located in the Village of Union Springs and the Towns of Springport and Montezuma in Cayuga County, and in the Town of Seneca Falls in Seneca County, New York. The Nation wishes to use this property as a land base and for commercial purposes, including the operation of existing convenience store, gas station and Class II gaming facilities. No new development is currently planned for the subject properties.

Areas so far identified for analysis in the EIS include land and water resources, traffic, air quality, cultural and archaeological resources, socio-economic conditions and public services. Alternatives to be analyzed include the proposed action, no action and any other reasonable alternatives that may be identified through the scoping process. The range of issues to be addressed in the EIS may also be expanded, based on comments received in response to this notice and at the public scoping meeting.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at all of the mailing address shown in the **ADDRESSES** section (except those for the public meetings) during regular business hours, 8 a.m. to 4:30 p.m. (unless otherwise shown), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: February 3, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–1938 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Public Scoping Meeting on Congressionally Mandated Study of Energy Rights-of-Way on Tribal Lands

AGENCY: Office of Indian Energy and Economic Development, Department of the Interior; Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of Meeting.

SUMMARY: Section 1813 of the Energy Policy Act of 2005 (Pub. L. 109–58) requires the Secretary of the Interior and Secretary of Energy to jointly conduct a study of issues regarding energy rights-of-way on tribal land and provide a report to Congress on the findings of the study. The report is due to Congress by August 7, 2006. The Department of the Interior and the Department of Energy are interested in receiving comments from the public about how to proceed with the implementation of section 1813.

DATES: A 2-day meeting will be held on March 7 and 8, 2006, in Denver, Colorado, at the Adams Mark Hotel, 1550 Court Place, Denver, CO 80202; Telephone (303) 893–3333. A block of rooms has been reserved at the hotel for the meeting on a first-come first-served basis. Please inform the hotel that you are attending the "Energy Policy Act Section 1813 Nation-wide Scoping Meeting."

ADDRESSES: Written comments should be sent by regular mail to Mr. Darryl Francois, Attention: Section 1813 ROW Study, Office of Indian Energy and Economic Development, 1849 C St., NW., Mail Stop 2749-MIB, Washington, DC 20240 or by e-mail to IEED@bia.edu. A duplicate copy of the comments should be sent to Mr. David Meyer, Office of Electricity Delivery and Energy Reliability, Department of Energy, 1000 Independence Avenue. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Department of the Interior—Mr. Darryl Francois, Office of Indian Energy and Economic Development, 1849 C Street, NW., Mail Stop 2749-MIB, Washington, DC 20240. He can also be reached by telephone at (202) 219–0740 or by electronic mail at *IEED@bia.edu.*

Department of Energy—Ms. Janelle Schmidt, Office of Electricity Delivery and Energy Reliability, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. She can also be reached by telephone at (202) 586–6415 or by electronic mail at *Janelle.Schmidt@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 1813 of the Energy Policy Act of 2005 (Pub. L. 109–58) requires the Secretaries of the Department of the Interior and the Department of Energy (Departments) to conduct a study of energy related rights-of-way on tribal lands. The Act requires that the study address four subjects:

1. An analysis of historical rates of compensation;

2. Recommendations for appropriate standards to determine fair and appropriate compensation;

3. An assessment of tribal self-determination and sovereignty interests implicated by applications for energy rights-of-way on tribal land; and

4. An analysis of relevant national energy transportation policies.

The Departments will consider Tribal and interested party's comments in preparing a final report for delivery to Congress by August 7, 2006. A proposed work plan was presented for comment in the **Federal Register** on December 29, 2005 (70 FR 77178).

To help develop the report to Congress, the Departments will conduct a 2-day scoping and kick-off meeting on March 7 and 8, 2006. The Departments will solicit input on how to proceed with this work in a fair and timely manner. At this meeting, the Departments propose to establish several working groups to solicit and further develop information on each of these subjects. We propose to convene these working groups on the second day of the meeting and will solicit initial substantive comments on study issues at that time.

If a Tribe, group, or organization would like to be considered to make a formal presentation at the meeting, please send a written request that includes a subject topic by regular mail or e-mail to the addresses provided above by February 22, 2006.

Dated: February 3, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–1967 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–96–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–410–1610–DQ–006D]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: March 9, 2006. The meeting will start at 10:30 a.m. and end by 4 p.m. The public comment period will be from 1:30 p.m. to 2 p.m. The meeting will be held in the conference room at the Idaho Commerce and Labor Career Center office located at 1350 Troy Road in Moscow, Idaho.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM Coeur d'Alene District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topics: Reviewing and providing comments on the Draft Coeur d'Alene RMP/EIS and the Draft Eastside Township Fuels EIS; status of the Cottonwood RMP; proposed vegetation treatment projects, and RAC Nomination period.

All meetings are open to the public. The public may present written comments to the Council in advance of or at the meeting. Each formal Council meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: February 7, 2006.

Lewis M. Brown,

District Manager.

[FR Doc. E6–1946 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf (OCS) Central Gulf of Mexico (GOM) Oil and Gas Lease Sale 198

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale (NOS) 198.

SUMMARY: On March 15, 2006, the MMS will open and publicly announce bids received for blocks offered in Central GOM Oil and Gas Lease Sale 198, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356, as amended), and the regulations issued thereunder (30 CFR part 256).

The Final Notice of Sale 198 Package (FNOS 198 Package) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

DATES: Public bid reading will begin at 9 a.m., Wednesday, March 15, 2006, in the Napoleon Ballroom of the Hilton New Orleans Riverside Hotel, Two Poydras Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans times, unless otherwise specified.

ADDRESSES: Bidders can obtain a FNOS 198 Package containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Internet Web site at *http://www.mms.gov.*

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, and from 8 a.m. to the Bid Submission Deadline of 10 a.m. on Tuesday, March 14, 2006. If the bids are mailed, please address the envelope containing all of the sealed bids as follows: Attention: Supervisor, Sales and Support Unit (MS 5422), Leasing Activities Section, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Contains Sealed Bids for Oil and Gas Lease Sale 198

Please Deliver to Ms. Jane Burrell Johnson, Room 311, Immediately.

Please note: Bidders mailing their bid(s) are advised to call Ms. Jane Burrell Johnson (504) 736–2811 immediately after putting their bid(s) in the mail.

If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. on Tuesday, March 14, 2006. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico Region may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 for information about the possible extension of the Bid Submission Deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all blocks and partial blocks listed in the document "Blocks Available for Leasing in Central GOM Oil and Gas Lease Sale 198" included in the FNOS 198 Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (available for free online in .PDF and .GRA format at *http://www.gomr.mms.gov/homepg/lsesale/map_arc.html* or which may be purchased from the MMS Gulf of Mexico Region Public Information Unit):

Outer Continental Shelf Leasing Maps—Louisiana Map Numbers 1 Through 12 (These 30 Maps Sell for $2.00 Each)

LA1 West Cameron Area (Revised November 1, 2000)
LA1A West Cameron Area, West Addition (Revised November 1, 2000)
LA1B West Cameron Area, South Addition (Revised November 1, 2000)
LA2 East Cameron Area (Revised November 1, 2000)
LA2A East Cameron Area, South Addition (Revised November 1, 2000)
LA3 Vermilion Area (Revised November 1, 2000)
LA3A South Marsh Island Area (Revised November 1, 2000)
LA3B Vermilion Area, South Addition (Revised November 1, 2000)
LA3C South Marsh Island Area, South Addition (Revised November.1, 2000)
LA3D South Marsh Island Area, North Addition (Revised November 1, 2000)
LA4 Eugene Island Area (Revised November 1, 2000)
LA4A Eugene Island Area, South Addition (Revised November 1, 2000)
LA5 Ship Shoal Area (Revised November 1, 2000)
LA5A Ship Shoal Area, South Addition (Revised November 1, 2000)
LA6 South Timbalier Area (Revised November 1, 2000)
LA6A South Timbalier Area, South Addition (Revised November 1, 2000)
LA6B South Pelto Area (Revised November 1, 2000)
LA6C Bay Marchand Area (Revised November 1, 2000)
LA7 Grand Isle Area (Revised November 1, 2000)
LA7A Grand Isle Area, South Addition (Revised February 17, 2004)
LA8 West Delta Area (Revised November 1, 2000)
LA8A West Delta Area, South Addition (Revised November 1, 2000)
LA9 South Pass Area (Revised November 1, 2000)
LA9A South Pass Area, South and East Addition (Revised November 1, 2000)
LA10 Main Pass Area (Revised November 1, 2000)
LA10A Main Pass Area, South and East Addition (Revised November 1, 2000)
LA10B Breton Sound Area (Revised November 1, 2000)
LA11 Chandeleur Area (Revised November 1, 2000)
LA11A Chandeleur Area, East Addition (Revised November 1, 2000)
LA12 Sabine Pass Area (Revised November 1, 2000)

Outer Continental Shelf Official Protraction Diagrams (These 10 Diagrams Sell for $2.00 Each)

NG15–03 Green Canyon (Revised November 1, 2000)
NG15–06 Walker Ridge (Revised November 1, 2000)
NG15–09 Amery Terrace (Revised October 25, 2000)
NG16–01 Atwater Valley (Revised November 1, 2000)
NG16–04 Lund (Revised November 1, 2000)
NG16–07 Lund South (Revised November 1, 2000)
NH15–12 Ewing Bank (Revised November 1, 2000)
NH16–04 Mobile (Revised November 1, 2000)
NH16–07 Viosca Knoll (Revised November 1, 2000)
NH16–10 Mississippi Canyon (Revised November 1, 2000)

Please note: A CD–ROM (in ARC/INFO and Acrobat (.PDF) format) containing all of the GOM Leasing Maps and Official Protraction Diagrams, except for those not yet converted to digital format, is available from the MMS Gulf of Mexico Region Public Information Unit for a price of $15. For the current status of all Central GOM Leasing Maps and Official Protraction Diagrams, please refer to 66 FR 28002 (published May 21, 2001) and 69 FR 23211 (published April 28, 2004). In addition, Supplemental Official OCS Block Diagrams (SOBDs) for these blocks are available for blocks which contain the "U.S. 200 Nautical Mile Limit" line and the "U.S.-Mexico Maritime Boundary" line. These SOBDs are also available from the MMS Gulf of Mexico Region Public Information Unit. For additional information, please call Ms. Tara Montgomery (504) 736–5722.

All blocks are shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this lease sale is shown in the document "List of Blocks Available for Leasing in Lease Sale 198" included in the FNOS 198 Package. Some of these blocks may be partially leased or deferred, or transected by administrative lines such as the Federal/State jurisdictional line. A bid on a block must include all of the available Federal acreage of that block. Also, information on the unleased portions of such blocks is found in the document "Central Gulf of Mexico Lease Sale 198—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred" included in the FNOS 198 Package.

Areas Not Available for Leasing: The following whole and partial blocks are not offered for lease in this lease sale:

Blocks which are currently under appeal (high bids rejected):

South Pelto (Area LA6B)

Block 16

West Delta (Area LA8A)

Blocks:
129 and 144

Blocks which are beyond the United States Exclusive Economic Zone in the area known as the Northern portion of the Eastern Gap:

Lund South (Area NG16–07)

Blocks:
172 and 173
213 through 217
252 through 261
through 305 349

Whole and partial blocks which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

Amery Terrace (Area NG15–09)

Whole Blocks:
280 and 281
318 through 320
355 through 359

Partial Blocks:
235 through 238
273 through 279
309 through 317

Statutes and Regulations: Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 *et seq.*, as amended (92 Stat. 629), hereinafter called "the Act"; all regulations issued

pursuant to the Act and in existence upon the Effective Date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: Initial period, extensions of initial period, minimum bonus bid amount, rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map "Lease Terms and Economic Conditions, Lease Sale 198, Final" for leases resulting from this lease sale:

Initial Period: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to less than 800 meters (pursuant to 30 CFR 256.37, commencement of an exploratory well is required within the first 5 years of the initial 8-year term to avoid lease cancellation); and 10 years for blocks in water depths of 800 meters or deeper;

Extensions of Initial Period: Extensions may be granted for eligible leases on blocks in water depths of less than 400 meters as specified in NTL No. 2000–G22;

Minimum Bonus Bid Amount: A bonus bid will not be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof for blocks in water depths of less than 400 meters or $37.50 or more per acre or fraction thereof for blocks in water depths of 400 meters or deeper; to confirm the exact calculation of the minimum bonus bid amount for each block, see "List of Blocks Available for Leasing" contained in the FNOS 198 Package;

Rental Rates: $6.25 per acre or fraction thereof for blocks in water depths of less than 200 meters and $9.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty Rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month during which the production is obtained;

Minimum Royalty: After the start of royalty-bearing production: $6.25 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $9.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement. then no minimum royalty payment is due;

Royalty Suspension Areas: Royalty suspension, subject to deep gas price thresholds, will apply to blocks in water depths less than 400 meters where deep gas (typically 15,000 feet or greater subsea) is drilled and commences production before May 3, 2009. The Energy Policy Act of 2005 provided additional royalty relief for ultra deep gas wells and extended the water depth to less than 400 meters for deep gas wells. In addition, subject to both oil and gas price thresholds, royalty suspension will apply in water depths of 400 meters or deeper. See the map "Lease Terms and Economic Conditions, Lease Sale 198, Final" for specific areas and the "Royalty Suspension Provisions, Lease Sale 198, Final" document contained in the FNOS 198 Package for specific details regarding royalty suspension eligibility, applicable price thresholds and implementation.

Lease Stipulations: The map "Stipulations and Deferred Blocks, Lease Sale 198, Final" depicts the blocks on which one or more of ten lease stipulations apply: (1) Topographic Features; (2) Live Bottoms; (3) Military Areas; (4) Blocks South of Baldwin County, Alabama; (5) Law of the Sea Convention Royalty Payment; (6) Protected Species; (7) Limitation on Use of Seabed and Water Column in the Vicinity of the Approved Port Pelican Offshore Liquefied Natural Gas (LNG) Deepwater Port Receiving Terminal, Vermilion Area, Blocks 139 and 140; (8) Below Seabed Operations on Mississippi Canyon Area, Block 920; (9) Limitation on Use of Seabed and Water Column in the Vicinity of the Approved Research Facility for Gas Hydrates, Mississippi Canyon Area, Block 118; and (10) Limitation on Use of Seabed and Water Column in the Vicinity of the Approved Gulf Landing Offshore LNG Deepwater Port Receiving Terminal, West Cameron Area, Block 213. The texts of the lease stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 198, Final" included in the FNOS 198 Package. In addition, the "List of Blocks Available for Leasing" contained in the FNOS 198 Package identifies for each block listed the lease stipulations applicable to that block.

Information to Lessees: The FNOS 198 Package contains an "Information To Lessees" document which provides detailed information on certain specific issues pertaining to this oil and gas lease sale.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 198, not to be opened until 9 a.m., Wednesday, March 15, 2006." The submitting company's name, its GOM Company number, the map area, map number, and block number should be clearly identified on the outside of the envelope. Please refer to the sample bid envelope included within the FNOS 198 Package. Please also refer to the Telephone Numbers/Addresses of Bidders Form included within the FNOS 198 Package. We are requesting that you provide this information in the format suggested for each lease sale. Please provide this information prior to or at the time of bid submission. Do not enclose this form inside the sealed bid envelope. The total amount of the bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the FNOS 198 Package. A blank bid form, which is provided for your convenience, may be copied and filled in.

The MMS published in the **Federal Register** a list of restricted joint bidders, which applies to this lease sale, at 70 FR 67499 on November 7, 2005. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must include on the bid form the proportionate interest of each participating bidder, stated as a percentage, using a maximum of five decimal places, *e.g.*, 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the FNOS 198 Package).

Rounding: The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty: Round up to the next whole dollar amount if the calculation results in a decimal figure (see next paragraph).

Please note: The minimum bonus bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing in Lease Sale 198" included in the FNOS 198 Package.

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Lease Sale 198, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" which can be found on the MMS Web site at *http://www.gomr.mms.gov/homepg/lsesale/198/cgom198.html.* All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 11 a.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Please note: Certain bid submitters (*i.e.*, those that are NOT currently an OCS mineral lease record title holder or designated operator OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) Amend development bond coverage; (3) Provide a letter of credit; or (4) Provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated FNOS 198 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the Act, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. To ensure that the Government receives a fair return for the conveyance of lease rights for this lease sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of current procedures, "Modifications to the Bid Adequacy Procedures" at 64 FR 37560 on July 12, 1999, can be obtained from the MMS Gulf of Mexico Region Public Information Unit or via the MMS Internet Web site at *http://www.gomr.mms.gov/homepg/lsesale/bidadeq.html.*

Successful Bidders: As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR part 256, subpart I, as amended.

Also, in accordance with regulations at 43 CFR, part 42, subpart C, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions.

Affirmative Action: The MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the MMS Gulf of Mexico Region Adjudication Unit. This certification is required by 41 CFR part 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the MMS Gulf of Mexico Region Adjudication Unit.

Geophysical Data and Information Statement: Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS. Every bidder submitting a bid on a block in Sale 198, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement identifying any processed or reprocessed pre- and post-stack depth migrated geophysical data and information in its possession or control and used in the evaluation of that block. The existence, extent (*i.e.*, number of line miles for 2D or number of blocks for 3D) and type of such data and information must be clearly identified. The statement must include the name and phone number of a contact person, and an alternate, knowledgeable about the depth data sets (that were processed or reprocessed to correct for depth) used in evaluating the block. In the event such data and information includes data sets from different timeframes, you should identify only the most recent data set used for block evaluations.

The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such depth data and information.

Every bidder must submit a separate Geophysical Data and Information Statement in a sealed envelope. The envelope should be labeled "Geophysical Data and Information Statement for Oil and Gas Lease Sale 198" and the bidder's name and qualification number must be clearly identified on the outside of the envelope. This statement must be submitted to the MMS at the Gulf of Mexico Regional Office, Attention: Resource Evaluation (1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394) by 10 a.m. on Tuesday, March 14, 2006. The statement may be submitted in conjunction with the bids or separately. Do not include this statement in the same envelope containing a bid. These statements will not be opened until after the public bid reading at Lease Sale 198 and will be kept confidential. An Example of Preferred Format for the Geophysical Data and Information Statement is included in the FNOS 198 Package. Please also refer to a sample of the Geophysical Envelope—Preferred Format included within the FNOS 198 Package.

Please refer to NTL No. 2003–G05 for more detail concerning submission of the Geophysical Data and Information Statement, making the data available to the MMS following the lease sale,

preferred format, reimbursement for costs, and confidentiality.

Dated: February 7, 2006.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. E6–2000 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 28, 2006. 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 February 28, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

California

San Diego County

Gregory Mountain (Chokia), Address Restricted, Pauma, 06000106

Kansas

Ellis County

Krueger Building, 811 Fort St., Hays, 06000111

McPherson County

Kuns-Collier House, 302 S. Walnut St., McPherson, 06000114

Montgomery County

Cook's Hotel, 113 West Myrtle, Independence, 06000115

Nemaha County

Prairie Grove School (Public Schools of Kansas MPS), Township Rd., "H", SE of int with Township Rd. 232, Seneca, 06000113

Russell County

Dream Theater (Theaters and Opera Houses of Kansas MPS), 629 N. Main St., Russell, 06000112

Louisiana

Orleans Parish

New Orleans Lower Central Business District (Boundary Increase), Approx. Rampart, Tulane, Loyola, Gravier, O'Keefe and Common, New Orleans, 06000110

Massachusetts

Essex County

Frank A. Palmer and Louis B. Crary (Shipwreck), Address Restricted, Gloucester vicinity, 06000107

Nevada

Churchill County

Federal Building and Post Office (U.S. Post Offices in Nevada MPS), 90 N. Maine St., Fallon, 06000109

Nye County

Manhattan School, Gold St. bet. Mineral St. and Sexter Ave., Manhattan, 06000108

Oklahoma

Carter County

Ardmore Municipal Auditorium, 220 West Broadway, Ardmore, 06000117

Hardy Murphy Coliseum, 600 Lake Murray Dr. S, Ardmore, 06000118

Jackson County

Cross S Ranch Headquarters, 1.3 mi. W and 4 mi. N of jct. of Cty Rds N199 and E1750, Olustee, 06000119

Olustee Public Library and Park, S side 4th St. bet. C & D Sts., Olustee, 06000116

Virginia

Emporia Independent City

Greensville County Training School (Rosenwald Schools in Virginia MPS), 105 Ruffin St., Emporia (Independent City), 06000122

King and Queen County

Northbank, 453 N. Bank Rd., Walkerton, 06000121

Portsmouth Independent City

Circle, The, 3010 High St., Portsmouth (Independent City), 06000120

[FR Doc. E6–1922 Filed 2–10–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Date and Location: The AMWG will conduct the following public meeting:

Phoenix, Arizona—March 7–8, 2006. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 3 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs, 2 Arizona Center, 400 N. 5th Street, 12th Floor, Conference Rooms A&B, in Phoenix, Arizona.

Agenda: The purpose of the meeting will be to review the Fiscal Year 2005 budget expenditures and proposed FY06 budget modifications and draft FY07–08 budget and workplan proposals, and to receive updates on science plans currently in development along with other monitoring and research reports. Additional topics of discussion will include status of humpback chub efforts, basin hydrology, public outreach, and other administrative and resource issues pertaining to the AMP.

Time will be allowed for any individual or organization wishing to make formal oral comments (limited to 5 minutes) at the meeting. To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov*.

Dated: January 31, 2006.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. E6–1943 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–561]

In the Matter of Certain Combination Motor and Transmission Systems and Devices Used Therein, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19.U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 10, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Solomon Technologies, Inc. A supplemental letter was filed on January 30, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain combination motor and transmission systems and devices used therein, and products containing same, by reason of infringement of claims 1–5, 7, 8, 10, and 12 of U.S. Patent No. 5,067,932. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 7, 2006, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain combination motor and transmission systems or devices used therein, or products containing same, by reason of infringement of claims 1–5, 7, 8, 10, or 12 of U.S. Patent No. 5,067,932, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Solomon Technologies, Inc., 1400 L & R Industrial Boulevard, Tarpon Springs, Florida 34689.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Toyota Motor Corporation, 1 Toyota-Cho, Toyota City, Aichi, 471–8571, Japan.

Toyota Motor Manufacturing North America, 25 Atlantic Avenue, Erlanger, Kentucky 41018.

Toyota Motor Sales, U.S.A., Inc., 19001 South Western Avenue, Torrance, California 90509.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 7, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–1978 Filed 2–10–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1094 (Final)]

Metal Calendar Slides From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1094 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the

United States is materially retarded, by reason of less-than-fair-value imports from Japan of metal calendar slides, provided for in subheading 7326.90.10 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: Effective February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of metal calendar slides from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 29, 2005, by Stuebing Automatic Machine Company, Cincinnati, Ohio.

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on April 4, 2006, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on April 18, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 7, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 12, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 11, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 25, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before April 25, 2006. On May 11, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 15, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "'V' and/or 'U' shaped metal calendar slides manufactured from cold-rolled steel sheets, whether or not left in black form, tin plated or finished as tin free steel ('TFS'), typically with a thickness from 0.19 mm to 0.23 mm, typically in lengths from 152 mm to 915 mm, typically in widths from 12 mm to 29 mm when the slide is lying flat and before the angle is pressed into the slide (although they are not typically shipped in this 'flat' form), that are typically either primed to protect the outside of the slide against oxidization or coated with a colored enamel or lacquer for decorative purposes, whether or not stacked, and excluding paper and plastic slides. Metal calendar slides are typically provided with either a plastic attached hanger or eyelet to hang and bind calendars, posters, maps or charts, or the hanger can be stamped from the metal body of the slide itself." 71 FR 5244, February 1, 2006.

request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 8, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–2002 Filed 2–10–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–560]

In the Matter of Certain NOR and NAND Flash Memory Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 10, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SanDisk Corporation of Sunnyvale, California. A supplemental letter was submitted by SanDisk on January 24, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain NOR and NAND flash memory devices by reason of infringement of claims 27, 28, 32, 50, 51, and 64 of U.S. Patent No. 5,172,338, claims 1–8 and 10–14 of U.S. Patent No. 5,991,517, and claims 7 and 10 of U.S. Patent No. 6,542,956. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 7, 2006, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain NOR or NAND flash memory devices by reason of infringement of one or more of claims 27, 28, 32, 50, 51, and 64 of U.S. Patent No. 5,172,338, claims 1–8 and 10–14 of U.S. Patent No. 5,991,517, and claims 7 and 10 of U.S. Patent No. 6,542,956, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SanDisk Corporation, 140 Caspian Court, Sunnyvale, California 94089.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: STMicroelectronics N.V., 39, Chemin du Champ des Filles, C.P. 21, CH 1228 Plan-Les-Ouates, Geneva, Switzerland. STMicroelectronics, Inc., 1310 Electronics Drive M/S 2308, Carrollton, Texas 75006.

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 8, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–1996 Filed 2–10–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. NAFTA–103–13]

Woven Cotton Boxer Shorts: Probable Effect of Modification of NAFTA Rules of Origin for Goods of Canada and Mexico

AGENCY: United States International Trade Commission.

ACTION: Correction of HTS subheading number in original notice.

DATES: *Effective Date:* February 7, 2006.

SUMMARY: The notice of institution of this investigation published in the **Federal Register** of February 2, 2006 (71 FR 5687) incorrectly listed one of the HTS subheading numbers. The correct HTS subheading number is 6207.1100, not 6207.1000. All other information in the notice remains the same.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Laura V. Rodriguez, Office of Industries (202–205–3499, *laura.rodriguez@usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov*. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects: NAFTA, rules of origin, fabrics, boxer shorts.

By order of the Commission.

Issued: February 7, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–1979 Filed 2–10–06; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Advisory Committee on Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: May 22–23, 2006.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 6, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–1277 Filed 2–10–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Advisory Committee on Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of open meeting on Evidence Rule 502.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 24–25, 2006.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Fordham University Law School, Lowenstein Building, President's Dining Room, 60th Street and Columbus Avenue, New York, NY.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 6, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–1278 Filed 2–10–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Advisory Committee on Rules of Criminal Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 3–4, 2006.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 6, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–1279 Filed 2–10–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 22–23, 2006.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 6, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–1280 Filed 2–10–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 22–23, 2006.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabieji, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 6, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–1281 Filed 2–10–06; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Human Body Models Consortium

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"), Global Human Body Models Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: General Motors Corporation, Detroit, MI; DaimlerChrysler Corporation, Auburn Hills, MI; Honda R&D Co., Ltd., Tochigi, Japan; Hyundai Motor Company, Gyeonggi-do, Republic of Korea; Nissan Motor Co., Ltd., Kanagawa, Japan; TK Holdings, Auburn Hills, MI; Toyota Motor Corporation, Aichi, Japan; and TRW Vehicle Safety Systems, Inc., Washington, MI. The general area of Global Human Body Models Consortium's planned activity is to conduct joint research and development necessary to create computer models of the human body (and/or portions thereof) and the body's reaction to external physical forces. The models would be used in vehicle and component testing. To accomplish this objective, the parties, working in conjunction as necessary with third parties such as government entities, universities and suppliers, will refine and improve current models and develop new ones.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–1291 Filed 2–10–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on January 23, 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"), Network Centric Operations Industry Consortium, Inc. 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, International Data Links Society, San Diego, CA; Military Communication Institute, Zegrze, POLAND; and Maritime Technology Centre R&D Institute, Gdynia, POLAND have been added as parties to this venture. Also, SPARTA, Inc., Arlington, VA; AeroVironment, Inc., Simi Valley, CA; and Software Engineering Institute/Carnegie Mellon University, Pittsburgh, PA have withdrawn as parties 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 Network Centric Operations Industry Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. 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 2, 2005 (70 FR 5486).

The last notification was filed with the Department on October 31, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 2005 (70 FR 71333).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–1289 Filed 2–10–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Correction

By Notice dated July 19, 2005, and published in the **Federal Register** on July 27, 2005 (70 FR 43457), Siegfried (USA), Inc., was granted registration as a bulk manufacturer of the basic class of controlled substances listed in the notice. Oxycodone (9143) and Morphine (9300) were inadvertently omitted from the list of controlled substances for Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070. The Notice of Registration published on July 27, 2005 (70 FR 43457), should be corrected to include Oxycodone (9143) and Morphine (9300).

Dated: February 6, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–1903 Filed 2–10–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 7, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting 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 Bureau of Labor Statistics (BLS), 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: Bureau of Labor Statistics.

Type of Review: Extension of a currently approved collection.

Title: Job Openings and Labor Turnover Survey (JOLTS).

OMB Number: 1220–0170.

Frequency: Monthly.

Type of Response: Reporting.

Affected Public: Business and other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 16,400.

Number of Annual Responses: 132,840.

Estimated Average Response: 10 minutes.

Total Burden Hours: 22,140.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Job Openings and Labor Turnover Survey (JOLTS) will collect data on job vacancies, labor hires, and labor separations. The data are used as demand-side indicators of labor shortages. These indicators of labor shortages at the national level greatly enhance policy makers' understanding of imbalances between the demand and supply of labor. Presently there is no other economic indicator of labor demand with which to assess the presence of labor shortages in the U.S. labor market. The availability of unfilled jobs is an important measure of tightness of job markets, symmetrical to unemployment measures.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–1948 Filed 2–10–06; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Indian and Native American Employment and Training Programs; Solicitation for Grant Applications and Announcement of Competition Waivers for Program Years 2006 and 2007

Announcement Type: New. Notice of Solicitation for Grant Applications and Announcement of Competition Waivers.

Funding Opportunity Number: SGA/DFA–PY–05–05.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.265

Key Dates: The closing date for receipt of applications under this announcement is by 5 p.m. (Eastern Time), 30 days after the date of publication in the **Federal Register**. Application and submission information is explained in detail in Part IV of this Solicitation for Grant Applications (SGA).

Summary: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of competitive grant funds to provide employment and training services to Indians, Alaska Natives and Native Hawaiians under section 166 of the Workforce Investment Act (WIA) for Program Years (PY) 2006, and 2007 (July 1, 2006 through June 30, 2008). Competition for section 166 grants is conducted every two years, except that the Secretary may waive the requirement for such competition for current grantees that have performed satisfactorily.

Through this Notice, the Department announces that the Secretary has waived competition for this solicitation for grantees that have performed satisfactorily under their current grant. (See Attachment A for a list of grantees receiving waivers.) To apply for an award of funds for PY 2006 and 2007 for their current service area, current grantees receiving a waiver of competition only need to submit a cover letter, signed by an authorized signatory, and a Standard Form (SF) 424 Application for Federal Assistance (Version 02), which will serve as the grantee's "Notice of Intent" (NOI) to continue providing WIA section 166 services. Submittals on *http://www.grants.gov*, with authorized electronic signatures, will also be accepted in place of the hard copy cover letter and SF 424.

The Secretary has also waived competition for this solicitation for those grantees operating a WIA section 166 training and employment program as part of a Pub. L. 102–477 Demonstration Project, which allows federally-recognized tribes, or entities serving federally-recognized tribes, to consolidate formula-funded employment, training, and related dollars under a single service plan administered by the Department of the Interior. (See Attachment B for a list of Pub. L. 102–477 grantees.) Grantees operating a WIA section 166 grant as part of a Public Law 102–477 Demonstration Project will need to submit a cover letter, signed by an authorized signatory, and a Standard Form (SF) 424 Application for Federal Assistance (Version 02), which will serve as the grantee's "Notice of Intent" (NOI) to continue providing WIA section 166 services to the address provided in section IV (3) of this notice. Submittals on *http://www.grants.gov*, with authorized electronic signatures, will also be accepted in place of the hard copy cover letter and SF 424.

Competition for funding under this solicitation is limited to the geographic areas listed in Attachment C of this SGA. Any eligible entity, including new applicants and current grant recipients serving other geographic areas, may apply for funding to serve these areas. Current grantees serving these geographic areas are subject to competition and must submit a grant application as specified in Part IV (2) in order to compete for their existing service area.

Important: Organizations seeking WIA section 166 funding for this period must comply with the provisions of this SGA. Late applications from current grantees or new applicants will not be considered for those geographic service areas that are in competition (as listed in Attachment C).

A list of current grantees and the geographic areas they serve can be found at: *http://www.doleta.gov/dinap/cfml/CensusData.cfm.*

Addresses: Applications may be submitted electronically on *http://www.grants.gov* or in hard-copy via mail or hand delivery. Mailed applications must be sent to: U.S. Department of Labor, ETA, Room N–4617, 200 Constitution Ave., NW., Washington,

DC 20210, Attention: James Stockton. Applicants are advised that mail delivery in the Washington, DC area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. Applications submitted via facsimile (fax) machine will not be accepted.

Supplementary Information: This solicitation consists of eight parts and three attachments:

- Part I provides the funding description and background information.
- Part II describes the size and nature of the anticipated awards.
- Part III describes eligible applicants and other grant specifications.
- Part IV provides information on the application and submission process.
- Part V describes the criteria against which applications will be reviewed and evaluated, and explains the proposal review process.
- Part VI provides award administration information.
- Part VII contains DOL agency contact information.
- Part VIII lists additional resources of interest to applicants.
- Attachment A lists grantees receiving waivers. As indicated, this list also includes grantees which will receive conditional designation with conditions to be specified by the Grant Officer and reflected in the grant award.
- Attachment B lists Public Law 102–477 grantees receiving waivers.
- Attachment C lists grantees that did not receive a waiver and areas/counties open for competition and associated funding amounts.

I. Funding Opportunity Description

Section 166 of the Workforce Investment Act (WIA) makes funds available to Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations to support employment and training activities in order to: (A) Develop more fully the academic, occupational, and literacy skills of such individuals, (B) make such individuals more competitive in the workforce, and (C) promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities. Requirements for WIA section 166 programs are set forth in WIA section 166 (29 U.S.C. 2911) and its regulations, found at 20 CFR part 668, published at 65 FR 49294, 49435 (Aug. 11, 2000).

1. Background on the Workforce Investment Act (WIA), Section 166 Grants (Also Known as Indian and Native American Grants or INA Grants)

The U.S. Department of Labor, Employment & Training Administration has awarded employment and training grants to Indian tribes, urban Indian centers, and other non-profit organizations serving Indians, Alaska Natives, and Native Hawaiians for over 30 years. These grants have been authorized under various forms of legislation such as the Job Training Partnership Act (JTPA) enacted in 1982, and its predecessor, the Comprehensive Employment and Training Act (CETA) enacted in 1973. While WIA maintains most of the core program values that existed in previous laws, it also establishes key reforms that are applicable to Native American programs.

One of the key reforms under WIA is the emphasis on the coordination of federally-funded job training programs. The mechanism used to coordinate these various job training programs is the One-Stop delivery system. Under WIA, the Native American section 166 program is a required partner in the One-Stop delivery system. As such, grantees must execute a Memorandum of Understanding (MOU) with the local workforce investment board that identifies the role of the INA grantee in the One-Stop center. It is important that section 166 grantees coordinate with their local One-Stop service provider(s).

Applicants to this SGA should also be aware of ETA's move towards results-oriented employment and training programs. In order to better measure performance, ETA has established common measures for all ETA programs. Listed below are the adult performance outcomes that section 166 grants are measured by:

- Entered Employment
- Employment Retention
- Earnings Increase

Applicants which receive supplemental youth funds will be measured by the following criteria:

- Placement in Employment or Education
- Attainment of a Degree or Certificate
- Literacy and Numeracy gains

Additional information on performance measures can be found in ETA's Training and Employment Guidance Letter (TEGL) 28–04 (April 15, 2005), which can be found at: *http://wdr.doleta.gov/directives/attach/TEGL28–04.pdf* and at *http://www.doleta.gov/performance/guidance/Adminstrators_Mtg_QA_for_web_1–12–04.cfm#Common*

2. Waivers

As indicated in the Summary above, the Secretary has the authority to grant waivers from competition to grantees that have performed satisfactorily under their current grant. Incumbent grantees that have performed satisfactorily, both programmatically and administratively, under the last two grant cycles will receive a waiver from competition for the PY 2006–2007, designation period funded under this notice.

However, if DOL has found that the grantee serving a geographic area demonstrated substantial and persistent failures of performance, that geographic area was placed in competition. UNLESS the grantee is serving a geographic area over which it has legal jurisdiction, as will be discussed in greater detail in subsection (b) titled "Conditional Designation".

(a) Criteria for Determining Substantial and Persistent Failures of Performance

As a baseline criteria for determining substantial and persistent failures of performance, the Department has applied: (1) Program performance measures, (2) the responsibility review criteria at 20 CFR 667.170, and, (3) the factors related to ability to administer funds in 20 CFR 668.220 and 668.230. The seriousness of the factors supporting a finding of denying a competition waiver is less than that required to support a finding of non-responsibility.

(b) Conditional Designation

The determination regarding whether to deny a waiver required some adjustment with respect to those grantees with substantial and persistent failures of performance that are Federally recognized Indian tribes or Alaska Native entities serving geographic areas over which they have legal jurisdiction and a priority for designation under 20 CFR 668.210(a). In these situations, the Department determined that it will provide a waiver and a conditional designation to such grantees. This treatment is in recognition that the Section 166 regulations provide a priority for designation for Federally recognized Indian tribes and Alaska Native entities (or consortia that include such a tribe or Alaska Native entity) regarding geographic areas and/or populations over which they have legal jurisdiction,

The conditions on the designation will be specified by the Grant Officer in the grant award. Conditional designation means that such grantees will be required to follow specific instructions by the Grant Officer in

regards to their substantial and persistent failures of performance. The designation of the grantee is limited to the geographic area over which it has legal jurisdiction as defined by 20 CFR 668.210(a). Those geographic areas which the grantee serves but lacks legal jurisdiction are subject to competition.

(c) Description of Attachments

Attachment A provides a list of current grantees receiving competition waivers (including those tribes and Alaska Native entities that will receive conditional designations). Attachment B is a list of P.L. 102–477 grantees receiving waivers. Attachment C is a list of current grantees not receiving waivers and associated geographic areas open to competitive selection. If a grantee received only conditional designation and waiver from competition, the grantee's legal jurisdiction is not listed on Attachment C.

3. Procedures after Designation

Being designated as a section 166 service provider, either under a waiver or through competition, will not automatically result in an immediate award of grant funds. Entities that successfully complete the designation process, including winning any competition(s) for service area(s) that may occur as defined in this SGA, must prepare a two-year Comprehensive Services Program (CSP) Plan that must be approved by DOL. Instructions for preparation of the CSP Plan will be issued to all designated service providers under separate guidance.

After a section 166 designee's CSP Plan is approved by DOL, a grant agreement ("Notice of Obligation" or NOO) must be executed in accordance with 20 CFR 668.292. Each NOO will reflect the amount of section 166 funds awarded as determined in accordance with 20 CFR 668.296 and 668.440.

II. Award Information

Type of assistance instrument: Funds will be awarded under this solicitation through two-year grants. Exact award amounts will be determined by DOL after designation of service areas and service providers, and once funding appropriations for the grant periods have been made by Congress. Waivers of competition have been made for the PY 06–07 grant cycle, as explained in Section I(2) of this SGA.

The section 166 program is a "formula funded" program that receives an annual appropriation of not less than $55,000,000 authorized under Section 174(a) of WIA. For PY2004–2005, this amount was distributed throughout the United States to 182 grantees. The amounts awarded under the CSP (Adult) in PY 2005 ranged from $13,898 to $6,011,664. The median grant award amount was $171,735. Adult award amounts for all section 166 grantees can be found at: *http://www.doleta.gov/dinap/pdf/CSPholdHarmless.pdf.*

Adult funding: The amount of funding a grantee will receive for adult services is based on a formula specified at 20 CFR 668.296(b). The *CSP (Adult) Funding Formula* is as follows:

(1) One-quarter of the funds will be allocated based on the percentage of unemployed Native Americans living in the grantee's designated INA service area (as defined below) compared to the total number of unemployed Native Americans living in the United States.

(2) Three-quarters of the funds will be allocated based on the percentage of Native Americans living in poverty in the grantee's designated INA service area compared to the total number of Native Americans living in poverty in the United States.

A grantee's designated INA service area is the area identified by the DOL Grant Officer in the grant award in which the grant applicant will operate an employment and training program (usually a county or reservation area). Grant applicants must specify the geographic area(s) they wish to serve in their grant application. The ETA uses counties and tribal reservations, Alaska Native villages and Alaska Native regional corporations to identify areas of service. The ETA used data from the 2000 Census to determine the number of Native Americans in poverty and unemployed for each service area. Attachment C identifies the services areas in competition for PY 2006–2007, along with the number of Native Americans in each geographic area who are unemployed, in poverty, or in the youth age bracket and the estimated funding associated with each service area.

Youth funding: Grant applicants serving reservation areas and grantees serving any area in the State of Oklahoma also receive Supplemental Youth Services (SYS) program funds. Youth funds are appropriated annually as stated in WIA at section 127(b)(1)(C)(i). Annual appropriations for the SYS program have been approximately $15,000,000, which has been awarded to approximately 136 Native American grantees. The amounts awarded under the SYS program in 2005 ranged from $1,315 to $2,706,072. The median grant award amount was $40,241. Youth award amounts for all section 166 grantees can be found at: *http://www.doleta.gov/dinap/pdf/SYSPholdHarmless.pdf.*

The amount of youth funding a grantee will receive is based on a formula specified at 20 CFR 668.440. The *SYS Funding Formula* is as follows: SYS funding will be allocated to grantees serving reservations (or areas in the State of Oklahoma) based on the percentage of Native American Youth between the ages of 14 and 21 living in poverty in the grantee's designated INA service area compared to the number of Native American youth between the ages of 14 and 21 living in poverty on all reservation areas and the State of Oklahoma.

Award amounts available for areas in competition: Estimated funds to be awarded for those areas in competition are included in Attachment C.

III. Eligibility Information

1. Eligible Applicants

To be eligible for an award of funds under WIA section 166 and this solicitation, an entity must meet all eligibility requirements of WIA section 166 and 20 CFR 668.200, as well as the application and designation requirements found at 20 CFR part 668, subpart B. The Federal regulations can be downloaded from the Internet at: *http://www.doleta.gov/dinap/pdf/wiafinalregsall.pdf.* Potential applicants are expected to thoroughly review and comply with the statute and regulations.

Organizations that are potentially eligible to apply for WIA section 166 funds under this solicitation are:

- Federally recognized Indian Tribes
- Tribal organizations as defined in 25 U.S.C. 450b
- Alaskan Native-controlled organizations representing regional or village areas, as defined in the Alaska Native Claims Settlement Act
- Native Hawaiian-controlled entities
- Native American-controlled organizations serving Indians, including community and faith-based organizations (see definition of Native American-controlled organizations described below)
- State-recognized tribal organizations serving individuals who were eligible to participate under JTPA section 401, as of August 6, 1998
- Consortia of eligible entities which individually meet the legal requirements for a consortium (see definition of a consortium described below). Additionally, to be eligible, entities must have a legal status as a government, an agency of a government, a private non-profit corporation (e.g., incorporated under IRS section 501(c)(3), or a consortium as defined below. Applicants seeking to provide services in a geographic

service area for the first time must satisfy the funding threshold identified below.

Definition of Native American-Controlled Organization: A Native American-controlled organization is defined as any organization for which more than 50 percent of the governing board members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaska or Native Hawaiian entity, consortium, or public or private non-profit agency. For the purpose of this award application, the governing board must have decision-making authority for the WIA section 166 program.

Eligible consortium: Each member of a consortium must individually meet the requirement of an eligible applicant, as defined in 20 CFR 668.200 (c), (that is, be a federally recognized tribe, or tribal organization, or Alaska Native-controlled organization, etc.) *and* at least one of the consortia members must have a legal status as a government, an agency of a government or a private non-profit corporation. Additionally, the consortium must meet the following conditions: (1) Have members in close proximity to one another but not necessarily in the same State; (2) have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally binding agreements; and (3) be jointly and individually responsible for the actions and obligations of the consortium, including debts.

Funding Thresholds: To be eligible for funding, a new (non-incumbent) entity must request one or more geographic service areas in competition that contain an eligible population of sufficient size to result in a funding level of at least $100,000 under the combined adult and youth funding formulas. *See* § 668.200(a)(3). Current section 166 grantees that do not meet the $100,000 threshold are exempt from this requirement. Federally-recognized tribes currently receiving, or applying for WIA section 166 funds under Public Law 102–477 only need to meet a $20,000 threshold, as long as the combined funding under Public Law 102–477 is at least $100,000. Attachment C provides funding estimates for the geographic areas in competition.

2. Cost Sharing or Matching

The section 166 program does not require grantees to share costs or provide matching funds.

3. Other Eligibility Criteria

In accordance with 29 CFR part 98, entities that are debarred or suspended shall be excluded from Federal financial assistance and are ineligible to receive a section 166 grant.

Additionally the applicant must have the ability to administer section 166 funds. The ability to administer section 166 funds is determined in accordance with 20 CFR 668.220 and 668.230.

Limitations on those served under a WIA section 166 grant are identified in Part IV (5) of this SGA, "Funding Restrictions."

Applicants should be aware that there are specific program regulations and OMB circulars that grantees must adhere to upon receiving a section 166 grant. See Part IV (2) of this SGA below.

IV. Application and Submission Information

1. Address to Request Application Package

This SGA contains all of the information needed to apply for grant funding.

2. Content and Form of Application Submission

Information that must be submitted under this SGA will depend on the applicant's status with DOL/ETA. For the purposes of this SGA, grant applicants are divided into four categories, each of which is addressed separately below: (a) Current grantees receiving a waiver from competition for their service area, including those with conditional designation (see listing in Attachment A); (b) current grantees operating a WIA section 166 grant under Public Law 102–477 (see listing of 102–477 grantees in Attachment B); (c) current grantees not receiving waivers from competition (see listing in Attachment C); and (d) new applicants (non-incumbent) for areas in competition.

a. *Current grantees receiving a waiver from competition.* Current grantees receiving a waiver of competition, as listed in Attachment A of this SGA, only need to submit the following documents:

- A brief cover letter informing ETA of the organization's interest in applying for WIA section 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 424 (Version 02). (See information regarding the completion of the SF–424 below.)

If a current grantee with a competition waiver for an existing service area wishes to apply for additional geographic service areas, the additional service area(s) must be stated in item #14 of the SF–424 and the procedures in Section V of this SGA must be followed to apply for grant funding for the additional area(s). A current grantee that has received a waiver from competition does not jeopardize its existing service area by applying for additional service areas nor does it receive any preference for the additional area.

b. *Federally recognized tribes applying for section 166 funds under Public Law 102–477.* Public Law 102–477 authorizes WIA section 166 funds to be awarded to federally recognized tribes under a "consolidation" plan administered through the U.S. Department of Interior. Public Law 102–477 allows federally-recognized tribes to consolidate formula-funded employment and training related funds under a single, consolidated plan. Grantees operating a WIA section 166 grant under Public Law 102–477, as listed in Attachment B of this SGA, only need to submit the following documents:

- A brief cover letter informing ETA of the organization's interest in applying for WIA section 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 424 (Version 02). (See information regarding the completion of the SF–424 below.)

These documents indicate their intent to continue receiving section 166 funds. Tribes wishing to apply for WIA section 166 funds under Public Law 102–477 should not apply under this solicitation. Instead, tribes must submit a 477 plan to the U.S. Department of Interior.

New tribal applicants should be aware that in order for ETA to timely obligate FY 2007, funds under Public Law 102–477, a tribe's 477 plan must be received by the Department of Interior no later than April 1, 2006, and approved no later than June 30, 2006. For further information on applying for WIA section 166 funds under Public Law 102–477, please contact Athena R. Brown, Chief, DINAP, at (202) 693–3737 (this is not a toll-free number).

c. *Current grantees not receiving a waiver from competition.* Current grantees not receiving a waiver from competition, as listed in Attachment C of this SGA, only need to submit the following documents to initially express interest in continuing to serve the geographic service area placed in competition:

- A brief cover letter informing the ETA of the organization's interest in applying for WIA section 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 4249 (Version 02). (See information regarding the completion of the SF 424 below.)

While these are the only documents initially required, grantees not receiving

a waiver should be aware that other entities may apply for their geographic service area(s). In cases where a new applicant (or applicants) applies for a current grantee's service area (see Attachment C), the Grant Officer will notify the applicant that there is competition for that service area no later than 15 days after the SGA deadline date. Upon such notification, the applicant will be given 30 days from the date of the notification to submit a competitive grant proposal that responds to the evaluation criteria described in Part V(1) and that complies with requirements for new applicants under Part IV(2)(c) below (except that current grantees need not provide identification or proof of legal status, unless it has changed since the entity's current grant award). Current grantees not receiving a waiver may want to prepare a competitive grant proposal in advance of the notice of competition as some portions (such as letters of support) may take longer than the 15 days to prepare.

If there is no competition for a service area currently served by a grantee that did not receive a waiver, the Grant Officer, in consultation with DINAP and consistent with 20 CFR 668.210, 668.250, and 668.280, will make a decision to continue funding to the current grantee, or to designate the service area to another WIA section 166 grantee that is willing to serve the area, or to transfer funding into the formula to be distributed among all WIA section 166 grantees.

d. *New applicants for areas in competition.* New applicants must submit a complete grant proposal that addresses each of the evaluation criteria indicated in Part V(1) of this SGA. The proposal may not exceed twenty (20) double-spaced, single-sided, 8.5 inch × 11 inch pages with 12 point text font and one inch margins. In addition, in attachments which may not exceed 10 pages, the applicant may provide resumes, a list of staff positions to be funded by the grant, letters of support, statistical information, and other related material.

The proposal must include within the 20-page limit:

- A brief cover letter informing the ETA of the organization's interest in applying for WIA section 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 424 (Version 02) (see information regarding the completion of the SF–424 below).
- Identification of the applicant's legal status, including articles of incorporation for non-profit organizations or consortium agreement (if applicable).
- A specific description of the geographic area (*i.e.*, county or reservation) being applied for. Only areas placed in competition and identified in Attachment C of this SGA can be applied for. New applicants should identify the area(s) they wish to serve in item #14 of the SF–424. Applicants may include service areas in an attachment to the SF–424 if additional space is needed.

Completing the Standard Form (SF) 424 (Version 02)

The SF–424 is available for downloading at *http://www.grants.gov*. The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the representative of the applicant.

While the SF–424 requires general information about an applicant, applicants may not be familiar with some required items, or the information may not be readily available. Explanations of these items are provided below:

- *Item #8(c)—Organization DUNS:* All applicants for Federal funds are required to have a Dun and Bradstreet (DUNS) number. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number access this website: *http://www.dunandbradstreet.com* or call 1–866–705–5711. Many organizations already have a DUNS number. Applicants should verify that their organization does not already have a DUNS number before obtaining a new number.
- *Item #11—Catalog of Federal Domestic Assistance Number (CFDA):* The CFDA number for the WIA section 166 program is 17.265. This number must be provided in item #11.
- *Item #14—Areas Affected by Project:* Applicants must include the specific geographic areas they wish to serve (i.e., counties, reservations, etc.). Current grantees that wish to serve their existing service area and are not applying for additional service areas only need to indicate "Existing Service Area" in this section. Current grantees and new applicants requesting service areas that are open to competition as indicated in Attachment C of this SGA must include the State, County, and Reservation service area in line item 14. Applicants may include service areas in an attachment to the SF–424 if additional space is needed.
- *Item #17—Proposed Project Start Date and Ending Date:* The WIA section 166 program is funded for a two-year period and is based on a program year period of July 1 through June 30. The proposed start date under this solicitation is July 1, 2006, and the proposed end date is June 30, 2008.
- *Item #18—Estimated Funding:* The WIA section 166 program is a formula funded program based on population characteristics of geographic service areas assigned to grantees and such variables as the annual congressional appropriations. Since WIA section 166 funding awards are calculated by the DOL/ETA, it is not necessary for applicants to complete Item #18. However, current grantees can view their estimated funding which has been calculated by the DOL/ETA through 2010, at this website: *http://www.doleta.gov/dinap/cfml/CensusData.cfm*. Please note that the funding amounts located at the Web sites above are estimates based on the Fiscal Year 2004, congressional appropriation. Funding estimates for those areas in competition are included in Attachment C.
- *Item #19—Is application Subject to Review by State Under Executive Order 12372 process?* The WIA section 166 program is not subject to Executive Order 12372.

All applicants (except for current Pub. L. 102–477 grantees) may submit their applications on *http://www.grants.gov* with authorized electronic signatures. This will be accepted in place of the hard copy cover letter and SF–424. New applicants must submit hard copies of other required documents.

3. Submission Date, Times, and Addresses

All applications may be submitted electronically on *http://www.grants.gov* or in hard-copy via mail or hand delivery. Applicants submitting proposals in hard-copy must submit an original signed application, SF–424 (all new applicants must also submit a SF–424A, Budget Form) and one (1) "copy-ready" version. Do not bind, staple, or insert protruding tabs.

The closing date for receipt of applications under this announcement is by 5 p.m. (eastern time), 30 days after the date of publication. Applications must be received at the address below no later than 5 p.m. (eastern time). Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the

mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James Stockton, Grant Officer, Reference SGA/DFA–PY–05–05, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time. Proposals submitted on diskette or CD are not encouraged as decontamination procedures may cause damage.

For those applying online through *http://www.grants.gov*, it is strongly recommended that applicants immediately initiate and complete the "Get Started" registration steps at *http://www.grants.gov/GetStarted*. These steps may take multiple days to complete, and this time should be factored into plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of an application. If submitting electronically through *http://www.grants.gov*, it would be appreciated if the application submitted is saved as .doc, .pdf, or .txt files. Applications submitted online, with authorized electronic signatures, are acceptable, in lieu of the brief cover letter with signature.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it (a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application received after the deadline, but having a U.S. postmark showing an early submittal will not be considered late if received before awards are made), or (b) was sent by U.S. Postal Service Express Mail or *http://www.grants.gov* to the addressee not later than 5 p.m. at the place of mailing or electronic submission one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by U.S. Postal Service Express Mail in the event of any electronic submission problems. "Post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without 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 package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

Important: Organizations seeking WIA section 166 funding for this period must comply with the provisions of this SGA. Late applications from current grantees or new applicants will not be considered for those geographic service areas that are in competition (as listed in Attachment C).

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372 "Intergovernmental Review of Federal Programs."

5. Funding Restrictions

Allowable costs. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., for tribes, OMB Circular A–87, for non-profit organizations, OMB Circular A–122. *See* 20 CFR 668.810 and 668.840 (incorporating WIA cost rules at 20 CFR 667.200 to 667.220). Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowable in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. The WIA section 166 program limits administrative costs to 15% but may be negotiated up to 20% upon approval from the grantor agency. There are no specific limits on indirect costs; however, since most indirect costs are considered administrative costs, the amount of indirect cost collected, regardless of the approved rate, may be limited by the overall administrative cost limit. WIA funds must not be spent on construction or purchase of facilities or buildings except in specific circumstances specified at section 667.260.

Limitation on the type of individuals served: The regulations at 20 CFR 668.300(a) limit eligibility for WIA section 166 program services to Native Americans as determined by a policy of the Native American grantee, Alaska Natives, and Native Hawaiians. Those receiving services must also, under § 668.300(b), be either low income, unemployed, underemployed as defined in 20 CFR 668.150, a recipient of a bona fide layoff notice which has taken effect in the last six months or will take effect in the following six month period, or employed persons in need of employment and training services to achieve self-sufficiency. Grantees must ensure that all eligible population members have equitable access to employment and training services. See 20 CFR 668.650(a). Priority of services must be given to veterans and spouses of certain veterans in accordance with the provisions of the "Jobs for Veterans Act," Public Law 107–288. Since all individuals served by the section 166 program must be Native American, Alaska Native, or Native Hawaiian, so must the veterans receiving priority under the "Jobs for Veterans Act" be Native American, Alaska Native, or Native Hawaiian.

V. Application Review Information

1. Evaluation Criteria

The factors listed below will be considered in evaluating the applicants' approach to providing services and their ability to produce the best outcomes for covered individuals residing in the service area.

2. Review and Selection Process

Evaluation criteria	Points
A.i. Previous experience or demonstrated capabilities in successfully operating an employment and training program established for and serving Indians and Native Americans	20

Evaluation criteria	Points
ii. Previous experience in operating or coordinating with other human resources development programs serving Indians and Native Americans. Applicant should describe other successful Federal, State, or private foundation grants that the applicant has operated in the last two years	10
iii. Demonstration of coordination and linkages with Indian and non-Indian employment and training resources within the community	10
B.i. Description of the entity's planning process and demonstration of involvement with the INA community	20
ii. Approach to providing services, including identification of the training and employment problems and needs in the requested area, and approach to addressing such needs	10
C.i. Demonstration of involvement with local employers and efforts that have been made to link unemployed Native Americans with employers. Applicant should also describe involvement with local Workforce Investment Boards, or if applicable, youth programs, and/or councils	10
ii. Applicants should describe efforts that have been made to coordinate their human resource services described under Criteria A(ii) with State Operated One-Step delivery systems	10
D. Demonstration of support and recognition by the Native American Community and service population, including local tribes and adjacent Indian organizations and the client populations to be served	10
Maximum Available Points	100

Overall Review Process. Where two or more entities apply for the same service area that has been placed in competition, DOL's Division of Indian and Native American Programs (DINAP), with the concurrence of the Grant Officer, will conduct an initial review of the applications for compliance with the statute, regulations, and this SGA. The initial review will consider, among other things, timeliness and completeness of submission, applicant eligibility, eligibility of the requested service area, population size, and funding thresholds as described in Part III (1) of this SGA. Applications that do not satisfy these conditions will not be considered.

The review will also consider any designation priority, as described in the next paragraph, and compliance with financial responsibility criteria, in accordance with 20 CFR 668.220 and 668.230, to ensure that applicants are capable of properly handling and accounting for Federal funds. Organizations with no prior grant history with the Department, or about whom there are financial or grant management concerns, may be conditionally designated pending an on-site review and/or a six-month assessment of program progress.

The Grant Officer is not required to adhere to the geographical service area requested by an applicant. The Grant Officer may make a designation of all the area requested, or, if acceptable to the applicant, a portion of the area requested or more than the area requested.

Designation Priority. In non-reservation areas placed in competition, consistent with 20 CFR 668.210(c), priority for designation will be given to entities with a Native American-controlled governing body and which are representative of the Native American community or communities that they are applying to serve.

Competitive Selection Procedures. If two or more applicants satisfy the initial review described above, for a geographic area identified in Attachment C that is open to competition under this SGA, then a competitive selection will be made following the procedures in this section and applying the designation priority noted above. When competitive selection is necessary, DINAP will notify each applicant of the competing Notices of Intent no later than 15 days after the application deadline date. Upon notification of competition, current grantees will be given 30 days from the date of notification to submit a complete proposal, as specified in Part IV (2)(c).

Where a competitive evaluation is required, the Grant Officer will use a formal panel review process to score proposals and any supporting attachments against the evaluation criteria listed in Part V (1). The review panel will include individuals with knowledge of or expertise in programs dealing with Indians and Native Americans. The purpose of the panel is to review and evaluate an organization's potential, based on its application, to provide services to a specific Native American community, and submit recommendations to the Grant Officer.

It is DOL's policy that no information affecting the panel review process will be solicited or accepted after the deadlines for receipt of applications set forth in this SGA. All submitted information must be in writing. This policy does not preclude the Grant Officer from requesting, or considering, additional information independent of the panel review process. During the review, the panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, *e.g.*, supporting references must contain the name of the contact person, an address, and telephone number. Panel ratings and recommendations are advisory to the Grant Officer.

Determination of Designation-Scoring. The Grant Officer will make the final determination of section 166 designees and of the geographic service area for which each designation is made. The Grant Officer will select the entity that demonstrates the ability to produce the best outcomes for its customers, based on all available evidence and in consideration of any designation priorities as described in above. In addition to considering the review panel's rating in those instances in which a panel is convened, the Grant Officer may consider any other available information regarding the applicants' financial and administrative capability, operational capability, and responsibility in order to make funding determinations that are advantageous to the government.

The Grant Officer need not designate an entity for every geographic area. *See* 20 CFR 668.294. If there are service areas in competition for which no entity submitted a complete application or for which no entity achieved a score of at least 70, the Grant Officer may either designate no service provider or may designate an entity based on demonstrated capability to provide the best services to the client population. DOL reserves the rights to select applicants with scores lower than 70 or lower than competing applications if such selection would, in DOL's judgment, result in the most effective and appropriate combination of services to the client population, funding, and costs.

An applicant that does not receive WIA 166 funding, in whole or in part, as a result of this process, will be afforded the opportunity to appeal the Grant Officer's decision as provided at 20 CFR 668.270.

3. Anticipated Announcement and Award Dates

If possible, designation decisions will be made by March 1, 2006.

VI. Award Administration Information

1. Award Notices

The Grant Officer, Mr. James Stockton, will notify applicants of the results of their application as follows:

Designation Award Letter. The designation award letter signed by the Grant Officer will serve as official notice that the applicant has been awarded WIA section 166 funding. The designation award letter will include the geographic service area for which the designation is made.

Conditional Designation Award Letter. Conditional award designations will include identification of the geographic service area, the nature of the conditions, and the actions required for the applicant to be removed from conditional award status and the time frame in which such actions must be accomplished.

Non-Designation Award Letter. Any organization not receiving a designated award, in whole or in part, for a requested geographic service area that is in competition (as identified in Attachment C) will be notified formally of the non-award designation.

Notification by a person or entity, other than the Grant Officer that an applicant has been awarded WIA section 166 funds is not valid.

2. Administrative and National Policy Requirements

Applicants that are awarded WIA section 166 funds and become a Grantee of the ETA must comply with the provisions of WIA and its regulations. Particular attention should be given to part 668 of Title 20 of the Code of Federal Regulations (published in the **Federal Register** August 11, 2000), which focuses specifically on programs for Indians and Native Americans under WIA. In addition, all grants will be subject to the following administrative standards and provisions, as applicable to the particular grantee:

- 20 CFR part 667—Administrative provisions under Title I of WIA
- 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 parts 30, 31, 32, 33, 35 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor; Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor; and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial 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—Lobbying
- 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations
- 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements
- 29 CFR part 97 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 29 CFR part 98—Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
- 29 CFR part 99—Audit of States, Local Governments, and Non-Profit Organizations

In accordance with WIA Section 195(6) and 20 CFR 668.630(f), programs funded under this SGA may not involve political activities. Additionally, in accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611), non-profit entities incorporated under 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants. Further, this program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides guidance on the scope of the veterans priority statute and its effect on current employment training programs.

3. Reporting

Applicants that are awarded WIA section 166 funds and become a grantee of the ETA will be required to submit reports on financial expenditures, program participation, and participant outcomes on no more than a quarterly basis and in accordance with ETA-specified formats, deadlines, and other requirements. The ETA will be modifying program reports for the WIA section 166 program to reflect OMB Common Measures which will take effect beginning July 1, 2006. Grantee performance will be evaluated against the Common Measures on an annual basis.

VII. Agency Contacts

Questions regarding this SGA can be directed to: Serena Boyd, Grants Management Specialist, e-mail: *boyd.serena@dol.gov*; (202) 693–3338; FAX: (202) 693–2879 (this is not a toll-free number).

VIII. Other Information

Potential applicants may obtain further information on the WIA section 166 program for employment and training of Native Americans through the website for DOL's Division of Indian and Native American Programs: *http://www.doleta.gov/dinap/*. Any information submitted in response to this SGA will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate. The Department of Labor is not obligated to make any awards as a result of this SGA, and only the Grant Officer can bind the Department to the provision of funds under WIA section 166. Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and/or award of Federal funds does not waive any grant requirements and/or procedures.

Signed at Washington, DC, this 6th day of February 2006.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

Attachment A—Current Grantees Receiving Waivers

Attachment B—Public Law 102–477 Grantees Receiving Waivers

Attachment C—Current Grantees Not Receiving Waivers and Associated Geographic Areas

ATTACHMENT A.—CURRENT GRANTEES RECEIVING WAIVERS

State	Grantee name
Alabama	Inter-Tribal Council of Alabama
Alabama	Poarch Band of Creek Indians
Alaska	Ilisagvik College
Alaska	Kenaitze Indian Tribe
Alaska	Maniilaq Association
Alaska	Tanana Chiefs Conference
Arizona	Affiliation of Arizona Indian Centers, Inc.
Arizona	American Indian Association of Tucson
Arizona	Colorado River Indian Tribes
Arizona	Gila River Indian Community
Arizona	Hopi Tribal Council
Arizona	Hualapai Tribe
Arizona	Inter-Tribal Council of Arizona, Incorporated
Arizona	Native Americans for Community Action, Inc.
Arizona	Navajo Nation
Arizona	Pascua Yaqui Tribe
Arizona	Phoenix Indian Center, Inc.
Arizona	Quechan Indian Tribe
Arizona	Salt River Pima-Maricopa Indian Community
Arizona	San Carlos Apache Tribe
Arizona	Tohono O odham Nation
Arizona*	White Mountain Apache Tribe
Arkansas	American Indian Center of Arkansas, Inc.
California	California Indian Manpower Consortium
California	Candelaria American Indian Council
California	Indian Human Resources Center
California	Northern California Indian Development Council, Inc.
California	Southern California Indian Center, Inc.
California	Tule River Tribal Council
California	United Indian Nations, Inc.
California	Ya-Ka-Ama Indian Education and Development, Inc.
Colorado	Southern Ute Indian Tribe
Colorado	Ute Mountain Ute Tribe
Delaware	Nanticoke Indian Association, Inc.
Florida	Florida Governors Council on Indian Affairs, Inc.
Florida	Miccosukee Tribe of Indians of Florida
Hawaii	Alu Like, Inc.
Indiana	American Indian Center of Indiana, Inc.
Kansas	United Tribes of Kansas and Southeast Nebraska, Inc.
Louisiana	Inter-Tribal Council of Louisiana, Inc.
Maine	Penobscot Nation
Massachusetts	Mashpee-Wampanoag Indian Tribal Council, Inc.
Massachusetts	North American Indian Center of Boston, Inc.
Michigan	Grand Traverse Band of Ottawa and Chippewa Indians
Michigan	Inter-Tribal Council of Michigan, Inc.
Michigan	Michigan Indian Employment and Training Services, Inc.
Michigan	Pokagon Band of Potawatomi Indians
Michigan	Sault Ste. Marie Tribe of Chippewa Indians
Minnesota	American Indian Opportunities, Inc.
Minnesota*	Bois Forte Reservation Tribal Council
Minnesota	Fond Du Lac Reservation
Minnesota	Leech Lake Band of Ojibwe
Minnesota	Minneapolis American Indian Center
Mississippi	Mississippi Band of Choctaw Indians
Missouri	American Indian Council
Montana	Assiniboine and Sioux Tribes
Montana	B.C. of The Chippewa Cree Tribe
Montana	Blackfeet Tribal Business Council
Montana	Crow Tribe of Indians
Montana	Montana United Indian Association
Montana	Northern Cheyenne Tribe
Nebraska	Indian Center, Inc.
Nebraska*	Omaha Tribe of Nebraska
Nevada	Inter-Tribal Council of Nevada, Inc.
Nevada	Las Vegas Indian Center, Inc.
New Mexico	Alamo Navajo School Board
New Mexico	Eight Northern Indian Pueblo Council
New Mexico	Five Sandoval Indian Pueblos, Inc.
New Mexico	Jicarilla Apache Tribe
New Mexico	Mescalero Apache Tribe
New Mexico	National Indian Youth Council
New Mexico	Pueblo of Acoma

ATTACHMENT A.—CURRENT GRANTEES RECEIVING WAIVERS—Continued

State	Grantee name
New Mexico	Pueblo of Isleta
New Mexico	Pueblo of Taos
New Mexico	Ramah Navajo School Board, Inc.
New Mexico	Santa Clara Indian Pueblo Tribal Government
New Mexico	Santo Domingo Tribe
New York	American Indian Community House, Inc.
New York	Native American Community Services of Erie and Niagara
New York	Native American Cultural Center, Inc.
New York	St. Regis Mohawk Tribe
North Carolina	Cumberland County Association for Indian People, Inc.
North Carolina	Eastern Band of Cherokee Indians
North Carolina	Guilford Native American Association
North Carolina	Haliwa-Saponi Tribe, Inc.
North Carolina	Lumbee Regional Development Association, Inc.
North Carolina	Metrolina Native American Association
North Carolina	North Carolina Commission on Indian Affairs
North Dakota	Standing Rock Sioux Tribe
North Dakota	Turtle Mountain Band of Chippewa Indians
North Dakota	United Tribes Technical College
Ohio	North American Indian Cultural Center, Inc.
Oklahoma	Absentee Shawnee Tribe
Oklahoma	Cheyenne Arapaho Tribes of Oklahoma
Oklahoma	Choctaw Nation of Oklahoma
Oklahoma*	Comanche Tribe of Oklahoma
Oklahoma	Creek Nation of Oklahoma
Oklahoma	Four Tribes Consortium of Oklahoma
Oklahoma	Inter-Tribal Council of Northeast Oklahoma
Oklahoma	Kiowa Tribe of Oklahoma
Oklahoma	Native American Resource Center, Inc.
Oklahoma	Otoe-Missouria Tribe
Oklahoma	Ponca Tribe of Oklahoma
Oklahoma	Seminole Nation of Oklahoma
Oklahoma	Tonkawa Tribe of Oklahoma
Oklahoma	United Urban Indian Council, Inc.
Oregon	Confederated Tribes of The Umatilla Indian Reservation
Oregon	Confederated Tribes of Warm Springs
Oregon	Organization of Forgotten Americans, Inc.
Pennsylvania	Council of Three Rivers American Indian Center, Inc.
Rhode Island	Rhode Island Indian Council, Inc.
South Carolina	South Carolina Indian Development Council, Inc.
South Dakota	Lower Brule Sioux Tribe
South Dakota*	Oglala Sioux Tribe
South Dakota	United Sioux Tribes of South Dakota Development
South Dakota*	Yankton Sioux Tribe
Texas	Alabama-Coushatta Indian Tribal Council
Texas	Dallas Inter-Tribal Center
Texas	Ysleta Del Sur Pueblo
Utah	Indian Training and Education Center
Utah	Ute Indian Tribe
Vermont	Abenaki Self-Help Association/N.H. Indian Council
Virginia	Mattaponi Pamunkey Monacan Consortium
Washington	American Indian Community Center
Washington	Confederated Tribes and Bands of the Yakama Nation
Washington	Lummi Indian Business Council
Washington	Makah Tribal Council
Washington	Puyallup Tribe of Indians
Washington	Seattle Indian Center, Inc.
Washington	The Tulalip Tribes
Washington	Western Washington Indian Employment and Training
Wisconsin	Lac Courte Oreilles Tribal Governing Board
Wisconsin	Lac Du Flambeau Band of Lake Superior Chippewa Indians, Inc.
Wisconsin	Spotted Eagle, Inc.
Wisconsin	Wisconsin Indian Consortium
Wyoming	Northern Arapahoe Business Council

Total Grantees Receiving Waivers: 136.
*Current grantees to receive conditional designation.

ATTACHMENT B.—PUBLIC LAW 102–477 GRANTEES RECEIVING WAIVERS

State	Grantee name
Alaska	Aleutian-Pribilof Islands Assn., Inc.
Alaska	Association of Village Council Presidents
Alaska	Bristol Bay Native Association
Alaska	Central Council of Tlingit and Haida Indian Tribes
Alaska	Chugachmiut
Alaska	Cook Inlet Tribal Council, Inc.
Alaska	Copper River Native Association
Alaska	Kawerak Incorporated
Alaska	Kodiak Area Native Association
Alaska	Metlakatla Indian Community
Alaska	Orutsararmuit Native Council
Florida	Seminole Tribe of Florida
Idaho	Nez Perce Tribe
Idaho	Shoshone-Bannock Tribes, Inc.
Minnesota	Mille Lacs Band of Ojibwe Indians
Minnesota	Red Lake Tribal Council
Minnesota	White Earth Reservation Tribal Council
Montana	Confederated Salish & Kootenai Tribes
Montana	Fort Belknap Indian Community
Nebraska	Winnebago Tribe of Nebraska
Nevada	Reno Sparks Indian Colony
Nevada	Shoshone-Paiute Tribes
New Mexico	Pueblo of Laguna
New Mexico	Pueblo of Zuni
New York	Seneca Nation of Indians
North Dakota	Spirit Lake Sioux Tribe
North Dakota	Three Affiliated Tribes
Oklahoma	Cherokee Nation of Oklahoma
Oklahoma	Chickasaw Nation
Oklahoma	Citizens Potawatomi Nation
Oklahoma	Osage Nation
Oklahoma	Pawnee Nation of Oklahoma
Oregon	Confederated Tribes of Siletz Indians
South Dakota	Cheyenne River Sioux Tribe
South Dakota	Sicangu Nation (Rosebud Sioux Tribe)
South Dakota	Sisseton-Wahpeton Sioux Tribe
Washington	Confederated Tribes of the Colville Reservation
Wisconsin	Ho-Chunk Nation
Wisconsin	Menominee Indian Tribe of Wisconsin
Wisconsin	Stockbridge-Munsee Community
Wyoming	Eastern Shoshone Tribe

Total Public Law 102–477 Grantees Receiving Waivers: 41.

ATTACHMENT C.—CURRENT GRANTEES NOT RECEIVING WAIVERS AND ASSOCIATED GEOGRAPHIC AREAS

	Unemployed	Poverty	Youth
State: Colorado **Grantee: Denver Indian Center, Inc.**			
Adams County	135	390	90
Alamosa County	25	55	4
Arapahoe County	135	340	60
Baca County	0	10	4
Bent County	0	4	0
Boulder County	40	385	105
Chaffee County	0	15	0
Cheyenne County	0	4	4
Clear Creek County	0	15	4
Conejos County	4	115	15
Costilla County	20	35	4
Crowley County	4	25	4
Custer County	4	20	4
Delta County	0	10	0
Denver County	475	1955	370
Dolores County	4	20	4
Douglas County	20	30	4
Eagle County	0	10	0
El Paso County	170	590	85
Elbert County	4	10	0
Fremont County	15	70	10

ATTACHMENT C.—CURRENT GRANTEES NOT RECEIVING WAIVERS AND ASSOCIATED GEOGRAPHIC AREAS—Continued

	Unemployed	Poverty	Youth
Garfield County	10	60	10
Gilpin County	0	0	0
Grand County	0	4	0
Gunnison County	0	10	0
Hinsdale County	0	4	0
Huerfano County	20	95	20
Jackson County	0	0	0
Jefferson County	135	550	120
Kiowa County	4	4	0
Kit Carson County	4	4	0
Lake County	4	0	0
Larimer County	95	335	165
Las Animas County	10	185	10
Lincoln County	0	4	0
Logan County	15	10	0
Mesa County	25	280	90
Morgan County	20	25	10
Otero County	15	95	10
Ouray County	0	10	0
Park County	4	20	0
Phillips County	0	4	0
Pitkin County	4	4	0
Prowers County	0	25	4
Pueblo County	100	520	60
Rio Blanco County	4	10	0
Rio Grande County	0	30	20
Routt County	0	4	0
Saguache County	4	25	4
San Juan County	0	4	4
San Miguel County	10	4	0
Sedgwick County	0	0	0
Summit County	0	0	0
Teller County	10	0	0
Washington County	4	4	0
Weld County	80	240	50
Yuma County	0	0	0
PY 2006 Adult Funding Estimate: *$605,530.*			
PY 2007 Adult Funding Estimate: *$609,946.*			
No Youth Funding.			
State: Kansas			
Grantee: Mid-American All Indian Center, Inc.			
Barber County	4	10	10
Barton County	20	45	10
Butler County	4	90	0
Chase County	0	0	0
Chautauqua County	4	30	10
Cowley County	30	125	20
Elk County	0	10	0
Ellsworth County	0	0	0
Greenwood County	0	15	0
Harper County	0	0	0
Harvey County	4	4	0
Kingman County	0	0	0
Lyon County	10	45	0
Marion County	4	4	0
McPherson County	0	4	0
Pratt County	0	0	0
Reno County	4	55	0
Rice County	4	15	10
Saline County	4	35	15
Sedgwick County	205	830	125
Stafford County	0	4	0
Sumner County	10	35	4
PY 2006 Adult Funding Estimate: *$121,690.*			
PY 2007 Adult Funding Estimate: *$118,558.*			
No Youth Funding.			
State: Michigan			
Grantee: North American Indian Association of Detroit, Inc.			
Wayne County	365	1515	145

ATTACHMENT C.—CURRENT GRANTEES NOT RECEIVING WAIVERS AND ASSOCIATED GEOGRAPHIC AREAS—Continued

	Unemployed	Poverty	Youth
PY 2006 Adult Funding Estimate: *$198,849.*			
PY 2007 Adult Funding Estimate: *$178,964.*			
No Youth Funding.			
State: Michigan			
Grantee: Southeastern Michigan Indians, Inc.			
Macomb County	75	265	40
Oakland County	105	375	65
St. Clair County	55	80	15
PY 2006 Adult Funding Estimate: *$98,517.*			
PY 2007 Adult Funding Estimate: *$88,665.*			
No Youth Funding.			
State: New Jersey			
Grantee: Powhatan Renape Nation			
Atlantic County	30	45	4
Bergen County	60	155	10
Burlington County	40	140	4
Camden County	20	305	55
Cape May County	0	4	0
Cumberland County	40	170	25
Essex County	70	325	20
Gloucester County	40	70	10
Hudson County	190	310	45
Hunterdon County	0	0	0
Mercer County	40	115	10
Middlesex County	70	225	35
Monmouth County	20	85	25
Morris County	45	25	0
Ocean County	70	180	30
Passaic County	60	325	30
Salem County	15	60	15
Somerset County	30	135	0
Sussex County	4	10	0
Union County	35	225	50
Warren County	15	0	0
PY 2006 Adult Funding Estimate: *$281,343.*			
PY 2007 Adult Funding Estimate: *$283,827.*			
No Youth Funding.			
State: Oklahoma			
Grantee: Wyandotte Nation			
Kansas:			
Cherokee County	700	35	205
Crawford County	355	41	45
Missouri:			
Barry County	260	10	135
Barton County	75	4	4
Dade County	50	0	4
Jasper County	1,420	70	365
Lawrence County	250	4	55
McDonald County	580	20	140
Newton County	1,155	45	320
Native Hawaiian Imputation	34	1	5
PY 2006 Adult Funding Estimate: *$106,174.*			
PY 2007 Adult Funding Estimate: *$106,763.*			
No Youth Funding.			
State: Wisconsin			
Grantee: Oneida Tribe of Indians of Wisconsin, Inc.			
Brown County	320	960	145
Calumet County	15	30	4
Door County	10	25	0
Kewaunee County	0	4	0
Manitowoc County	35	140	20
Outagamie County	65	370	85
Sheboygan County	10	125	10
Winnebago County	40	115	0

ATTACHMENT C.—CURRENT GRANTEES NOT RECEIVING WAIVERS AND ASSOCIATED GEOGRAPHIC AREAS—Continued

	Unemployed	Poverty	Youth
PY 2006 Adult Funding Estimate: *$162,950.* PY 2007 Adult Funding Estimate: *$162,950.* PY 2006 Youth Funding Estimate: *$26,178.* PY 2007 Youth Funding Estimate: *$18,325.*			

Total Current Grantees Not Receiving Waivers: 7.

[FR Doc. 06–1251 Filed 2–10–06; 8:45 am]
BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, February 16, 2006.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Advance Notice of Proposed Rulemaking and Request for Comment: Part 715 of NUCA's Rules and Regulations, Supervisory Committee Audits.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, February 16, 2006.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 206(h)(1)(A) of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).
2. Request from a Corporate Federal Credit Union to Amend its Existing Waiver under Part 704 of NCUA's Rules and Regulations. Closed pursuant to Exemption (8).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: (703) 518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 06–1374 Filed 2–9–06; 3:45 pm]
BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Comment Management; Notice of Establishment

The Director of the National Science Foundation has determined that the establishment of the Proposal Review Panel for Industrial Innovation is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Proposal Review Panel for Industrial Innovation (#28164).

Purpose: Advise the National Science Foundation on the merit of proposals of proposals requesting financial support for research and research-related activities under the purview of the Office of Industrial Innovation.

Responsible NSF Official: Kesh Narayanan, Office of Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/292–8050.

Dated: February 8, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–1301 Filed 2–10–06; 8:45 am]
BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 18f–3; SEC File No. 270–385; OMB Control No. 3235–0441.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Section 18(f)(1)[1] of the Investment Company Act of 1940[2] (the "Investment Company Act") prohibits registered open-end management investment companies ("funds") from issuing any senior security. Rule 18f–3 under the Act[3] exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a "multiple class fund") if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare, and fund directors must approve, a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges ("rule 18f–3 plan").[4] Approval of the plan must occur before the fund issues any shares of multiple classes and whenever the fund materially amends the plan. In approving the plan, a majority of the fund board, including a majority of the fund's independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f–3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

There are approximately 1,142 multiple class funds.[5] Based on a review of typical rule 18f–3 plans, the Commission's staff estimates that the 1,142 funds together make an average of

[1] 15 U.S.C. 80a–18(f)(1).
[2] 15 U.S.C. 80a.
[3] 17 CFR 270.18f–3.
[4] Rule 18f–3(d).
[5] This estimate is based on data from Form N–SAR, the semi-annual report that funds file with the Commission.

571 responses each year to prepare and approve a written rule 18f–3 plan, requiring approximately 10 hours per response and a total of 5,710 burden hours per year in the aggregate.[6] The staff estimates that preparation of the rule 18f–3 plan may require 4 hours of the services of an attorney or accountant employed by the firm, at a cost of approximately $140 per hour for professional time,[7] and approval of the plan may require 1 hour of the attention of each of 6 directors, at a cost of approximately $635 per hour per director.[8] The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $2,495,270 ((4 hours × 1 professional × 571 responses × $140) + (1 hour × 6 directors × 571 responses × $635)).

The estimated annual burden of 5,710 hours represents an increase of 937 hours over the prior estimate of 4,773 hours. The increase in burden hours is attributable to a change in estimates of the number of multiple class funds that are subject to the rule based on recent Commission filings. For the most part, however, most funds require less time to prepare the rule 18f–3 plans because they only need to amend existing plans.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 6, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–1965 Filed 2–10–06; 8:45 am]

BILLING CODE 8010–01–P

[6] The estimate reflects the assumption that each multiple class fund prepares and approves a rule 18f–3 plan every two years when issuing a new class or amending a plan (or that 571 of all 1,142 funds prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 4 hours per plan (or 2,284 hours for 571 funds annually), and the time required to approve a plan is an additional 1 hour per director per plan (or 3,426 hours for 571 funds annually (assuming 6 directors per fund)).

[7] Hourly rates are derived from salary information compiled by the Securities Industry Association. We used the annual salary listed for the Deputy General Counsel position, adjusted upward by 35% to reflect possible overhead costs and employee benefits, to make our estimate. *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry* (2004) (available in part at *http://www.careerjournal.com/salaryhiring* (last visited Nov. 17, 2005)).

[8] Hourly rates are based on previous estimates, adjusted to reflect a 27% reported increase in compensation during the 2003–2004 period. *See* Management Practice Inc. Bulletin: More Meetings Means More Pay for Fund Directors (April 2005) (available at *http://www.mfgovern.com*).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 31a–1; SEC File No. 270–173; *OMB Control No. 3235–0178*

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 31a–1 [17 CFR 270.31a–1] under the Investment Company Act of 1940 (the "Act") is entitled "Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies." Rule 31a–1 requires registered investment companies ("funds"), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act [15 U.S.C. 80a–30] and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws. The Commission periodically inspects the operations of funds to insure their compliance with the provisions of the Act and the rules thereunder. The books and records required to be maintained by rule 31a–1 constitute a major focus of the Commission's inspection program.

There are approximately 4300 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1500 hours annually per series for a total of 6000 annual hours per fund. The estimated total annual burden for all 4300 investment companies subject to the rule therefore is approximately 25,800,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, 90 percent of the records created pursuant to the rule are the type that generally would be created as a matter of normal business custom and to prepare financial statements.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. The collection of information required by rule 31a–1 is mandatory. Responses will not be kept confidential. The records required by rule 31a–1 are required to be preserved pursuant to rule 31a–2 under the Investment Company Act [17 CFR 270.31a–2]. Rule 31a–2 requires that certain of these records be preserved permanently, and that others be preserved for six years from the end of the fiscal year in which any transaction occurred. In both cases, the records should be kept in an easily accessible place for the first two years. 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.

General comments regarding the above information should be directed to

the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: David_Rostker@omb.eop.gov; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 6, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–1966 Filed 2–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53230; File No. PCX–2005–116]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To List and Trade Shares of the iShares MSCI Australia Index Fund, iShares MSCI Austria Index Fund, iShares MSCI Canada Index Fund, iShares MSCI EMU Index Fund, iShares MSCI Germany Index Fund, and iShares MSCI Mexico Index Fund

February 6, 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 October 11, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), 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 PCX filed Amendment No. 1 to the proposed rule change on December 13, 2005.[3] The PCX filed Amendment No. 2 to the proposed rule change on December 14, 2005.[4] The PCX filed Amendment No. 3 to the proposed rule change on January 24, 2006.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary, PCXE, proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to list and trade the following iShares® [6] MSCI℠ [7] Series Index Funds, which are Investment Company Units ("ICUs"), governed by PCXE Rule 5.2(j)(3): iShares MSCI Australia Index Fund, iShares MSCI Austria Index Fund, iShares MSCI Canada Index Fund, iShares MSCI EMU Index Fund,[8] iShares MSCI Germany Index Fund, and iShares MSCI Mexico Index Fund (the "Funds").

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 has adopted listing standards applicable to ICUs, which are consistent with the listing criteria currently used by the American Stock Exchange ("Amex") and other exchanges.[9] The Exchange now proposes to list and trade on the basis more fully set forth herein shares of the Funds, which are ICUs,[10] governed by PCXE Rule 5.2(j)(3).

a. Description of the Funds

The Funds are currently listed and traded on the Amex[11] and trade on other securities exchanges [12] and in the over-the-counter market. The information below describes how the Funds were created and are traded.[13]

The shares of the Funds are issued by iShares, Inc. iShares, Inc. is an open-ended management investment company. Each Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the applicable underlying index. The Funds utilize representative sampling to invest in a representative sample of securities in the applicable underlying index. Barclays Global Fund Advisors ("BGFA"), a subsidiary of Barclays Global Investors, N.A. ("BGI"), is the investment adviser for each Fund. BGI is a wholly-owned indirect subsidiary of Barclays Bank PLC of the United Kingdom. BGFA and its affiliates are not affiliated with the index provider, MSCI. Investors Bank and Trust Company ("Investors Bank") serves as administrator, custodian and transfer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Amendment No. 2 made clarifying changes to Amendment No. 1.

[5] Amendment No. 3 made clarifying changes to Amendment No. 1.

[6] iShares is a registered trademark of Barclays Global Investors, N.A.

[7] The MSCI and MSCI indices are registered service marks of Morgan Stanley & Co., Incorporated.

[8] The iShares MSCI EMU Index Fund is based on the MSCI EMU Index, which is currently comprised of companies from eleven of the twelve European Economic and Monetary Union, or "EMU" countries (*i.e.*, all of the EMU countries except Luxembourg), as follows: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, and Spain.

[9] In October 1999, the Commission approved PCXE Rule 5.2(j)(3), which sets forth the rules related to the listing and trading criteria for ICUs. *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–1998–29). In July 2001, the Commission also approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of ICUs under PCX Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716–01 (July 19, 2001) (SR–PCX–2001–14).

[10] The definition of an ICU is set forth under PCXE Rule 5.1(b)(15) (noting that an ICU is a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company or a similar entity).

[11] The Index Funds were formerly known as World Entity Benchmark Shares or WEBS. The iShares MSCI Australia, Austria, Canada, Germany, and Mexico Index Funds were initially approved for listing and trading on the Amex in 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43). The iShares MSCI EMU Index Fund was initially approved for listing and trading on the Amex in 2000. *See* Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–Amex–98–49).

[12] *See, e.g.*, Securities Exchange Act Release No. 50142 (August 3, 2004), 69 FR 48539 (August 10, 2004) (SR–NYSE–2004–27) (approving the UTP trading of certain iShares MSCI Index Funds and the S&P Europe 350 Index Fund).

[13] *See* iShares, Inc. Prospectus and Statement of Additional Information dated January 1, 2005 (as revised September 23, 2005) and the Web sites of the Amex (*http://www.amex.com*) and iShares (*http://www.iShares.com*). Fund information relating to net asset value ("NAV"), returns, dividends, component stock holdings and the like is updated on a daily basis on the Web sites.

agent for each Fund, and SEI Investments Distribution Co. (the "Distributor") is the principal underwriter and distributor of shares of the Funds. Neither Investors Bank nor the Distributor is affiliated with iShares, Inc., MSCI, or the Exchange.

iShares, Inc. will issue and redeem the shares of the Funds only in aggregations of substantial size, which varies for the various Funds but is at least 50,000 shares (each aggregation of shares is a "Creation Unit"; one or more Creation Units are sometimes referred to as "Creation Unit Aggregations"). As of December 5, 2005, the value of a Creation Unit of each of the Funds is as follows: The iShares MSCI Australia Index Fund—$3,861,867; the iShares MSCI Austria Index Fund—$2,710,144; the iShares MSCI Canada Index Fund—$2,159,521; the iShares MSCI EMU Index Fund—$3,826,520; the iShares MSCI Germany Index Fund—$5,920,760; and the iShares MSCI Mexico Index Fund—$3,582,278. Each Fund issues and sells shares of each Fund only in Creation Units through the Distributor on an ongoing basis at prices based on the next calculation of NAV after an order is received. Creation Unit Aggregations may be purchased only by or through a participant that has entered into an authorized participant agreement with the Distributor ("Authorized Participant"). Each Authorized Participant must be either a member of the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Authorized Participants must place an irrevocable purchase order for Creation Units of each of the Funds before 4 p.m. (ET) on any Business Day [14] to receive that Business Day's NAV.

An Authorized Participant wishing to purchase newly-issued Creation Units from a Fund may do so in exchange for: (i) An in-kind deposit of a portfolio of equity securities constituting an optimized representation of the Fund's underlying index (the "Deposit Securities"), and (ii) a cash component more fully described below (together, the "Portfolio Deposit"). The cash component is an amount equal to the "Dividend Equivalent Payment" (as described below), plus or minus, as the case may be, a "Balancing Amount" (as described below). The "Dividend Equivalent Payment" is an amount equal, on a per Creation Unit basis, to the dividends on all the portfolio securities of the Fund with ex-dividend dates within the accumulation period for such distribution, net of expenses and liabilities for such period, as if all of the portfolio securities had been held by iShares, Inc. for the entire period. The "Balancing Amount" is an amount equal to the difference between (a) the NAV per Creation Unit of the Fund and (b) the sum of (i) the Dividend Equivalent Payment and (ii) the market value per Creation Unit of the securities deposited with iShares, Inc. (the sum of (i) and (ii) is referred to as the "Deposit Amount"). The Balancing Amount serves the function of compensating for any differences between the NAV per Creation Unit and the value of the Deposit Amount.

Each Fund reserves the right to permit or require the substitution of an amount of cash or the substitution of any security to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to iShares, Inc. or for other similar reasons.

BGFA makes available through the NSCC daily, prior to the opening of business (currently 9:30 a.m. Eastern time ("ET")),[15] the names and required number of shares of each Deposit Security to be included in the current Portfolio Deposit for each Fund ("New Basket Amount"). It is anticipated that Portfolio Deposits will be made primarily by institutional investors and arbitrageurs. Creation Units are separable upon issuance into identical shares that will be listed and traded on the Exchange by professionals and institutional and retail investors.

Shares of the Funds will only be redeemable in Creation Unit Aggregations through each Fund. To redeem, an investor will have to accumulate enough shares of a Fund to constitute a Creation Unit Aggregation. An investor redeeming a Creation Unit Aggregation generally will receive Deposit Securities as announced by BGFA on the day of the redemption request, plus cash in an amount equal to the difference between the NAV of the shares being redeemed and the value of the Deposit Securities, less a redemption transaction fee, noted below. With respect to each Fund BGFA makes available through the NSCC prior to 9:30 a.m. (ET) on each business day, the Portfolio Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form by 4 p.m. (ET) on any business day.[16]

Investors purchasing Creation Unit Aggregations are charged a standard creation transaction fee, regardless of how many Creation Units are purchased on a particular day. The transaction fees are $2,400 for the iShares MSCI Australia Index Fund, $600 for the iShares MSCI Austria Index Fund, $1,900 for the iShares MSCI Canada Index Fund, $8,000 for the iShares MSCI EMU Index Fund, $1,500 for the iShares MSCI Germany Index Fund, and $1,400 for the iShares MSCI Mexico Index Fund. Likewise, investors redeeming Creation Unit Aggregations at NAV are also charged a standard redemption transaction fee, regardless of how many Creation Units are redeemed on a particular day. The redemption transaction fees are the same as the creation transaction fees noted above.

Each Fund makes distributions of dividends from net investment income, including net foreign currency gains, if any, at least annually. The Funds will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients.

b. MSCI Indices

i. Generally

The MSCI indices are owned and compiled by Morgan Stanley Capital International Inc., a Delaware corporation of which Morgan Stanley is the majority owner, and The Capital Group of Companies, Inc. is the minority shareholder. MSCI is not affiliated with iShares, Inc., BGI, BGFA, Investors Bank, the Distributor, or the Exchange. MSCI and Morgan Stanley do not share any employees that are directly involved in the index compilation. MSCI employees directly involved in the index compilation do not report directly to any Morgan Stanley personnel. MSCI has established policies and procedures for the handling and monitoring the dissemination of confidential, non-public information relating to the MSCI indices. These policies and procedures include specific "firewall" procedures regulating the flow of information between MSCI and Morgan Stanley personnel. BGI and its affiliates have no involvement in selection of component stocks in the underlying indices.

MSCI applies the same criteria and calculation methodology across all

[14] A "Business Day" with respect to each Fund is any day on which ArcaEx is open for business.

[15] Usually, NSCC disseminates the estimated Portfolio Securities and Cash Amount between 6 p.m. and 8 p.m. (ET) on the prior business day for both creation and redemption request placed the following day. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on February 2, 2006.

[16] *Id.*

markets for all equity indices. The MSCI indices are calculated assuming that dividends (net of taxes) paid by the securities in the index are reinvested in index securities.[17]

ii. Weighting

The underlying indices for the Funds are market capitalization weighted. All single-country MSCI indices are free-float weighted, *i.e.*, companies are included in the indices at the value of their free public float (free float multiplied by price). MSCI defines "free float" as total shares excluding shares held by strategic investors such as governments, corporations, controlling shareholders and management, and shares subject to foreign ownership restrictions. MSCI's standard equity indices generally seek to have 85% of the free float-adjusted market capitalization of a country's stock market reflected in the MSCI index for such country.[18] With respect to the MSCI EMU Index, market capitalization weighting, combined with a consistent target of 85% of free float-adjusted market capitalization, seeks to ensure that each country's weight in the MSCI EMU Index approximates its weight in the total universe of developing and emerging markets.

iii. Selection Criteria

MSCI undertakes an index construction process, which involves: (i) Defining the equity universe; (ii) adjusting the total market capitalization of all securities in the universe for free float available to foreign investors; (iii) classifying the universe of securities under the Global Industry Classification Standard (the "GICS"); and (iv) selecting securities for inclusion according to MSCI's index construction rules and guidelines.

The index construction process starts at the country level, with the identification of all listed securities for that country. MSCI classifies each company and its securities in only one country. This allows securities to be sorted distinctly by their respective countries. In general, companies and their respective securities are classified as belonging to the country in which they are incorporated. All listed equity securities, or listed securities that exhibit characteristics of equity securities, except investment trusts, mutual funds and equity derivatives, are eligible for inclusion in the universe. Shares of non-domiciled companies generally are not eligible for inclusion in the universe.

iv. Adjusting Total Market Capitalization for Free Float

After identifying the universe of securities, MSCI calculates the free float-adjusted market capitalization of each security in that universe using publicly available information. The process of free float adjusting market capitalization involves (i) defining and estimating the free float available to foreign investors for each security, using MSCI's definition of free float, (ii) assigning a free float-adjustment factor to each security, and (iii) calculating the free float-adjusted market capitalization of each security.

v. GICS Classification

In addition to the free float-adjustment of market capitalization, all securities in the universe are assigned to an industry-based hierarchy that describes their business activities. To this end, MSCI has designed, in conjunction with Standard & Poor's, the GICS. This comprehensive classification scheme provides a universal approach to industries worldwide and forms the basis for achieving MSCI's objective of reflecting broad and fair industry representation in its indices.

vi. Selection of Securities

In an attempt to ensure a broad and fair representation in the indices of the diversity of business activities in the universe, MSCI follows a "bottom-up" approach to index construction, building indices up to the industry group level. The bottom-up approach to index construction requires a thorough analysis and understanding of the characteristics of the universe. This analysis drives the individual security selection decisions, which aim to reflect the overall features of the universe in the country index. MSCI targets an 85% free float-adjusted market representation level within each industry group, within each country.

The security selection process within each industry group is based on the careful analysis of: (i) Each company's business activities and the diversification that its securities would bring to the index; (ii) the size (based on free float-adjusted market capitalization) and liquidity of securities;[19] and (iii) the estimated free float for the company and its individual share classes. Only securities of companies with estimated free float greater than 15% are, in general, considered for inclusion. Exceptions to this general rule are made only in significant cases, where not including a security of a large company would compromise the index's ability to fully and fairly represent the characteristics of the underlying market.

vii. Free Float

MSCI defines the free float of a security as the proportion of shares outstanding that are deemed to be available for purchase in the public equity markets by international investors. In practice, limitations on free float available to international investors include: (i) Strategic and other shareholdings not considered part of available free float and (ii) limits on share ownership for foreigners.

Under MSCI's free float-adjustment methodology, a constituent inclusion factor is equal to its estimated free float rounded-up to the closet 5% for constituents with free float equal to or exceeding 15%. For example, a constituent security with a free float of 23.2% will be included in the index at 25% of its market capitalization. For securities with a free float of less than 15% that are included on an exceptional basis, the estimated free float is adjusted to the nearest 1%.

viii. Changes to the Indices

According to the Registration Statement, the MSCI indices are maintained with the objective of reflecting, on a timely basis, the evolution of the underlying equity markets. In maintaining the MSCI indices, emphasis is also placed on continuity, replicability and minimizing turnover in the indices. Maintaining the MSCI indices involves many aspects, including additions to and deletions from the indices and changes in number of shares and changes in Foreign Inclusion Factors ("FIFs") as a result of updated free float estimates.

Potential additions are analyzed not only with respect to their industry group, but also with respect to their industry or sub-industry group, in order to represent a wide range of economic and business activities. All additions are considered in the context of MSCI's methodology, including the index constituent eligibility rules and guidelines.

In assessing deletions, it is important to emphasize that indices must

[17] *See* the iShares, Inc. Prospectus and Statement of Additional Information dated January 1, 2005 (as revised September 23, 2005).

[18] *Id.*

[19] All else being equal, MSCI targets for inclusion the most sizable and liquid securities in an industry group. In addition, securities that do not meet the minimum size guidelines discussed below and/or securities with inadequate liquidity are not considered for inclusion. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on January 31, 2006 (correcting typographical error).

represent the full-investment cycle, including bull as well as bear markets. Out-of-favor industries and their securities may exhibit declining prices, declining market capitalization, and/or declining liquidity, and yet are not deleted because they continue to be good representatives of their industry group.

As a general policy, changes in number of shares are coordinated with changes in FIFs to accurately reflect the investability of the underlying securities. In addition, MSCI continuously strives to improve the quality of its free float estimates and the related FIFs. Additional shareholder information may come from better disclosure by companies or more stringent disclosure requirements by a country's authorities. It may also come from MSCI's ongoing examination of new information sources for the purpose of further enhancing free float estimates and better understanding shareholder structures. When MSCI identifies useful additional sources of information, it seeks to incorporate them into its free float analysis.

Overall, index maintenance can be described by three broad categories of implementation of changes: (i) Annual full country index reviews that systematically re-assess the various dimensions of the equity universe for all countries and are conducted on a fixed annual timetable; (ii) quarterly index reviews, aimed at promptly reflecting other significant market events; and (iii) ongoing event-related changes, such as mergers and acquisitions, which are generally implemented in the indices rapidly as they occur.

Potential changes in the status of countries (stand-alone, emerging, developed) follow their own separate timetables. These changes are normally implemented in one or more phases at the regular annual full country index review and quarterly index review dates.

The annual full country index review for the MSCI standard country indices is carried out once every 12 months and implemented as of the close of the last business day of May. The implementation of changes resulting from a quarterly index review occurs on only three dates throughout the year, as of the close of the last business day of February, August, and November. Any country indices may be impacted at the quarterly index review. MSCI index additions and deletions due to quarterly index rebalancings are announced at least two weeks in advance. The intra-day values of the underlying indexes are disseminated every 60 seconds [20] throughout the trading day by organizations authorized by the index providers and are available through major financial information vendors.

ix. Recent Data for the MSCI Indices

As of November 30, 2005, the iShares MSCI Australia Index's top three holdings were BHP Billiton Ltd., Commonwealth Bank of Australia, and National Australia Bank Ltd. The Index's top three industries were diversified banks, diversified metals and mining, and real estate investment trusts.[21] The Index components had a total market capitalization of approximately $521.6 billion. The average total market capitalization was approximately $6.3 billion. The ten largest constituents represented approximately 51.1% of the Index weight. The five highest weighted stocks, which represented 37.8% of the Index weight, had an average daily trading volume of 7,726,309 shares during the past two months. Each of the component stocks had a daily trading volume of at least 26,690 shares for any given trading day in the six months ended November 30, 2005.[22]

As of November 30, 2005, the iShares MSCI Austria Index's top three holdings were OMV AG, Telekom Austria AG, and Erste Bank Der Oester Spark. The Index's top three industries were integrated oil and gas, integrated telecommunications services, and diversified banks. The Index components had a total market capitalization of approximately $40.1 billion. The average total market capitalization was approximately $3.1 billion. The ten largest constituents represented approximately 95.5% of the Index weight. The five highest weighted stocks, which represented 74.2% of the Index weight, had an average daily trading volume of 654,786 shares during the past two months. Each of the component stocks had a daily trading volume of at least 1,874 shares for any given day in the six months ended November 30, 2005.[23]

As of November 30, 2005, the iShares MSCI Canada Index's top three holdings were Royal Bank of Canada, Manulife Financial Corp., and Encana Corp. The Index's top three industries were diversified banks, oil and gas exploration and production, and life and health insurance. The Index components had a total market capitalization of approximately $741.3 billion. The average total market capitalization was approximately $7.9 billion. The ten largest constituents represented approximately 47.7% of the Index weight. The five highest weighted stocks, which represented 26.9% of the Index weight, had an average daily trading volume of 2,101,668 shares during the past two months. Each of the component stocks had a daily trading volume of at least 1,230 shares for any given day in the six months ended November 30, 2005.[24]

As of November 30, 2005, the iShares MSCI EMU Index's top three holdings were Total SA, Sanofi Aventis, and Nokia OYJ. The Index's top three industries were diversified banks, integrated oil and gas, and integrated telecommunications services. The Index components had a total market capitalization of approximately $3,099.9 billion. The average total market capitalization was approximately $9.9 billion. The ten largest constituents represented approximately 25.5% of the Index weight. The five highest weighted stocks, which represented 14.5% of the Index weight, had an average daily trading volume of 32,013,459 shares during the past two months. Each of the component stocks had a daily trading volume of at least 398 shares for any given day in the six months ended November 30, 2005.[25]

As of November 30, 2005, the iShares MSCI Germany Index's top three holdings were Siemens AG–REG, E.ON AG, and Allianz AG–REG. The Index's top three industries were automobile manufacturers, diversified chemicals, and industrial conglomerates. The Index components had a total market capitalization of approximately $663.8 billion. The average total market capitalization was approximately $13.3 billion. The ten largest constituents represented approximately 67.7% of the Index weight. The five highest weighted stocks, which represented 40.6% of the Index weight, had an average daily

[20] *See* Amendment No. 3.

[21] Each reference to market capitalization in this section ("Recent Data for the MSCI Indices") is a reference to free-float adjusted market capitalization. According to the Statement of Additional Information for iShares, Inc. dated January 1, 2006, MSCI defines "free float" as total shares excluding shares held by strategic investors such as governments, corporations, controlling shareholders and management, and shares subject to foreign ownership restrictions. MSCI calculates the free float-adjusted market capitalization of each security using publicly available information. The process of free float adjusting market capitalization involves: (i) Defining and estimating the free float available to foreign investors for each security, using MSCI's definition of free float; (ii) assigning a free float-adjustment factor to each security; and (iii) calculating the free float-adjusted market capitalization of each security. *See* Amendment No. 3.

[22] *See* Amendment No. 3.

[23] *Id.*

[24] *Id.*

[25] *Id.*

trading volume of 4,312,091 shares during the past two months. Each of the component stocks had a daily trading volume of at least 2,847 shares for any given day in the six months ended November 30, 2005.[26]

As of November 30, 2005, the iShares MSCI Mexico Index's top three holdings were America Movil SA DE CV—SER L, Cemex SA–CPO, and Telefonos de Mexico SA—SER L. The Index's top three industries were wireless telecommunication services, construction materials, and integrated telecommunication services. The Index components had a total market capitalization of approximately $100.7 billion. The average total market capitalization was approximately $4.6 billion. The ten largest constituents represented approximately 89.2% of the Index weight. The five highest weighted stocks, which represented 75.9% of the Index weight, had an average daily trading volume of 12,691,256 shares during the past two months. Each of the component stocks had a daily trading volume of at least 13 shares for any given day in the six months ended November 30, 2005.[27]

x. Prices and Exchange Rates

The prices used to calculate the MSCI indices are the official exchange closing prices or those figures accepted as such. MSCI reserves the right to use an alternative pricing source on any given day.

The MSCI indices are calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets. For exchange rates for the MSCI indices, MSCI uses the FX rates published by WM Reuters at 4 p.m. London time. MSCI uses WM Reuters' rates for all developed and emerging markets. Exchange rates are taken daily at 4 p.m. London time by the WM Reuters and are sourced whenever possible from multi-contributor quotes on Reuters. Representative rates are selected for each currency based on a number of "snapshots" of the latest contributed quotations taken from the Reuters service at short intervals around 4 p.m. WM Reuters provides closing bid and offer rates. MSCI uses these to calculate the mid-point to 5 decimal places.

MSCI continues to monitor exchange rates independently and may, under exceptional circumstances, elect to use an alternative exchange rate if the WM Reuters rate is believed not to be representative for a given currency on a particular day.[28]

c. Funds' Assets and Industry Concentration

The Funds' prospectus states that each Fund will typically invest at least 95% of its assets in the component securities of its underlying index and American Depositary Receipts ("ADRs") based on such component securities. Each of the iShares MSCI Canada, EMU, and Germany Index Funds will invest at all times at least 90% of its assets in the component securities of its underlying index and ADRs based on such component securities. Each of the iShares MSCI Australia, Austria, and Mexico Index Funds will invest at all times at least 80% of its assets in the component securities of its underlying index and ADRs based on such component securities, and at least 90% of its assets in the component securities of its underlying index or in securities included in the relevant market, but not in its underlying index, or in ADRs based on the component securities of the underlying index. Therefore, each of the iShares MSCI Australia, Austria and Mexico Index Funds will invest not more than 10% of fund assets in ADRs and other securities, which are not included in or based on the component securities of its Underlying Index and are also not included in the relevant market.[29]

The NAV for the Funds will be calculated directly by Investors Bank as of the close of regular trading (normally 4 p.m. (ET)), according to the Funds' prospectus. The NAV of each Fund is calculated by dividing the value of the net assets of such Fund (total assets less total liabilities) by the total number of outstanding shares of the Fund. Generally, each Fund's investments are valued using market valuations. If current market valuations are not available or such valuations do not reflect current market values, the affected investments will be valued using fair value pricing. The value of assets denominated in foreign currencies is converted into U.S. dollars using exchange rates selected by BGFA. The NAV will be available to the public on *http://www.iShares.com*, from iShares, Inc. by means of a toll-free number, and to NSCC participants through data made available from the NSCC.

Each of the Funds will not concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that, to the extent practicable, the Fund will concentrate to approximately the same extent that its underlying index concentrates in the stocks of such particular industry or group of industries. As of October 31, 2005, the iShares MSCI Australia Index Fund held 25% or more of its total assets in banks; the iShares MSCI Canada Index Fund held 25% or more of its total assets in energy; and the iShares SCI Mexico Index Fund held 25% or more of its total assets in the telecommunications industry.[30] Each Fund's top portfolio holdings can be found at *http://www.iShares.com*.

Each Fund will maintain regulated investment company compliance, which requires, among other things, that, at the close of each quarter of the Fund's taxable year, not more than 25% of its total assets may be invested in the securities of any one issuer. In order for a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (a) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (b) not more than 25% of the value of its total assets may be invested in the securities of any one issuer or of two or more issuers that are

[26] *Id.*

[27] *Id.*

[28] If MSCI elects, under exceptional circumstances, to use alternative sources of exchange rates when the WM Reuters rates are not available or MSCI determines that such rates are not reflective of market circumstances for a given currency on a particular day, the Exchange believes that it is unnecessary for a filing pursuant to Section 19(b) under the Act to be submitted to the Commission. The Exchange submits that under exceptional circumstances, it may be appropriate for MSCI to make such an election. However, the Exchange represents that if the use of an alternative exchange rate source is more than of a temporary nature, a rule filing will be submitted pursuant to Section 19(b) of the Act. *See* Amendment No. 3.

[29] Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

[30] Industry concentration is a function of the market capitalization of the companies in the particular industry divided by the total market capitalization of the index. The total market capitalization of an index does not determine its industry concentration, nor does the total market capitalization of the index reflect the total market capitalization of the country. Each index uses a bottom-up sampling approach (rules based) to achieve a balance between fair market representation and investability. *See* Amendment No. 3.

controlled by the particular Fund (within the meaning of Section 851(b)(3)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other regulated investment companies) or for taxable years beginning after October 24, 2004, the securities of one or more qualified publicly traded partnerships.

The Exchange believes that these requirements and policies prevent any Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the shares of a Fund could become a surrogate for trading in unregistered securities.

d. Tracking Error

According to the Funds' prospectus, BGFA expects that over time, the correlation between each Fund's performance and that of its underlying index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called "tracking error." A Fund using a representative sampling strategy (which all of the Funds utilize) can be expected to have a greater tracking error than a Fund using a replication strategy. Replication is a strategy in which a Fund invests in substantially all of the securities in its underlying index in approximately the same proportions as in the underlying index.

The Funds have chosen to pursue a representative sampling strategy that, by its very nature, entails some risk of tracking error. Fund expenses, the timing of cash flows, and other factors all contribute to tracking error. The Web site for the Funds, *http://www.iShares.com*, contains detailed information on the performance and the tracking error for each Fund.

e. Availability of Information Regarding Funds and Underlying Indexes

There will also be disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines or major market data vendor, which will be made available prior to the opening of trading on the Exchange. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to 9:30 a.m. (ET). In addition, the Web site for the Funds, *http://www.iShares.com*, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Funds: (i) The prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV ("Bid/Ask Price")[31] and a calculation of the premium or discount of such price against such NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[32]

The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or online information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.[33]

The value of each underlying index will be updated intra-day on a real time basis as individual component securities of that index change in price. The intra-day values of the indices will be disseminated every 60 seconds throughout the trading day by organizations authorized by the index providers and major financial information vendors when foreign market hours overlap with ArcaEx trading hours from 9:30 a.m. (ET) to 8 p.m. (ET).[34] When the foreign market is closed during the ArcaEx trading hours from 9:30 a.m. (ET) to 8 p.m. (ET), investors may refer to the closing index values provided by MSCI at *http://www.msci.com*. The values of the MSCI Australia Index, the MSCI Canada Index, and the MSCI Germany Index are reported daily in *The Wall Street Journal*.

To provide current Fund pricing information, the Exchange will disseminate through the facilities of the Consolidated Tape Association or one or more major market data vendors[35] an indicative optimized portfolio value ("IOPV") for the Funds. The IOPV is an amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. Dollars.[36] The IOPV will be calculated by an independent third party, such as Bloomberg, L.P. The IOPV will be disseminated every 15 seconds between 9:30 a.m. and 4:15 p.m. (ET).[37] The IOPV likely will not reflect the value of all securities included in the applicable indices. In addition, the IOPV will not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular moment. In addition, the foreign exchange rate used in computing NAV of a Fund may differ materially from that used by the IOPV calculator. Thus, the IOPV should not be viewed as a real-time update of the NAV of the Funds, which is calculated only once a day. It is expected, however, that during the trading day the IOPV will closely approximate the value per share of the portfolio of securities for the Funds except under unusual circumstances.

For the iShares MSCI Australia Index Fund, there is no overlap in trading

[31] The Bid-Ask Price of the Funds is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Funds' NAV.

[32] Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006 (as to additional information disseminated about the Funds).

[33] Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006 (as to closing price and exchange rate).

[34] The index value may be disseminated through either the Consolidated Tape Association or one or more major market data vendors. PCXE Rule 5.2(j)(3), Commentary .01(b)(3). *See* Securities Exchange Act Release No. 52806 (November 18, 2005), 70 FR 71358 (November 28, 2005) (SR–PCX 2005–88). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on January 31, 2006.

[35] The IOPV may be disseminated through either the Consolidated Tape Association or one or more major market data vendors pursuant to PCXE Rule 5.2(c). *See* Securities Exchange Act Release No. 52809 (November 18, 2005), 70 FR 71590 (November 29, 2005) (SR–PCX–2005–108). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on January 31, 2006.

[36] Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006 (as to description of IOPV).

[37] The Commission expects any exchange listing and trading shares of exchange traded funds ("ETFs") or similar products to do so only when the underlying index value and IOPV is updated and disseminated on a real time basis. For these products, however, the Commission has permitted index dissemination every 60 seconds when the applicable foreign market is open, which would be applicable to ArcaEx's after-hours trading sessions. However, since NSCC does not disseminate the New Basket Amount until approximately 6 p.m. to 8 p.m., an updated IOPV after the 4 p.m. NAV determination is not possible during ArcaEx's late trading session from 4 p.m. to 8 p.m. Accordingly, the Commission will permit ArcaEx to trade these EFTs without dissemination of the IOPV in its late trading session. However, to trade in all other ArcaEx trading sessions, an IOPV must be disseminated at least every 15 seconds. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

hours between the foreign and U.S. markets. Therefore, for this Fund, the IOPV calculator will utilize closing prices (denominated in the foreign currency) in the principal foreign market for securities in the Fund's portfolio and convert the price to U.S. dollars.[38] This IOPV will be updated every 15 seconds from 9:30 a.m. to 4:15 p.m. (ET) to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency.

For the iShares MSCI Austria, Canada, EMU, Germany, and Mexico Index Funds, there is an overlap in trading hours between the foreign and U.S. markets. Therefore, during any overlap period that occurs between 9:30 a.m. and 4:15 p.m. (ET), the IOPV calculator will update the applicable IOPV every 15 seconds to reflect price changes in the applicable foreign market or markets and convert such prices into U.S. dollars based on the currency exchange rate. When the foreign market or markets are closed between 9:30 a.m. and 4:15 p.m. (ET), the IOPV will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes.

For each Fund, in addition to having an equity securities value component, the IOPV will also include the applicable cash component consisting of estimated accrued dividend and other income, less expenses. The Exchange believes that dissemination of the IOPV based on the Deposit Securities provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with trading shares of the Funds on the Exchange or the creation or redemption of Fund shares.[39]

f. Information Circular

In connection with the trading of the Funds, the PCX intends to inform its equity trading permit holders ("ETP Holders") in an Information Circular of the special characteristics and risks associated with trading the Funds, including how shares in the Funds are created and redeemed, the requirement that ETP Holders deliver a prospectus to investors purchasing shares of the Funds prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, how information regarding the per share IOPV is disseminated, trading information, and the applicability of suitability rules (as set forth in PCXE Rule 9.2(a)–(b)).[40] The circular will also discuss exemptive, no-action and interpretive relief granted by the Commission from certain rules under the Act.

g. Initial Share Issuance and Continued Trading

The Funds are subject to the criteria for initial and continued listing of ICUs pursuant to PCXE Rule 5.2(j)(3), Commentary .01 (d), which requires that a minimum of 100,000 shares of a series of ICUs be outstanding at commencement of trading. As noted in the Funds' prospectus, one Creation Unit consists of 300,000 shares with respect to the iShares MSCI Germany Index Fund; 200,000 shares with respect to the iShares MSCI Australia Index Fund; 100,000 shares with respect to each of the iShares MSCI Austria, Canada and Mexico Index Funds; and 50,000 shares with respect to the iShares MSCI EMU Index Fund. Therefore, one Creation Unit outstanding at the commencement of trading of each country-specific Fund on the Exchange, and two Creation Units outstanding at the commencement of trading of the iShares MSCI EMU Index Fund on the Exchange, will satisfy the Exchange's initial listing criteria. The Exchange believes that the proposed number of shares outstanding at the commencement of trading for each Fund is sufficient to provide market liquidity and to further the Funds' investment objective.

As the listing exchange for the Funds, the PCX will consider the halting of trading and delisting of a Fund in any of the following circumstances: (i) Following the initial twelve-month period beginning upon the commencement of trading of the Fund, there are fewer than 50 record and/or beneficial holders of the Fund for 30 or more consecutive trading days; (ii) the value of the underlying index is no longer calculated or available; or (iii) such other event occurs or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange will halt trading in a Fund if the Index Value or IOPV applicable to such Fund is no longer calculated or disseminated.[41] In addition, the PCX will remove a Fund from trading and listing upon termination of the Fund that issued the shares of the Fund.[42]

h. Initial Listing and Annual Listing Maintenance Fees

The Exchange initial listing fee applicable to the listing of the Funds is $20,000, which covers all of the Funds.[43] In addition, the annual listing maintenance fee applicable to the Funds will be based upon the year-end aggregate total shares outstanding of the Funds.[44]

i. Surveillance Procedures

The Exchange will closely monitor activity in the trading of the shares of the Funds to identify and deter any potential improper trading activity in the Funds. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. Specifically, the Exchange will rely on its existing surveillance procedures governing equities and exchange-traded funds, which have been deemed adequate under the Act. The Exchange has developed procedures to closely monitor activity in the shares of the Funds to identify and deter potential improper trading activity.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As detailed above in the description of the generic standards, if the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the underlying

[38] The IOPV Calculator at the time of this filing is Bloomberg, L.P. ("Bloomberg"). When determining the foreign exchange rate, Bloomberg uses an aggregation of bank provided rates that may differ from the aggregation of bank provided rates utilized by WM Reuters in determining the foreign exchange rate. *See* Amendment No. 3.

[39] Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

[40] The Commission has issued an order ("Order") granting the Funds an exemption from Section 24(d) of the Investment Company Act of 1940. *See, e.g.*, Investment Company Act Release No. 25623 (June 25, 2002). Any Product Description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Application for the Order.

[41] In the event an Index value or IOPV is no longer calculated or disseminated from 9:30 a.m. (ET) to 4:15 p.m. (ET), the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. As stated, the Funds may trade in ArcaEx's late trading session without dissemination of the IOPV in its late trading session. However, to trade in all other ArcaEx trading session, an IOPV must be disseminated at least every 15 seconds. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

[42] PCXE Rule 5.5(g)(2).

[43] The initial listing fee covers all funds listed by a fund issuer or "family." There will be no initial listing fees for any subsequent funds that may be listed on the Exchange by iShares, Inc. *See* Securities Exchange Act Release No. 34–50591 (October 26, 2004), 69 FR 63427 (November 1, 2004) (SR–PCX–2004–63) (approving adoption of new listings fees for exchange-traded funds and closed-end funds); Securities Exchange Act Release No. 34–51519 (April 11, 2005), 70 FR 20199 (April 18, 2005) (SR–PCX–2005–37) (extending implementation date to April 1, 2005)

[44] *Id.* The calculation of the aggregate total shares outstanding will also include the shares outstanding of any subsequent funds that may be listed on the Exchange by iShares, Inc.

index, such issuer or broker-dealer is required to erect and maintain a "firewall" in a form satisfactory to the Exchange, in order to prevent the flow of information regarding the underlying index from the index production personnel to sales and trading personnel. In addition, the Exchange will require that calculation of underlying indexes be performed by an independent third party who is not a broker-dealer.

j. Exchange Trading Rules and Policies

As ICUs under PCXE Rule 5.2(j)(3), the shares of the Funds will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities. With respect to trading halts, the PCX may consider all relevant factors in exercising its discretion to halt trading in the Funds. Trading on the PCX in the Funds may be halted because of market conditions or for reasons that, in the view of the PCX, make trading in the Funds inadvisable. These may include (1) the extent to which trading is not occurring in the underlying securities or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[45] In addition, PCXE Rule 7.12 sets forth the trading parameters, *i.e.*, "circuit breakers," applicable to the Funds in periods of extraordinary market volatility.

Shares of the Funds will trade on ArcaEx from 9:30 a.m. (ET) until 8 p.m., even if the IOPV is not disseminated from 4:15 p.m. (ET) until 8 p.m. (ET). Shares of the Funds will trade in a minimum price variation of $0.01 pursuant to PCXE Rule 7.6. Trading pertaining to odd-lot trading in Exchange equities (PCXE Rule 7.38) will also apply. Shares of the Funds will be deemed "Eligible Securities" as defined in PCXE Rule 7.55(a)(3), for purposes of the Intermarket Trading System ("ITS") Plan, and therefore will be subject to the trade-through provisions of PCXE Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

k. Due Diligence

The Information Circular will note that, pursuant to PCX Rule 9.2(a), each ETP Holder, through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[46] of the Act, in general, and furthers the objectives of Section 6(b)(5),of the Act,[47] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and 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 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 Exchange requests the Commission to find good cause to accelerate effectiveness of this rule filing pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication of the proposed rule change in the **Federal Register**. The Funds are substantially the same in structure as other iShares index funds, which have an established and active trading history on the exchanges. The Exchange believes that its proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, protect investors and the public interest.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–116 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–PCX–2005–116. 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 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–PCX–2005–116 and should be submitted on or before March 6, 2006.

V. Commission Findings

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.[48] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[49] and will promote just and equitable principles of trade, and facilitate transactions in securities,

[45] *See supra* note 41.

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[48] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78f(b)(5).

and, in general, protect investors and the public interest. The Commission believes that the Exchange's listing standards, trading rules, suitability and disclosure rules for the Funds are consistent with the Act. The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The Commission notes that it previously approved the original listing and trading of the Funds on the Amex.[50] Further, with respect to each of the following key issues, the Commission believes that the Funds satisfy established standards.

A. Surveillance

The Commission notes that the Underlying Indexes are broad-based and are composed of securities having significant trading volumes and market capitalization, thus impeding improper trading practices in the Shares, the ability to use the Shares to manipulate the underlying securities, and the ability to use the Shares as a surrogate to trade one or a few unregistered securities. Nevertheless, the PCX represents that its surveillance procedures applicable to trading in the proposed iShares are adequate to properly monitor the trading of the Funds. The Exchange also is able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market. In addition, the Commission notes that the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.

As stated, when a broker-dealer, or a broker-dealer's affiliate such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that the Exchange has represented that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI Indices.

B. Dissemination of Information About the Shares

In approving the Funds for listing and trading on the PCX, the Commission notes that the Underlying Indexes are broad-based indexes. If there is an overlap between the foreign jurisdiction and the PCX trading hours, these index values are disseminated through various main market data vendors at least every 60 seconds during such overlap in trading hours. Otherwise, the Funds provide the Index closing value at *http://www.iShares.com*. Additionally, the Commission notes that the Exchange will disseminate through the facilities of CTA during NYSE trading hours at least every 15 seconds a calculation of the IOPV (which will reflect price changes in the applicable foreign market and changes in currency exchange rates), along with an updated market value of the Shares. Comparing these two figures will help investors to determine whether, and to what extent, the Shares may be selling at a premium or discount to NAV and thus will facilitate arbitrage of the Shares in relation to the Index component securities.

The Commission also notes that the Web site for the Funds (*http://www.iShares.com*), which is and will be publicly accessible at no charge, will contain the Shares' prior business day NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV.

C. Listing and Trading

The Commission finds that the Exchange's rules and procedures for the proposed listing and trading of the Funds are consistent with the Act. Shares of the Funds will trade as equity securities subject to PCX rules including, among others, rules governing trading halts, prospectus delivery, and customer suitability requirements. In addition, the Funds will be subject to PCX listing and delisting/halt rules and procedures governing the trading of Index Fund Shares on the Exchange. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Circular the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including suitability and prospectus delivery requirements.

D. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[51] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in PCXE Rule 5.2(j)(3) (ICUs), and the Commission has previously approved the listing of these securities on the Amex.[52] Therefore, the Commission does not believe that the proposed rule change raises issues that have not been previously considered by the Commission.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[53] that the proposed rule change (SR–PCX–2005–116), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[54]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–1931 Filed 2–10–06; 8:45 am]

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[50] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43).

[51] 15 U.S.C. 78s(b)(2).

[52] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (approving the listing and trading of the ICUs for trading on the Amex).

[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53226; File No. SR–Phlx–2005–92]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Cancellation Fees

February 3, 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 December 30, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On January 27, 2006, the Phlx submitted an amendment to the proposed rule change ("Amendment No. 1").[3] The Phlx has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii)[4] and Rule 19b–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Phlx clarified the manner in which the fee will be assessed and made technical changes to the rule text.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt a cancellation fee of $1.10 per order to be assessed on member organizations for each cancelled AUTOM-delivered[6] order in excess of the number of orders executed on the Exchange by that member organization in a given month. The proposed cancellation fee will not be assessed in a month in which fewer than 500 AUTOM-delivered orders are cancelled. Simple cancels and cancel-replacement orders are the types of orders that will be counted when calculating the number of AUTOM-delivered orders.[7] The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.phlx.com*), at the principal office of the Phlx, 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of assessing $1.10 per order for each cancelled AUTOM-delivered order in excess of the number of orders that the executing member organization executes on the Exchange in a given month is to discourage excessive use of cancellations.[8] The Exchange believes this proposed fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of canceling orders immediately after they are routed electronically to the Exchange. The Exchange believes that a cancellation fee should help to deal with the various operational problems and costs resulting from this practice.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–92 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–2005–92. 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

[5] 17 CFR 240.19b–4(f)(2).

[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. *See* Exchange Rules 1014(b)(ii) and 1080.

[7] A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number. For example, if an original order is received for 100 contracts @ $1.70 and 20 contracts get filled, leaving a remaining balance of 80 contracts, and a cancel-replacement order is received with instructions to cancel the 100 contracts and replace it with 60 contracts @ $1.80, the replacement order would be for 40 contracts with a price of $1.80 (because 20 contracts were already executed at the price of $1.70). *See* Exchange Rule 1066(c)(7).

[8] As represented by the Phlx, this proposal does not cover orders delivered through the Floor Broker Management System ("FBMS") because, at this time, FBMS orders are entered and cancelled manually from the floor and do not create the capacity issues that are created in connection with excessive electronically-delivered cancelled orders, as described above. *See* Exchange Rule 1063. Telephone conversation between Edith Hallahan, Deputy General Counsel, and Cynthia K. Hoekstra, Director, Phlx, and Nancy J. Sanow, Assistant Director, and Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, February 1, 2006.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] The effective date of the original proposed rule change is December 30, 2005 and the effective date of the amendment is January 27, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 27, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–92 and should be submitted on or before March 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–1961 Filed 2–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53242; File No. SR–Phlx–2005–11]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Quoting Obligations for Directed Streaming Quote Traders and Directed Remote Streaming Quote Traders and Changes to the Exchange's Opening Rule

February 7, 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 3, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On February 6, 2006, the Exchange filed Amendment No. 1.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1014(b)(ii)(D) and Exchange Rule 1017(b)(ii) to: (1) Delete the requirement that Streaming Quote Traders ("SQTs")[4] and Remote Streaming Quote Traders ("RSQTs")[5] submit continuous electronic quotations in not less than 99% of the series in each Streaming Quote Option in which they receive Directed Orders;[6] (2) establish a new quoting obligation for SQTs and RSQTs that receive Directed Orders; and, as a result of these changes, (3) establish that, if the specialist is not quoting at the opening, the system will nonetheless open a series when any two Phlx XL participants are quoting in such series within two minutes of the opening of the underlying security on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange Circular), or when one Phlx XL participant is quoting in such series thereafter.

The text of the proposed rule change is set forth below. Brackets indicate deletions; italics indicates new text.

* * * * *

Obligations and Restrictions Applicable to Specialists and Registered Options' Traders

Rule 1014. (a) No change.

(b) ROT. (i) No change.

(ii) (A)–(C) No change.

(D) Market Making Obligations Applicable in Streaming Quote Options.

(1) In addition to the other requirements for ROTs set forth in this Rule 1014, an SQT and an RSQT shall be responsible to quote continuous, two-sided markets in not less than 60% of the series in each Streaming Quote Option (as defined in Rule 1080(k)) in which such SQT or RSQT is assigned, provided that, *on any given day, a Directed SQT ("DSQT") or a Directed RSQT ("DRSQT") (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange in at least 60% of the options in which such DSQT or DRSQT is assigned. Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain continuous quotations for not less than 99% of the series of the option listed on the Exchange until the close of that trading day.*

[a Directed SQT or RSQT (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote continuous, two-sided markets in not less than 99% of the series in each Streaming Quote Option in which they receive Directed Orders (as defined in Rule 1080(l)(i)(A))].

(2) The specialist shall be responsible to quote continuous, two-sided markets in not less than 99% of the series in each Streaming Quote Option in which such specialist is assigned.

(3)[(1) During a six month period commencing on the date of the initial deployment of Phlx XL (the "initial six-month period"), any SQT or RSQT assigned in a Streaming Quote Option (and the specialist assigned in such Streaming Quote Option) may submit electronic quotations with a size of fewer than 10 contracts for a period of sixty days after such option begins trading as a Streaming Quote Option. Beginning on the sixty-first day after such option begins trading as a Streaming Quote Option,] SQTs, RSQTs and the specialist assigned in such Streaming Quote Option shall submit

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment dated February 6, 2006 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule text to provide that, whenever a Directed Streaming Quote Trader or Directed Remote Streaming Quote Trader enters a quotation in an option in which such trader is assigned, such trader must maintain continuous quotations for not less than 99% (instead of 100%) of the series of the option listed on the Exchange until the close of that trading day, and added clarifying language to the "Purpose" section of the proposed rule change to note that, in order to participate in a Directed Order that is received in a particular Streaming Quote Option, a Directed Streaming Quote Trader or Directed Remote Streaming Quote Trader must be quoting continuously in not less than 99% of the series of such Streaming Quote Option.

[4] An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[5] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[6] The term "Directed Order" means any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM. *See* Exchange Rule 1080(l)(i)(A).

The term "Order Flow Provider" ("OFP") means any member or member organization that submits, as agent, customer orders to the Exchange. *See* Exchange Rule 1080(l)(i)(B).

electronic quotations with a size of not less than 10 contracts.

[(2) During a six month period commencing on the first day following the expiration of the initial six-month period, any SQT or RSQT assigned in a Streaming Quote Option (and the specialist assigned in such Streaming Quote Option) may submit electronic quotations with a size of fewer than 10 contracts for a period of thirty days after such option begins trading as a Streaming Quote Option. Beginning on the thirty-first day after such option begins trading as a Streaming Quote Option, SQTs, RSQTs and the specialist assigned in such Streaming Quote Option shall submit electronic quotations with a size of not less than 10 contracts.

(3) Thereafter, any SQT or RSQT assigned in a Streaming Quote Option that is newly deployed on Phlx XL (and the specialist assigned in such Streaming Quote Option) shall submit electronic quotations with a size of not less than 10 contracts beginning on the date on which such Streaming Quote Option begins trading on Phlx XL.]

(E) No change.

(c)–(h) No change.

Commentary: No change.

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Openings In Options

Rule 1017. (a) No change.

(b) The system will calculate an Anticipated Opening Price ("AOP") and Anticipated Opening Size ("AOS") when a quote or trade has been disseminated by the primary market for the underlying security, and under the conditions set forth below. The specialist assigned in the particular option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the primary market for the underlying security. An AOP may only be calculated if: (i) The Exchange has received market orders, or the book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer); and (ii) either (A) the specialist's quote has been submitted; (B) the quotes of at least two Phlx XL participants [that are required to submit continuous, two-sided quotes in 99% of the series in all option issues in which such Phlx XL participant is assigned ("99% participants"),] have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange Circular); or (C) if neither the specialist's quote nor the quotes of two [99%] *Phlx XL* participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange circular), one [99%] *Phlx XL* participant has submitted their quote. *A Phlx XL participant that submits a quote pursuant to this Rule 1017(b) in any series when the specialist's quote has not been submitted shall be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote, after which the Phlx XL participant that submitted such quote shall be obligated to submit quotations pursuant to Rule 1014(b)(ii)(D).* In situations where an AOP may be calculated and there is an order/quote imbalance, the system will immediately send an imbalance notice indicating the imbalance side (buy or sell) and the AOP and AOS (an "Imbalance Notice") to Phlx XL participants provided that the primary market for the underlying security has disseminated the opening quote or trade. Phlx XL participants that have not submitted opening quotes will then submit their opening quotes, and Phlx XL participants that have submitted opening quotes may submit revised opening quotes; thereafter the system will disseminate an updated Imbalance Notice every five seconds (or such shorter period as determined by the Options Committee and disseminated to membership via Exchange Circular) until the series is open. If no imbalance exists, no Imbalance Notice will be sent, and the system will establish an opening price as described in paragraph (c) below.

(c)–(d) No change.

(e) The system will not open a series if one of the following conditions is met:

(i) there is no quote from the specialist or [a 99%] *Phlx XL* participants, *as described in Rule 1017(b)(ii)(B) and (C) above;*

(ii)–(iii) No change.

(f)–(j) No change.

Commentary: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

According to the Exchange, the purpose of the proposed rule change is to encourage Directed Orders by establishing a new quoting obligation for Directed SQTs ("DSQTs") and Directed RSQTs ("DRSQTs")[7] that would require them to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange in at least 60% of the options in which such DSQT or DRSQT is assigned. The Exchange notes that, in order to participate in a Directed Order that is received in a particular option, a DSQT or DRSQT must be quoting continuously in not less than 99% of the series of such option.[8] According to the Exchange, the proposed rule change is similar to the quoting obligation for participants that receive Directed Orders on other exchanges.[9]

Deletion of 99% Quoting Requirement for Directed SQTs/RSQTs

Currently, Exchange Rule 1014(b)(ii)(D) requires DSQTs and DRSQTs to quote continuous, two-sided markets in not less than 99% of the series in each Streaming Quote Option in which they are assigned.[10] According to the Exchange, for competitive reasons, the proposed rule change would amend that quoting requirement applicable to DSQTs and DRSQTs.[11]

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[7] The term "Directed Specialist, RSQT, or SQT" means a specialist, RSQT, or SQT that receives a Directed Order. *See* Exchange Rule 1080(l)(i)(C).

[8] *See* Amendment No. 1.

[9] The Exchange notes that the International Securities Exchange, Inc. ("ISE") currently has rules in effect concerning "Preferenced Orders" that are virtually identical to the Exchange's rules concerning Directed Orders (*See* ISE Rule 713, Supplementary Material .03). The quoting obligation applicable to ISE Competitive Market Makers, including those that receive "Preferenced Orders" is contained in ISE Rule 804(e)(2). *See also*, Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR–ISE–2005–18). The instant proposed rule change, which tracks ISE Rule 804, is intended to enable the Exchange to compete for Directed Orders by establishing a quoting obligation for Directed SQTs and RSQTs that is virtually identical to the quoting obligation applicable to ISE Competitive Market Makers that receive "Preferenced Orders."

[10] Telephone call by and between Edith Hallahan, Senior Vice President and Deputy General Counsel, Phlx; and David Hsu, Special Counsel, Division of Market Regulation, Commission, on February 7, 2006.

[11] *Id.*

Instead, DSQTs and DRSQTs, would be obligated to submit quotations under proposed Exchange Rule 1014(b)(ii)(D)(1), described below. This obligation would be similar to that of other exchanges with Directed or Preferenced Order flow programs.[12] The Exchange stated that it is now concerned that the current quoting obligation is impeding Directed Order flow to the Exchange.

New Quoting Obligation for DSQTs and DRSQTs

The proposed rule change would provide that, on any given day, a DSQT or a DRSQT would be responsible to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange of at least 60% of the options in which such DSQT or DRSQT is assigned. The Exchange believes that this new quoting obligation for DSQTs and DRSQTs should encourage member organizations to send Directed Orders to DSQTs and DRSQTs on the Exchange.

In order to ensure continuity of quoting, the proposed rule change would provide that, whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain continuous quotations for not less than 99% of the series of the option listed on the Exchange until the close of that trading day. The Exchange believes that this should promote liquidity on the Exchange.

Amendments to Rule 1017, Openings in Options

Currently, Exchange Rule 1017(b) provides that a series may open when: (i) The Exchange has received market orders, or the book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer); and (ii) either (A) the specialist's quote has been submitted; (B) the quotes of at least two Phlx XL participants that have the 99% quoting obligation ("99% participants") have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange Circular); or (C) if neither the specialist's quote nor the quotes of two 99% participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange Circular), one 99% participant has submitted their quote.

Because proposed Exchange Rule 1014(b)(ii)(D) modifies the quoting obligations of the 99% participants,[13] the Exchange proposes to amend Exchange Rule 1017(b) to establish that, if the specialist is not quoting at the opening, the system will open a series when any two Phlx XL participants are quoting within two minutes of the opening on the primary market for the underlying security, or when any *single* Phlx XL participant has submitted his/her quote thereafter, thus eliminating the requirement that such Phlx XL participants must be 99% participants in order for the series to open.

In order to ensure the continuity of quotations in series that are opened when the specialist has not submitted his or her quotation, the proposed rule change would provide that a Phlx XL participant that submits a quote pursuant to the proposed rule in any series when the specialist's quote has not been submitted would be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote, after which the Phlx XL participant that submitted such quote would be obligated to submit quotations as described above under proposed Exchange Rule 1014(b)(ii)(D).

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [14] in general, and furthers the objectives of section 6(b)(5) of the Act [15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enabling the Exchange to compete for order flow in Directed Orders by establishing a new quoting obligation applicable to DSQTs and DRSQTs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not 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 not solicited, and does not intend to solicit comments on the proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–11 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–2006–11. 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 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–Phlx–2006–11 and should

[12] *See, e.g.*, ISE Rule 804(e)(2). *See also*, Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR–ISE–2005–18).

[13] *See supra* note 10.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

be submitted on or before March 6, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act [16] and the rules and regulations thereunder applicable to a national securities exchange,[17] and, in particular, the requirements of Section 6(b)(5) of the Act.[18] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission previously approved, on a one-year pilot basis expiring May 27, 2006, rules that permit each specialist, DSQT, or DRSQT assigned in options trading on the Phlx XL system to receive a Directed Order, provided that such specialist, DSQT, or DRSQT is quoting at the National Best Bid or Offer at the time the Directed Order is received by the Exchange.[19] In addition, the Directed Order Rules Release noted that, like specialists, DSQTs or DRSQTs would be required to quote continuous, two-sided markets in not less than 100% of the series in each Streaming Quote Option in which they receive Directed Orders.[20] While the current proposal would reduce the quoting obligations of a DSQT or DRSQT to not less than 99% of the series listed on the Exchange of at least 60% of the Stream Quote Options in which such DSQT or DRSQT is assigned, the Commission notes the current proposal would not reduce the quoting obligations of a DSQT and DRSQT in Streaming Quote Options in which a DSQT or DRSQT participates in a Directed Order. Specifically, the proposed rule change would require a DSQT or DRSQT to maintain continuous quotations in not less than 99% of the series of any Streaming Quote Options in which it participates in a Directed Order.[21]

In addition, the Commission notes that the proposed amendments to Exchange Rule 1017(b) would continue to permit the system to open upon the quote or quotes of DSQTs or DRSQTs, and thus may continue to facilitate an expedited opening of options on the Exchange and thereby improve market efficiency for all market participants. The Commission also notes that a Phlx XL participant that submits a quote pursuant to the Opening Amendment in any series when a specialist's quote has not been submitted would be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change relating to DSQT and DRQST quoting obligations is substantially similar to ISE Rule 804,[22] which was previously approved by the Commission after notice and comment, and therefore the proposed rule change relating to DSQT and DRSQT quoting obligations does not raise any new regulatory issues. The Commission does not believe that the proposed amendments to Exchange Rule 1017(b) would significantly impact the current opening process because any Phlx XL participant that submits a quote pursuant to proposed rule would be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[23] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Phlx–2006–11) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–1963 Filed 2–10–06; 8:45 am]

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[16] 15 U.S.C. 78f.

[17] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15.U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (the "Directed Order Rules Release"). This order does not affect the expiration date of the Directed Order rules.

[20] In connection with the adoption of the Exchange's Risk Monitor Mechanism, the 100% quoting obligation was reduced to 99%. *See* Securities Exchange Act Release No. 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006).

[21] *See* proposed Exchange Rule 1014(ii)(D)(1).

[22] *See supra* note 9.

[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53243; File No. SR–Phlx–2005–43)

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto Relating to Index Option Strike Prices

February 7, 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 June 22, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On December 8, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On December 9, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. On January 12, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1101A (Terms of Option Contracts) to indicate that the Exchange may set strike price intervals of $5 or greater for options on indexes, and may set strike prices at $2.50 or greater for listed index options or in response to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 3 replaced and superseded the original filing and subsequent amendments in their entireties. Telephone conversation between Jruij Trypupenko, Director and Counsel, New Products Group and Legal Department, Phlx, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission, on January 26, 2006.

customer interest or specialist request. The proposal would also delete language that is no longer necessary. The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 1101A.

Terms of Option Contracts

(a) The Exchange shall determine fixed point intervals of exercise prices for index options (*options on indexes*). Generally, the exercise (strike) price intervals [shall]*will* be [$2.50 for the three consecutive near-term months,] *no less than* $5; *provided, that* [for the fourth month and $10 for the fifth. However,] the Exchange may determine to list strike prices at *no less than* $2.50 intervals [in response to demonstrated customer interest or specialist request] *for options on the following indexes (which may also be known as sector indexes):*

(i) PHLX Computer Box Maker Index, if the strike price is less than $200,

(ii) PHLX Defense Index, if the strike price is less than $200,

(iii) PHLX Drug Index, if the strike price is less than $200,

(iv) PHLX Europe Index, if the strike price is less than $200,

(v) PHLX Gold/Silver Index, if the strike price is less than $200,

(vi) PHLX Housing Index, if the strike price is less than $200,

(vii) PHLX Oil Service Index, if the strike price is less than $200,

(viii) PHLX Semiconductor Index, if the strike price is less than $200,

(ix) PHLX Utility Index, if the strike price is less than $200.

(x) PHLX World Energy Index, if the strike price is less than $200,

(xi) SIG Investment Managers Index™, if the strike price is less than $200,

(xii) SIG Cable, Media & Entertainment Index™, if the strike price is less than $200,

(xiii) SIG Casino Gaming Index™, if the strike price is less than $200,

(xiv) SIG Semiconductor Equipment Index™, if the strike price is less than $200,

(xv) SIG Semiconductor Device Index™, if the strike price is less than $200,

(xvi) SIG Specialty Retail Index™, if the strike price is less than $200,

(xvii) SIG Steel Producers Index™, if the strike price is less than $200,

(xviii) SIG Footwear & Athletic Index™, if the strike price is less than $200.

(xix) SIG Education Index™, if the strike price is less than $200,

(xx) SIG Restaurant Index™, if the strike price is less than $200,

(xxi) SIG Coal Producers Index™, if the strike price is less than $200,

(xxii) SIG Oil Exploration & Production Index™, if the strike price is less than $200,

(xxiii) PHLX/KBW Bank Index, if the strike price is less than $200,

(xxiv) KBW Capital Markets Index, if the strike price is less than $200,

(xxv) KBW Insurance Index, if the strike price is less than $200,

(xxvi) KBW Mortgage Finance Index, if the strike price is less than $200,

(xxvii) KBW Regional Banking Index, if the strike price is less than $200,

(xxviii) TheStreet.com Internet Sector, if the strike price is less than $200,

(xxix) Wellspring Bioclinical Trials Index™, if the strike price is less than $200.

The Exchange may also determine to list strike prices at no less than $2.50 intervals for options on indexes delineated in this rule in response to demonstrated customer interest or specialist request. For purposes of this paragraph, demonstrated customer interest includes institutional (firm) corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by an ROT with respect to trading for the ROT's own account. [The Exchange may also determine to list strike prices at wider intervals.]

(b) through (c), Commentary—No change.

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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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide the Exchange with the ability to set strike price intervals for options on indexes at $2.50 or greater if the strike price is less than $200, in keeping with Exchange needs, specialist and customer requests, and market conditions and practices.

Phlx Rule 1101A currently indicates the Exchange generally shall determine set strike intervals for options on indexes, which are also known as index options or sector index options, as follows: $2.50 for three consecutive near-term months, $5.00 for the fourth month, and $10.00 for the fifth month.

The Exchange has found that the index strike pricing formulation, which generally requires set pricing intervals according to whether options are in the first three consecutive months, the fourth month, or the fifth month, does not afford the flexibility to set strike prices at appropriate intervals commensurate with market conditions and index prices set by other exchanges, often for similar products.[4] Moreover, Phlx specialists and customers have expressed on numerous occasions that the current index strike pricing approach is too restrictive and does not allow for efficient pricing of index options, thereby putting them at a competitive disadvantage.

The Exchange therefore proposes to amend Phlx Rule 1101A to indicate that the Exchange would be permitted to determine fixed point strike price intervals for index options (also known as sector index options) as follows:

—No less than $5.00,

—Provided that the Exchange may list strike prices at no less than $2.50 intervals (a) in those index options delineated in Phlx Rule 1101A(a) where the strike prices are less than $200, and (b) in the same index options delineated in this rule in response to demonstrated customer interest or specialist request.

For purposes of Phlx Rule 1101A, "demonstrated customer interest or specialist request" includes institutional (firm) corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but does not include interest expressed by a registered options trader ("ROT") with respect to trading for the ROT's own account.

The Exchange believes that proposed Phlx Rule 1101A, as amended, would provide the flexibility needed for more efficient index options pricing, would tend to maximize trading opportunities, and would be analogous in function to

[4] The Exchange has recently amended current Phlx Rule 1101A in an attempt to gain needed flexibility. *See* Securities Act Release No. 49311 (February 24, 2004), 69 FR 9673 (March 1, 2004) (SR–Phlx–2003–72).

index strike pricing rules of other option exchanges.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction 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 should allow the Exchange to set strike prices at levels that would maximize pricing efficiency and trading opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–43 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–2005–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2005–43 and should be submitted on or before March 6, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires among other things, that the rules of the Exchange are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction 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 Commission believes that the proposed rule change should provide the Exchange with the flexibility to efficiently price index options by allowing the Exchange to list $2.50 strike price intervals only on certain index options delineated in this rule.

The Phlx has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that other option exchanges have similar rules permitting the listing of $2.50 strike price intervals on certain delineated index options.[10] The Commission believes that granting accelerated approval of the proposal should allow the Phlx to conform its rules to those of other option-exchanges without delay. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[11] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2005–43) and Amendments No. 1, 2, and 3 thereto be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–1964 Filed 2–10–06; 8:45 am]

BILLING CODE 8010–01–P

[5] *See e.g.*, Chicago Board Options Exchange Rule 24.9 and International Securities Exchange Rule 2009.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* note 5.

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways

to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400. E-mail: *OPLM.RCO@ssa.gov.*

The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Section 107 Representative Payee Study—0960–NEW. As mandated by section 107 of the Social Security Protection Act of 2004, the Social Security Administration is sponsoring an independently conducted study evaluating the Representative Payee Program. In this study, selected groups of SSA beneficiaries and representative payees will be interviewed about their experiences within the program. These two groups' responses will then be compared and contrasted. A re-contact interview will be conducted with 100 representative payees identified as demonstrating characteristics of abusers of the representative payee system. The ultimate purpose of the study is to evaluate the knowledge level and performance of representative payees vis-à-vis the standards established for them by SSA. The respondents are recipients of SSA benefits (adults and ages 14–17) and representative payees (individuals and organizations).

Type of Request: New information collection.

	Number of respondents	Frequency of response	Average burden per response (min)	Estimated annual burden (hr)
SSA Beneficiaries	2,565	1	45	1,924
Representative Payees	5,130	1	55	4,703
Representative Payees (Re-contact study)	100	1	55	92
Totals	7,795			6,719

Total Estimated Annual Burden: 6,719 hours.

Dated: February 6, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–1940 Filed 2–10–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance, J. Douglas Bake Memorial Airport, Oconto, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of a portion of the airport property. The City of Oconto WI is proposing to swap 13.9 acres of existing airport land for 13.9 acres of land from an adjacent landowner. The swap will allow the airport to acquire land in fee that lies under the approach to Runway 22. Both parcels are vacant land in the northeast corner of the airport and are deemed of equal value. The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan.

The acreage comprising this parcel was originally acquired under Grant No. AIP 3–55–SBGP–20–04 (Oconto AIP—06). The City of Oconto (Wisconsin), as airport owner, has concluded that the subject airport land is not needed for expansion of airport facilities. There are no impacts to the airport by allowing the airport to dispose of the property. No revenue will be derived as the parcels are of the same value. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16,,1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before March 15, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone number (612) 713–4350/Fax number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the J. Douglas Bake Memorial Airport, 2983 Airport Road, Oconto WI 54153.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at J. Douglas Bake Memorial Airport in Oconto, Wisconsin and described as follows:

A parcel of land located in part of Government Lot 6, Section 24, City of Oconto, and part of the Northwest Quarter of the Northwest Quarter, section 25, Town of Oconto all in township 28 North, Range 21 East, Oconto County, Wisconsin.

Said parcel subject to all easements, restrictions, and reservations of record.

Dated: Issued in Minneapolis, MN on January 19, 2006.

Robert A. Huber,

Acting Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–1315 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Air Carrier Listing of Leading Outsource Maintenance Providers

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's (OMB) renewal of a current information collection. The **Federal Register** Notices with a 60-day comment period soliciting comments on the following collection of information was published on December 5, 2005, vol. 70, #232, page 72496. The data from this report will be used to assist the principal maintenance or avionics inspector in preparing the annual FAA surveillance requirements of the leading contract maintenance providers to the air operators.

DATES: Please submit comments by March 15, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Air Carriers Listing of Leading Outsource Maintenance Providers.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0708.

Forms(s): Quarterly Outsource Maintenance Providers Utilization Report.

Affected Public: A total of 121 Respondents.

Frequency: The information is collected quarterly.

Estimated Average Burden Per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 484 hours annually (This is an increase over the previous estimate for this collection. We have revised the time estimated to complete the form).

Abstract: The data from this report will be used to assist the principal maintenance or avionics inspector in preparing the annual FAA surveillance requirements of the leading contract maintenance providers to the air operators.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including 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 3, 2006.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–1313 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss rotorcraft issues.

DATES: The meeting is scheduled for Monday, February 27, 2006, at 10:15 a.m. central standard time (cst).

ADDRESSES: The meeting will be held at the Dallas Convention Center, room D171, 650 South Griffin Street, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Caren Waddell, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8199, or e-mail *caren.waddell@faa.gov*.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II).

The agenda will include:

- Opening Remarks.
- Working Group Status Report—Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure.
- FAA Status Report—Performance and Handling Qualities Requirements for Rotorcraft, Notice of Proposed Rulemaking (NPRM).
- FAA Status Report—Fatigue Tolerance Evaluation of Metallic Structure, NPRM and Advisory Circular package.
- Other Business.
- Future Meetings.

Attendance is open to the interested public but will be limited to the space available. Persons participating by telephone can call (817) 222–4871; the pass code is 5359#. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting.

If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on February 6, 2006.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 06–1348 Filed 2–9–06; 11:46 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 2005, there were four applications approved. This notice also includes information on four other applications, approved in November 2005, inadvertently left off the November 2005 notice. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of

the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.
Application Number: 05–14–C–00–HSV.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $4,903,496.
Earliest Charge Effective Date: April 1, 2006.
Estimated Charge Expiration Date: April 1, 2008.
Classes of Air Carriers Not Required to Collect PFC's:
(1) Air taxi/commercial operators having fewer than 500 annual enplanements; (2) certified air carriers having fewer than 500 annual enplanements; and (3) certified route air carriers having fewer than 500 annual enplanements.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Huntsville International Airport.
Brief Description of Projects Approved for Collection and Use:
Two security vehicles.
Runway guard lights.
Concourse/terminal renovations.
Public access circulation roads.
Decision Date: November 16, 2005.
FOR FURTHER INFORMATION CONTACT: Roderick Nicholson, Jackson Airports District Office, (601) 664–9884.

Public Agency: City of Pensacola, Florida.
Application Number: 05–07–C–00–PNS.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $82,514,000.
Earliest Charge Effective Date: December 1, 2007.
Estimated Charge Expiration Date: June 1, 2028.
Classes of Air Carriers Not Required to Collect PFC's:
Nonscheduled/on-demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pensacola Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Terminal expansion and improvements.
Ramp expansion—design and construction.
Master plan update.
Land acquisition.
Lightning protection system.
Localizer and distance measuring equipment, runway 08.
Storm water drainage system improvements.
PFC implementation and administration.
Financial feasibility.
Brief Description of Disapproved Projects:
Employee parking lot expansion.
Determination: Employee parking lots are not eligible in accordance with paragraph 604 of FAA Order 5100.38C, Airport Improvement Program (AIP) Handbook (June 28, 2005).
Developmental Regional Impact.
Determination: This project includes elements of a master plan project, however, it does not focus on the airport development needs, but rather on the airport's impact on the community. Therefore, this project is not eligible.
Decision Date: November 16, 2005.
FOR FURTHER INFORMATION CONTACT: William Farris, Orlando Airports District Office, (407) 812–6331, extension 125.

Public Agency: City of Valdosta, Georgia.
Application Number: 06–07–C–00–VLD.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $67,858.
Charge Effective Date: February 1, 2006.
Estimated Charge Expiration Date: May 1, 2006.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Runway 17/35 extension (design).
Runway 17/35 extension (construction).
Decision Date: November 29, 2005.
FOR FURTHER INFORMATION CONTACT: Parks Preston, Atlanta Airports District Office, (404) 305–7149.

Public Agency: Dubuque Airport Commission, Dubuque, Iowa.
Application Number: 06–07–C–00–DBQ.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $153,046.
Earliest Charge Effective Date: March 1, 2006.
Estimated Charge Expiration Date: March 1, 2007.
Class of Air Carriers Not Required to Collect PFC's:
On-demand air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Dubuque Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Acquire deicer vehicle.
Construct snow removal equipment building.
Replace aircraft rescue and firefighting equipment.
PFC administrative costs.
Pavement condition index study.
Brief Description of Disapproved Project:
Secondary radar acquisition.
Determination: This project is not PFC-eligible.
Decision Date: November 30, 2005.
FOR FURTHER INFORMATION CONTACT: Lorns Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Port of Portland, Oregon.
Application Number: 05–09–C–00–PDX.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $68,207,251.
Earliest Charge Effective Date: May 1, 2016.
Estimated Charge Expiration Date: March 1, 2018.
Classes of Air Carriers Not Required to Collect PFC'S:
(1) Air taxi/commercial operators that enplane fewer than 500 passengers per year; and (2) all miscellaneous itinerant air carriers, which are nonscheduled/on-demand air carriers that do not provide regularly scheduled air service to Portland International Airport.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Portland International Airport.
Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:
Concourse corridor connector.
Taxiway B east and west.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Deicing system design.
Land acquisition and exhibit A update.
Taxiway T and terminal apron rehabilitation.
Rehabilitate northeast apron.
Terminal building multi-user flight information display system/flight information display system.
Concourses A and B ramp rehabilitation.
North runway extension—feasibility and conceptual design, environmental analysis.
Terminal building Americans with Disabilities Act modifications.
Federal inspection station facility improvements.
Noise system upgrade.
Upgrade runway guard lights.
Common use ticket counter.
Roadway canopy bird netting.
Midfield checkpoint security identification display area access.
Install key control system.

Decision Date: December 7, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Pullman/Moscow Regional Airport, Pullman, Washington.

Application Number: 06–05–00–PUW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $310,250.

Earliest Charge Effective Date: March 1, 2007.

Estimated Charge Expiration Date: September 1, 2010.

Class of Air Carriers Not Required to Collect PFC'S:

Nonscheduled air taxi/commercial operators, utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pullman/Moscow Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Master plan.
Airport site investigation/runway designation.
Land acquisition/approach protection.
Reconstruction of general aviation apron.
Runway safety area grading.
PFC administrative fees.

Decision Date: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 05–09–C–00–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,847,000.

Earliest Charge Effective Date: November 1, 2007.

Estimated Charge Expiration Date: November 1, 2009.

Class of Air Carriers Not Required to Collect PFC'S:

None.

Brief Description of Project Approved for Collection and Use:

Airport drainage improvements.

Decision Date: December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 03–15–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $11,625,000.

Earliest Charge Effective Date: June 1, 2013.

Estimated Charge Expiration Date: July 1, 2013.

Class of Air Carriers Not Required to Collect PFC'S:

Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).

Brief Description of Project Partially Approved for Collection at ORD and Use at ORD at a $4.50 PFC Level:

School soundproofing 2002–2003.

Determination: The approved amount is less than the amount requested in the PFC application because the public agency deleted two proposed schools from the project and reduces the PFC amount accordingly.

Brief Description of Project Partially Approved for Collection at ORD and Use at ORD at a $3.00 PFC Level:

Equipment acquisition 2001–2003.

Determination: The approved amount is less than the amount requested in the application. Only 7 of the 22 proposed pieces of equipment have been approved. The remaining 15 pieces of equipment were determined not to be eligible.

Brief Description of Projects Approved for Collection at ORD and Use at Gary/Chicago Regional Airport at a $3.00 PFC Level:

Acquire snow removal equipment (snow broom).
Expand snow removal equipment building.
Rehabilitate runway 12/30/
Terminal apron expansion and loading bridge installation.

Brief Description of Withdrawn Project:

Runway formulation.

Determination: The City of Chicago, Department of Aviation withdrew this project from its application by letter dated July 8, 2005.

Decision Date: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Chad Oliver, Chicago Airports District Office, (847) 294–7199.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date.
94–01–C–08–CVG Covington, KY	04/22/05	$32,872,000	$35,796,000	03/01/96	04/01/96
98–03–C–06–CVG Covington, KY	04/22/05	24,004,000	24,833,000	07/01/99	09/01/99
99–05–C–05–CVG Covington, KY	04/22/05	18,136,000	18,598,000	11/01/01	01/01/02
01–07–C–02–CVG Covington, KY	04/22/05	29,046,000	32,074,000	08/01/03	08/01/03
99–02–C–02–PUW Pullman, WA	12/13/05	714,731	706,727	10/01/05	10/01/05
02–03–U–01–PUW Pullman, WA	12/13/05	NA	NA	10/01/05	10/01/05
02–04–C–01–PUW Pullman, WA	12/13/05	89,900	111,937	03/01/07	03/01/07
*97–01–C–02–SDF Louisville, KY	12/14/05	90,600,000	90,600,000	04/01/18	04/01/12
*01–02–C–03–SDF Louisville, KY	12/14/05	10,732,140	10,012,140	04/01/17	03/01/13

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date.
* 03–03–C–01–SDF Louisville, KY	12/14/05	5,666,800	5,666,800	06/01/18	09/01/13

NOTE: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Louisville, KY, this change is effective on March 1, 2006.

Issued in Washington, DC, on February 8, 2006.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 06–1314 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2006–23894]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 14, 2006.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Maritime Administration (MAR–630), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2323; Fax: 202–493–2180, or e-mail: *taylor.jones@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Intermodal Sealift Agreement (VISA).

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0532.

Form Numbers: MA–1020.

Expiration Date of Approval: Three years after date of approval by the Office of Management and Budget.

Summary of Collection of Information. This information collection is in accordance with Section 708, Defense Production Act, 1950, as amended, under which participants agree to provide commercial sealift capacity and intermodal shipping services and systems necessary to meet national defense requirements. In order to meet national defense requirements, the government must assure the continued availability of commercial sealift resources.

Need and Use of the Information: The information collection is needed by MARAD and the Department of Defense (DOD), including representatives from the U.S. Transportation Command and its components, to evaluate and assess the applicants' eligibility for participation in the VISA program. The information will be used by MARAD and the U.S. Transportation Command, and its components, to assure the continued availability of commercial sealift resources to meet the DOD's military requirements.

Description of Respondents: Operators of qualified dry cargo vessels.

Annual Responses: 40.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

(Authority: 49 CFR 1.66)

By order of the Maritime Administrator.

Dated: February 8, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–2004 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18640, Notice 2]

InterModal Technologies, Inc.; Denial of Petition for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

SUMMARY: This notice denies a petition from InterModal Technologies, Inc., for a temporary exemption from certain requirements of Federal Motor Vehicle Safety Standard No. 121, *Air brake systems.* The denial is based on the petitioner's failure to persuade the agency that the safety device in question provides a safety level at least equal to that of the applicable Federal standard. Further, it failed to articulate how the exemption would make easier the development or field evaluation of the safety device for which the exemption is being sought.

The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the application on July 19, 2004, and afforded an opportunity for comment.[1]

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I. Background and Summary of the Petition

InterModal Technologies, Inc. ("InterModal") is a manufacturer of semi-trailers and is incorporated in the State of Colorado. InterModal would like to manufacture semi-trailers equipped with a device, which it refers to as "MSQR–5000 pneumatic antilock braking system" ("MSQR–5000").[2] The MSQR–5000 does not incorporate electrical circuits to transmit or receive electrical signals.[3]

[1] *See* 69 FR 43052.

[2] For additional information on this petition, please *see* Docket No. NHTSA–2004–18640 at *http://dms.dot.gov/search/search/FormSimple.cfm*.

[3] We note that the President of InterModal Technologies, William Washington, is also the President of ABS, Inc., manufacturer of the MSQR–

In its petition, InterModal contends that the MSQR–5000 device operates as an Antilock Braking System (ABS). InterModal acknowledged that a trailer equipped with the MSQR–5000 does not comply with the malfunction indicator (warning light) requirements of S5.2.3.2 and S5.2.3.3 in Federal Motor Vehicle Safety Standard ("FMVSS") No. 121, *Air brake systems*.[4]

FMVSS No. 121 establishes requirements for braking systems on vehicles equipped with air brake systems. In order to address the safety consequences of braking-related instability, FMVSS No. 121 requires ABS.[5] FMVSS No. 121 also includes warning light requirements established to inform operators of an ABS malfunction and both to facilitate and to encourage repairs of faulty ABS systems.

S5.2.3.2 *Antilock Malfunction Signal* requires that:

"* * * each trailer * * * manufactured on or after March 1, 2001, that is equipped with an antilock brake system shall be equipped with an electrical circuit that is capable of signaling a malfunction in the trailer's antilock brake system, and shall have the means for connection of this antilock brake system malfunction signal circuit to the towing vehicle * * * Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system, and the malfunction signal shall be automatically reactivated whenever power is again supplied to the trailer's antilock brake system. In addition, each trailer manufactured on or after March 1, 2001, that is designed to tow other air-brake equipped trailers shall be capable of transmitting a malfunction signal from the antilock brake systems of additional trailers it tows to the vehicle towing it."

S5.2.3.3 *Antilock Malfunction Indicator* requires that:

"In addition to the requirements of S5.2.3.2, each trailer * * * manufactured on or after March 1, 1998, and before March 1, 2009, shall be equipped with an external antilock malfunction indicator lamp * * *"

The trailers in question are incapable of meeting these requirements. Trailers equipped with only the MSQR–5000 would not be equipped with an electrical circuit capable of signaling a malfunction in the ABS or storing any information that indicated a malfunction had occurred. Further, these trailers would not be equipped with an external antilock malfunction indicator lamp.

Because the trailers equipped with MSQR–5000 do not comply with the requirements of S5.2.3.2 and S5.2.3.3 of FMVSS No. 121, pursuant to the procedures of 49 CFR 555.6(b), InterModal petitioned NHTSA for a Temporary Exemption from these requirements. The stated basis for the petition was that an exemption would facilitate the development or field evaluation of the MSQR–5000, which petitioner contends offers a safety level at least equal to that of systems that comply with FMVSS No. 121. The petitioner argued that without an exemption, it is unable to sell a vehicle whose overall level of safety is at least equal to that of vehicles that meet the requirements of the standard.

InterModal did not elaborate on how an exemption from the requirements of S5.2.3.2 and S5.2.3.3 would facilitate development or field evaluation of a new motor vehicle safety feature. The petitioner indicated that MSQR–5000 has already been developed by Air Brake Systems, Inc.[6] Accordingly, development of a new motor vehicle safety feature was not at issue because InterModal seeks an exemption for a product that has already been developed. InterModal stated that more than 7,000 MSQR–5000 units are already in operation.

InterModal offered several reasons why it believes the overall level of safety of semi-trailers equipped with MSQR–5000 is at least equal to that of non-exempted semi-trailers.

First, InterModal argued that based on laboratory test data and field-test data, MSQR–5000 operates as a conventional ABS. Further, InterModal stated that MSQR–5000 met or exceeded all the performance requirements in FMVSS No. 121.[7] Petitioner also cited several affidavits in support of its contention that trailers equipped with MSQR–5000 are at least as safe as trailers equipped with conventional ABS.[8]

Second, InterModal argued that MSQR–5000 is a "fully closed-loop" system, as opposed to a conventional electronic ABS that utilizes modulators to vent air during the braking cycle. According to petitioner, an electronic ABS is subject to contamination and wear due to venting. Further, in its view, venting may extend the stopping distance. In contrast, the MSQR–5000 modulates air internally and does not vent during braking.

In regard to the electronic malfunction indicator requirement, InterModal stated that tractor-trailer combinations resulting from use of its trailers with a standard tractor would already be equipped with a pneumatic "low pressure" malfunction indicator located in the cabin. Petitioner asserts that this design alerts the driver if the system malfunctions. Further, in the event of a severe air pressure loss, an emergency brake chamber releases to engage the emergency brake, stopping the vehicle until repairs can be made.

Finally, the petitioner presented several arguments of why it believes a semi-trailer equipped with a MSQR–5000 device is superior to a semi-trailer equipped with a conventional ABS system that complies with the requirements of FMVSS No. 121. Specifically, petitioner argues that MSQR–5000: (1) Is less expensive; (2) is less expensive to install; (3) is easier to operate; (4) has a better safety record than ABS products that comply with the requirements of FMVSS No. 121;[9] (5) causes less wear on brake linings; (6) has fewer parts that are susceptible to damage or wear.

Other than what may be implied from the foregoing, the petitioner did not specifically set forth the reasons why granting this exemption would be in the public interest, as required by 49 CFR 555.5(b) (7).

For additional information on InterModal, please go to: *http://www.intermodaltechnologies.com.*

5000. ABS, Inc. claims on its website that the MSQR–5000 is "exempt" from warning light requirements incorporated into FMVSS No. 121, *http://www.absbrakes.com/exemption.htm*. Nevertheless, InterModal now seeks an exemption from the same warning light requirement. For more information on MSQR–5000, *see http://www.absbrakes.com/*.

[4] The supporting information attached to the petition contained several affidavits arguing that MSQR–5000 meets other requirements of FMVSS No. 121 and performs better than conventional ABS systems; a copy of the patent application; and two test reports.

[5] The issue of whether MSQR–5000 is an ABS is addressed later in this document.

[6] We note that Air Brake Systems, Inc., advertises the MSQR–5000 as complying with "IN-CAB warning light regulation 49 CFR 571.121" *see http://www.absbrakes.com/home.htm*. That statement is misleading because FMVSS No. 121 applies to vehicles and not items of equipment. An item of equipment such as the MSQR–5000 cannot "comply" with FMVSS No. 121.

[7] We note that Air Brake Systems, Inc. apparently sponsored testing of an MSQR–5000 equipped tractor-trailer combination by the Southwest Research Institute in 2002. The test report for this testing, which was submitted with the petition, and available on the Air Brake Systems, Inc. Web site, states in pertinent part: "For the wetted curve test, the vehicle is required by FMVSS 121 to stop from 30 mph on a wetted surface while negotiating a 500-foot radius curve and maintaining itself within in a 12-foot wide lane. When using full treadle brake application per FMVSS 121, the vehicle did not stay in the 12-foot lane. This occurred for the vehicle with and without the MSQR–5000 brake valve at both vehicle weights." *http://www.absbrakes.com/ABS%20Final%20Report-Revision%20A.pdf* at Executive Summary and page 9.

[8] For laboratory test data, field-test data, and affidavits, see Docket No. NHTSA–2004–18640.

[9] In support of this statement, petitioner indicates that in September 2000, 300,000 electronic ABS units were subject to a voluntary recall because of delays in brake application.

II. Comments on the Petition

We published a notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2). The notice made no judgment on the merits of the application. In response, we received five comments, three supporting granting the petition and two supporting denial.

Andrew W. Mouk stated that he "handled the products liability coverage for the MSQR–5000 for many years and ha[s] never had a liability claim arise out of the use of this product." He added that some insurance companies have even offered a discount in rates to truckers who install this device on their heavy trucks, and that drivers have been impressed with the increased braking capabilities after the installation of MSQR–5000. He argued that the trucking industry would be a safer industry "if this valve was in more widespread use." [10] No data to support Mr. Mouk's comments was included.

An anonymous commenter stated that s/he "witnessed testing of the MSQR–5000 valve at Bandimere Speedway in Colorado and observed firsthand a 40% reduction in stopping distance and almost 50% reduction in braking time using this system." The commenter also asserted that s/he knows of drivers who report dramatically improved safety and reduced maintenance costs. The commenter also asserted knowledge of "many reports of accidents avoided and lives saved due to the shorter stopping distance and braking reliability." [11] The commenter argued that the Antilock Malfunction Indicator required by S5.2.3.3 of FMVSS No. 121 is inconsequential to safety. As with the previous comment, this commenter did not provide any supporting data.

Tracy White of Farm Master, Inc., stated that the company uses and likes MSQR–5000 because the system is easy to install and maintain. The comment also indicated that Farm Master's customers preferred the system because of its reliability and that Farm Master has not received any complaints.[12]

Robert J. Crail opposed granting the petition. He stated that a failure of the "diaphragm" in the MSQR–5000 would render inoperable the "alleged antilock feature." Mr. Crail also stated that air brake systems equipped with the MSQR–5000 valve have no means of automatically controlling the degree of rotational wheel slip during braking and no means of sensing the rate of angular rotation of the wheels. Further, he stated that the MSQR–5000 valve has no means of relieving excess pressure from the brake chambers, which means a locked wheel would remain locked until the driver reduced the braking pressure, which Mr. Crail stated is not antilock braking. Mr. Crail concluded by arguing that trailers containing the MSQR–5000 would "certainly degrade highway safety."

Advocates for Highway and Auto Safety (Advocates) argued that NHTSA should reject the requested exemption because the petition filed by InterModal has substantive and procedural defects. Specifically, Advocates stated that InterModal acknowledged the manufacture and sale of trailers equipped with seemingly noncompliant braking systems, and argued that granting an *ex post facto* exemption would be inappropriate. Advocates also stated that InterModal made no arguments explaining why a grant of the petition would be in the public interest.

Advocates argued that MSQR–5000 does not notify vehicle operators of ABS malfunction with otherwise operable brakes. In the case of ABS systems complying with FMVSS No. 121, a malfunction notification alerts an operator who can drive the vehicle to a safe location, including repair facilities, in order to accomplish restoration of full ABS operation. By contrast, Advocates states that MSQR–5000 overrides operator control of the vehicle and brings it to an immediate stop in what could be dangerous operating circumstances. Finally, Advocates argued that InterModal provided no reliable safety data on the consequences of emergency brake application if ABS malfunctions occur.

III. The Agency Decision

After careful consideration of the petition, NHTSA is denying the InterModal petition for a temporary exemption because the petitioner failed to meet the criteria specified in 49 CFR 555.6(b). Specifically, InterModal did not persuade the agency that MSQR–5000 provides a safety level at least equal to that of the applicable Federal safety standard. InterModal also failed to articulate how granting the exemption would be in the public interest or how the exemption would facilitate development or field evaluation of the MSQR–5000.

Background

When heavy vehicle brakes are applied with increasing amounts of force, braking generally improves. However, at some point, the forces in the brakes exceed the grip of the tire on the road. The tire then begins to slide and the wheel rapidly goes into full lockup. A sliding tire loses its grip in all directions. Thus, locked wheels make a vehicle unstable and lead to loss of control.

FMVSS No. 121 requires antilock braking systems (ABS) on vehicles equipped with air brakes. The ABS controls the degree of rotational wheel slip in order to minimize wheel lockup, maximize braking force and preserve directional control. In doing so, the ABS reduces, holds and reapplies, *i.e.*, modulates, brake pressure to each controlled wheel. More specifically, the ABS automatically reduces the amount of brake application pressure by venting air in the brake chambers into the atmosphere. The brake pressure must then be increased again to ensure that there is sufficient brake force. Through these cycles, which require reducing or applying air pressure by as much as 60 pounds per square inch, the degree of wheel slip is controlled.

The ABS system must have the ability to determine if and when a braked wheel becomes locked due to changes in traction conditions. To accomplish this, any ABS must be a "closed loop" system; i.e., a system that continuously monitors the rate of wheel rotation, adjusts wheel rotation when needed, and reacts to ongoing changes in rotation caused by the operation of the system, by changed road surfaces, or both.[13] For example, a braking vehicle may move from a high friction surface, like dry pavement, to a very low friction surface such as an icy road. In such an instance, an ABS must sense the different frictional properties of the road surface through changes in the rate of wheel rotation and reduce brake air line pressure on the low friction surface, and then restore it when a high friction surface is reached.

Definition of ABS

The definition of ABS included in FMVSS No. 121 incorporates the terms set forth in Society of Automotive Engineers (SAE) publications and European regulations to reflect the attributes of antilock systems as commonly understood by the automotive industry.[14]

[10] *See* Docket No. NHTSA–2004–18640–3.

[11] *See* Docket No. NHTSA–2004–18640–6.

[12] *See* Docket No. NHTSA–2004–18640–7.

[13] *See* 60 FR 13217. We note that in the petition, InterModal argues that MSQR–5000 is closed loop because it is incapable of venting air during the braking cycle. As explained below, this argument is erroneous because MSQR–5000 is incapable of continuously monitoring the rate of wheel rotation and therefore is not closed loop.

[14] *See* Sec. 7.3, 7.4.4, 7.4.5 of "Antilock Brake System Review" SAE J2246 (June 1992). "ABS is a feedback control system that attempts to maintain controlled braking under all operating conditions. This is accomplished by controlling the slip at each wheel so as to obtain optimum forces within the limits of the tire-road combination."

An antilock brake system is defined in S4 of FMVSS No. 121 as follows:

Antilock brake system or ABS means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals. [*emphasis added*]

We interpret this definition as follows:

"Automatically controls" means that the ABS, rather than the driver, regulates the degree of rotational wheel slip during braking. Automatic control is necessary since drivers frequently cannot control lockup in emergency situations or on slippery surfaces.

"Wheel slip" refers to the proportional amount of wheel/tire skidding relative to the forward motion (velocity) of the vehicle. As defined in S4 of FMVSS No. 121, wheel lockup means 100 percent wheel slip.

"During braking" means during all phases of braking when antilock braking would be called upon, including incipient wheel lock and subsequent wheel lockup. In order to meet this portion of the definition, an ABS must therefore act when wheels are about to lock, when they have locked and after they have locked.

In short, the introductory clause of the definition of ABS in FMVSS No. 121 means that during braking an ABS system must act without any action on the part of the driver. When functioning on its own, the system must exercise control over the degree of rotational wheel slip, including full lockup. Finally, a qualifying system must act at all times during braking, including those periods where lock up is about to occur, and where full lockup has occurred. The definition also sets forth the means by which these conditions are to be met.

"Sensing the rate of angular rotation of the wheels" means that the ABS must be able to sense the rate of angular wheel rotation, not simply whether the wheel is rotating or not. The information about the rate of wheel rotation, relative to the forward motion of the vehicle, enables an ABS to determine if a wheel is about to lockup or has locked up. It also enables the ABS to then control (release/hold/reapply) brake pressure to enable the wheel to begin rotating again, at an appropriate level of rotational wheel slip.

"Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals" means that ABS must use the rate of wheel rotation and not a substitute or surrogate factor to control wheel slip and prevent lockup.

"Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals" means that the ABS must modulate brake pressure in response to the rate of angular rotation of the wheels relative to the vehicle's forward motion. During automatic brake control, wheel speed has to be constantly monitored so that the maximum braking force for the conditions can be achieved by a succession of pressure reduction, pressure-holding and pressure-reapplication.

Meeting all of the elements of this definition is necessary to ensure that an ABS system provides the minimum level of performance necessary for safe braking. Thus, an antilock system must be capable of reducing, holding and reapplying brake pressure to each controlled wheel. The wheel speed sensor must monitor the rotational speed of the wheel. When a monitored wheel approaches a lockup condition, there is a sharp deceleration of the wheel and rise in wheel slip. If this exceeds threshold levels, the control unit must send a signal to the modulator device to hold or reduce the build-up of wheel brake pressure until the danger of wheel lockup has passed. The brake pressure must then be increased again to ensure that the wheel is not underbraked for the road surface conditions.

Warning Light

An ABS malfunction warning light is required by Sections 5.1.6.2 and 5.1.6.3 of Standard 121. The warning light requirements are important for reducing crashes, deaths and injuries. These warning light requirements are necessary to ensure that operators are informed of an ABS malfunction, including those that have previously occurred in a trailer, and both facilitate and encourage repairs of faulty ABS systems.[15]

[15] *See* 60 FR 13244.

Analysis

One threshold question that must be examined is whether the petitioner's vehicles are equipped with an ABS system that functions as an ABS within the meaning of FMVSS No. 121. This is relevant to InterModal's petition because paragraph S5.2.3.1 of FMVSS No. 121 of FMVSS No. 121 requires trailers to be equipped with ABS, as defined in the Standard. If the MSQR–5000 is not an ABS, within the meaning of FMVSS No. 121, an exemption from the warning light requirements of the Standard, as requested by InterModal, would still not permit the petitioner to use the MSQR–5000 in lieu of an ABS system either complying with Standard 121 or, if InterModal had requested an exemption from the ABS requirement, providing an equivalent level of performance to vehicles meeting that requirement.

Many of the arguments raised by the petitioner as to whether MSQR–5000 meets the Federal requirements applicable to anti-lock braking systems have previously been examined by NHTSA in a June 4, 2001 interpretation letter to MAC Trailer and the subsequent litigation arising out of issuance of that letter.[16] (*Air Brake Systems, Inc.* v. *Mineta*, 357 F.3d 632 (6th Cir. 2004); *Air Brake Systems, Inc.* v. *Mineta*, 202 F.Supp.2d 705 (E.D.Mich. 2002)).

Why MSQR–5000 Does Not Meet the Definition of ABS

InterModal submitted a series of affidavits stating that MSQR–5000 is an ABS system within the meaning of S4 of FMVSS No. 121. As explained below, we disagree and note that the supporting affidavits, as well as the arguments contained in the petition do not address the entire definition as set forth in S4 of FMVSS No. 121.

The MSQR–5000 is essentially a diaphragm, backed by a piston and dampened by a rubber spring, which is acted on by the air pressure in the brake lines to the brake cylinders.[17] According to the materials submitted by the petitioner, the MSQR–5000 operates on the theory that wheel lockup occurs because of pressure spikes and pressure differentials inside the braking system. The MSQR–5000 purportedly prevents wheel lockup by reacting to, and

[16] During the course of the litigation both ABS, Inc. and NHTSA submitted affidavits and declarations to the District Court. Many of these affidavits and declarations were submitted by InterModal in support of its petition. The agency has placed these in the docket along with declarations and affidavits submitted to the District Court by NHTSA.

[17] *See* patent # 5,078,455.

negating the impact of, these pressure waves and pressure differentials.

InterModal also provided the agency with several affidavits from private individuals purporting to state that a vehicle equipped with MSQR–5000 would conform to the requirements of FMVSS No. 121, and that based on mathematical calculations, vehicles equipped with MSQR–5000 would exhibit shorter stopping distances compared to conventional ABS systems that comply with the requirements of FMVSS No. 121.[18] Because these affidavits did not explain how the MSQR–5000 compensates for its apparent inability to detect and combat wheel slip, we find the affidavits irrelevant to vehicle performance on road conditions where ABS is needed. Similarly, comments submitted in support of the petition stating that use of the MSQR–5000 shortened stopping distance, had not generated any product liability claims, or was cheap and simple to maintain, are irrelevant to whether it functions as an ABS. Stopping performance alone is no indicator that a vehicle has ABS. While the petitioner provided some data, these data did not demonstrate performance which meets or exceeds the requirements of FMVSS No. 121, as required by § 555.6(b)(2)(ii). In fact, one item provided by InterModal, a Final Report on testing conducted by Southwest Research Institute (SWRI), indicates that the MSQR–5000 allowed wheel lockup resulting in a tractor-trailer combination experiencing the equivalent of an FMVSS No. 121 test failure. Specifically, the vehicle did not, under a full-treadle brake application, stop within a 12-foot wide lane from 30 mph on wet surface while negotiating a 500-foot radius curve.[19] The conclusion of the Final Report reads as follows: "Based on the test results and discussions with the manufacturer, SwRI found that the MSQR–5000 system does not function in the same manner as an electronic anti-lock brake system (ABS). With full treadle application, it is possible to cause wheel lockup that results in the vehicle not staying within the 12-foot lane."[20]

The agency has considerable experience examining devices such as the MSQR–5000 and claims that this device and similar pressure dampening mechanisms function as an ABS. In 1992, NHTSA received a petition to require installation of devices like the MSQR–5000 on air-braked vehicles. In response, the agency reviewed tests performed by the Southwest Research Institute, and the U.S. Army's Aberdeen Proving Ground, which showed that the MSQR–5000, and a similar device called the BX–100, did not prevent wheel lockup. NHTSA also tested a similar device for hydraulic brake systems, called the Brake Guard, which showed that the Brake Guard did not, as claimed, prevent wheel lockup.[21] The agency denied the petition on July 2, 1992 explaining:

"* * * Independent tests of the petitioner's device or products similar to his device indicate that it would not be in the interest of safety to adopt his requested amendment. For instance, tests at the Aberdeen Proving Ground indicated that a similar product, the BX–100 brake equalizer, was not approved for use on military vehicles * * * Similarly, tests at Southwest Research Institute indicated that vehicles equipped with the petitioner's device needed an average of approximately 0.5 seconds longer to stop because additional time was needed to fill the expansion chamber. These vehicles exhibited a slower stopping time which ranged from 0.4 to 1.0 seconds at 40 miles per hour which would add from 24 to 59 feet to the stopping distance * * * Tests also indicate that the petitioner's device does not smooth out pressure spikes as claimed. In fact, it typically would only cause small changes in the pressure curves because of the added volume in the brake system that must be filled with air * * * Historically, measurements at VRTC concerning pressure in air brake systems have not revealed peaks in brake pressure. In contrast, to the agency's knowledge, axle-to-axle pressure differentials in combination units are the only type of air pressure differential that contributes to safety problems such as jackknifing and unbalanced braking."[22]

In regard to the theory of the MSQR–5000's operation, NHTSA also conducted two-year road tests of the antilock brake systems on 200 trucks, and 50 trailers, accumulating 44 million miles' worth of data,[23] which revealed no evidence of the pressure pulses that are the linchpin of the device's operation. In the course of the litigation in *Air Brake Systems, Inc.* v. *Mineta*, ABS Inc. offered no data purporting to demonstrate that these pressure pulses exist and InterModal's petition offers nothing further.

As in the current InterModal petition, in the case of *Air Brake Systems, Inc.* v. *Mineta*, ABS Inc. and its affiants asserted that the MSQR–5000 operates on the basis of differential pressure waves generated during braking by brake shoes contacting high and low spots and other irregularities in rotating brake drums. In response to these pressure differentials, the MSQR–5000 allegedly generates responsive waves that dampen pressure increases.[24] NHTSA research and testing have never revealed the existence of the pressure waves described by the petitioner and, after conferring with agency experts and outside consultants having as much as 45 years experience in the field of developing, designing, and testing brake systems, the agency believes that such waves do not exist.[25] However, even assuming that the pressure differentials posited by the petitioner in fact exist, the MSQR–5000 depends on wheel rotation to generate the pressure pulses to which it allegedly reacts. As a locked wheel does not rotate, the MSQR–5000 cannot sense wheel lockup when it occurs and would cease completely to function under the very conditions of maximum braking instability when it most needs to act.[26] Therefore, the agency concludes that MSQR–5000 does not "automatically control * * * the degree of rotational wheel slip during braking" under all conditions, as FMVSS No. 121 requires.

In addition to the inability to control rotational wheel slip during braking, even if the claimed pressure pulses do exist, they are not signals from which "the rate of angular rotation of the wheels," or, therefore, wheel slip, can be determined, as FMVSS No. 121 requires. Because the MSQR–5000 has no way of knowing how many "irregularities" there are in the shape of

[18] In addition to the affidavit, petitioner also provided the agency with a copy of the patent application which described the operation of MSQR–5000. Further, a one-page summary of a test "* * * conducted to approximate the requirements of the 1 March 1997 revision of FMVSS 121 anti-lock brake system regulation" by Perazzola, Inc., purported to show that vehicles equipped with MSQR–5000 exhibited superior stopping performance.

[19] *See* the Executive Summary and page 9 of the SWRI Final Report at Docket No. NHTSA–2004–18640.

[20] The vehicle tested was a tractor-trailer combination. Standard No. 121 contains a requirement that non-articulated air braked vehicles; *i.e.*, "straight trucks" stay within a 12 foot lane while braking on a wetted curve. This test requirement does not apply to articulated vehicle such as a tractor-trailer combination. However, the testing performed by Southwest is indicative of the inability of the MSQR–5000 to function as an ABS in a panic stop on a low friction surface. *See* Id. at 10.

[21] Based on NHTSA's testing, and other evidence, the Federal Trade Commission concluded that the Brake Guard was not an antilock brake system, and that there were "no competent and reliable scientific data" to support the manufacturer's claims to the contrary (*See* Docket No. NHTSA–2004–18640).

[22] *See* 57 FR 29459.

[23] *See* affidavits of Duane Perrin and Jeffrey Woods at Docket No. NHTSA–2004–18640.

[24] *See* affidavits by Cepican, Corn, Foss, and Perazzola at Docket No. NHTSA–2004–18640.

[25] *See* affidavits of Beier, Ervin, Perrin, and Buckman at *Id.*

[26] *See* affidavits of Beier, Perrin, and Milligan at *Id.*

any given brake drum, it cannot measure the angular velocity of a wheel based solely on the propagation of the assumed pressure pulses.[27] For example, the device has no means of distinguishing between the pulses generated by a brake drum with six irregularities turning at 10 miles per hour, and a drum with a single irregularity turning at 60 miles per hour.[28] Further, because it cannot determine the forward velocity of the vehicle, it would in any event lack critical information needed in order to determine wheel slip. The MSQR–5000 also lacks any means of processing information about the angular rotation of the wheels, and the forward velocity of the vehicle, in order to calculate the wheel slip. Finally, the theoretical claims of petitioner fail to account for the fact that the brake drums on new vehicles are round and have minimal irregularities, if any, from which any pressure pulses would spring.[29]

The petitioner argues that the MSQR–5000 controls wheel slip and prevents lockup by reducing pressure spikes that its expert assumes to be on the order of 2 psi.[30] However, during a sudden stop, a vehicle operator may apply as much as 60–100 psi of brake pressure, thus requiring that pressure be reduced by anywhere from 20 to 80 psi to prevent wheels from locking, or to free wheels that have already locked.[31] Under these conditions, modulating pressure pulses in the range of 2 psi will not prevent sustained wheel lockup.[32] The MSQR–5000 does not vent air from the brake chambers in order to reduce brake pressure, a process that is basic to controlling slip and preventing lockup in air-braked vehicles.[33] For this reason, NHTSA concludes that the MSQR–5000 does not "control wheel slip during braking" within the meaning of FMVSS No. 121.

The petitioner's analysis of fluid dynamics within an air brake system assumes a plane, one dimensional system and fails to account for the reflection and diffraction of the assumed pressure waves within the multi-dimensional geometry of a real brake line system.[34] It also fails to account for the effects of the incoming "data" waves and outgoing "control" waves on one another as they travel in opposite directions within the same brake lines. Instead it assumes, that the pressure waves generated by the rotation of the brake drums travel in "still air" within the brake line.

Malfunction Indicator

The MSQR–5000 is not equipped with an electrical circuit capable of signaling an ABS malfunction or storing information that such a malfunction had occurred. Consequently, InterModal's trailers are not equipped with an external antilock malfunction indicator lamp. The agency believes that an antilock malfunction indicator is a critical safety feature necessary to alert vehicle operators that the ABS system is not functioning and wheel lockup could occur. While the petitioner and one commenter stated that a warning system isn't necessary because MSQR–5000 does not use electricity and a low air pressure warning device would suffice, it fails to explain the potential consequences of mechanical failures of the MSQR–5000 system.

We note that a low air pressure warning device can warn a driver of a significant loss in the brake system air pressure. However, Robert J. Crail and Advocates both noted that a low air pressure alarm would not warn a driver that MSQR–5000 is not operating. The MSQR–5000 can fail without significant loss in system air pressure. If this occurred, ABS systems meeting the requirements of FMVSS No. 121 would warn the vehicle operator in the absence of any pressure loss. Conversely, the MSQR–5000 would not.

NHTSA adopted the warning light requirement after concluding "that it is essential that a driver be notified about an ABS malfunction, so that the problem can be corrected." This conclusion applies equally to electronic and mechanical ABSs, and NHTSA explained that "mechanical ABSs will have to comply with the malfunction indicator requirements."[35] Any mechanical device, including the MSQR–5000, can wear out, break, or otherwise malfunction.[36] Indeed, we have previously concluded, and continue to believe, that the MSQR–5000 is susceptible to any number of possible malfunctions that would not be detected by the vehicle's low-pressure warning system.[37]

InterModal Did Not Articulate How a Temporary Exemption Would Facilitate the Development or Field Evaluation of Vehicles Equipped With MSQR–5000

The petitioner did not articulate how a temporary exemption would facilitate the development or field evaluation of vehicles equipped with MSQR–5000, as required by § 555.6(b)(3). Specifically, the petitioner did not provide a research plan or any other information that would explain how an exemption would be helpful in further development of MSQR–5000 or trailers equipped with that device. For example, InterModal did not indicate that it intends to collect any data from vehicles equipped with MSQR–5000. We therefore concur in the comments offered by Advocates indicating that InterModal did not address how granting an exemption would serve the public interest.

In sum, the petitioner failed to meet the criteria of § 555.6(b)(3) and § 555.6(b)(2)(ii) because the petitioner did not persuade the agency that the safety device in question provides a safety level at least equal to that of the applicable Federal standard, and because it failed to articulate how the exemption would make easier the development or field evaluation of the safety device for which the exemption is being sought. In addition, because the agency believes that MSQR–5000 cannot sense the rate of angular wheel rotation on a vehicle with new brake drums that do not have wear-related irregularities; is incapable of quantifying the actual rate of angular wheel rotation or wheel slip; cannot control rotational wheel slip during full lockup; and cannot release excess pressure and therefore is incapable of preventing incipient lockup, we conclude that a grant of an exemption is not in the public interest.

In consideration of the foregoing, the agency is denying the InterModal petition for a temporary exemption from the requirements of Federal Motor Vehicle Safety Standard ("FMVSS") No. 121, *Air brake systems.*

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: February 8, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. E6–2001 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–59–P

[27] *See* the affidavit of Duane Perrin at *Id.*

[28] *See id.* See also the affidavits of Milligan and Beier at Docket No. NHTSA–2004–18640.

[29] *See* affidavits of Ervin and Perrin at Id. Even a used drum seldom becomes "out of round" by more than thirty to sixty thousandths (0.030–0.060) of an inch, in one or two places. Petitioner did not address how far "out of round" a brake drum must be to send a detectable "signal" to the MSQR–5000. See affidavit of Beier at Id.

[30] *See* affidavit of John F. Foss (page 6) at *Id.*

[31] For example, in one test of the BX–100, which has a dampener essentially identical to the MSQR–5000, the required air brake pressure for meeting the test stopping criteria was 46 psi, whereas wheel lockup occurred at 15 psi, a difference of more than 30 psi.

[32] *See* affidavits of Ervin and Perrin at *Id.*

[33] *See* the affidavits of Duane Perrin and Leonard Buckman at *Id.*

[34] *See* affidavit of Milligan at Id.

[35] *See* 60 FR at 13220, 13244, 13246.

[36] *See* Id.

[37] *See* the affidavit of Beier at Id, giving examples.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–05–22356]

RIN 2137–AE13

Hazardous Materials: Enforcement Procedures; Correction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: On January 25, 2006, PHMSA published a notice of public meetings inviting interested persons to participate in a series of public meetings addressing the enhanced hazardous materials transportation enforcement authority contained in the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)), enacted on August 10, 2005. In the January 25, 2006, notice we published a 3 p.m. start time for the March 15, 2006 public meeting in error. The Seattle, Washington meeting will instead begin at 12 p.m. on March 15, 2006.

DATES: Public meetings:

(1) February 21, 2006, starting at 8 a.m., in Dallas, Texas;

(2) March 8, 2006, starting at 9 a.m., in Washington, DC; and

(3) March 15, 2006, starting at 12 p.m., in Seattle, Washington.

ADDRESSES: *Public meetings:*

(1) Dallas/Addison Marriott Quorum by the Galleria, 14901 Dallas Parkway, Dallas, TX 75254;

(2) DOT Headquarters, Nassif Bldg, Room 2230, 400 Seventh Street, SW., Washington. DC 20590; and

(3) Doubletree Guest Suites Seattle, South Center, 16500 South Center Parkway, Seattle, WA 98188. This meeting will be conducted in conjunction with the Multimodal Hazmat Transportation Training Seminar being held on March 14–15, 2006. To register for the Seminar (free to the first 450 pre-registrants), please complete and submit the registration form available on the Web site of PHMSA's Office of Hazardous Materials Safety (*http://hazmat.dot.gov/training/training.htm*).

Oral presentations: Any person wishing to present an oral statement should notify Vincent Lopez by telephone, e-mail, or in writing at least four business days before the date of the public meeting at which the person wishes to speak. Oral statements will be limited to 15 minutes per commenter. For information on facilities or services for persons with disabilities or to request special assistance at the meetings, contact Mr. Lopez by telephone or e-mail as soon as possible.

Docket: For access to the docket to read background documents including those referenced in this document go to *http://dms.dot.gov* and/or 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: Jackie K. Cho (jackie.cho@dot.gov) or Vincent Lopez (*vincent.lopez@dot.gov*), Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration. U.S. Department of Transportation, 400 Seventh Street, SW., Room 8417, Washington, DC 20590, (202) 366–4400.

SUPPLEMENTARY INFORMATION:

Background information may be obtained from the Notice published on January 25, 2006, 71 FR 4207–4208.

Correction:

The January 25, 2006, Notice published a 3 p.m. start time for the Seattle, Washington public meeting in error. Instead, the Seattle meeting will begin at 12 p.m. on March 15, 2006.

Issued in Washington, DC on February 8, 2006, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 06–1317 Filed 2–10–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–XX

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–XX, Elections Created of Effected by the American Jobs Creation Act of 2004.

DATES: Written comments should be received on or before April 14, 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 notice 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: Elections Created or Effected by the American Jobs Creation Act of 2004.

OMB Number: 1545–1986.

Notice Number: Notice 2006–XX.

Abstract: The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (the Act), created various elections and permits taxpayers to revoke certain elections that are currently in effect in light of changes made by the Act. The collection of information is necessary to inform the Internal Revenue Service that an election is being made or revoked. This notice will enable the Internal Revenue Service to ensure that the eligibility requirements for the various elections or revocations have been satisfied; verify that the requisite computations, allocations, etc. have been made correctly; and appropriately monitor whether any required collateral actions relating to the elections or revocations have been complied with. Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Average Time Per Respondent: 5 min.

Estimated Total Annual Burden Hours: 12,765.

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 2, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1932 Filed 2–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 1, 2006, at 1 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, March 1, 2006, at 1 p.m. Eastern Time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, 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 Barbara Toy. Ms. Toy can be reached at 1–888–912–1227, or 414–297–1611, or by FAX at 414–297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: February 7, 2006.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–1927 Filed 2–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 7, 2006, at 3 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Sandy McQuin at 1–888–912–1227, or (414) 297–1604.

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 a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Tuesday, March 7, 2006, at 3 p.m. Eastern Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Sandy McQuin at 1–888–912–1227 or at (414) 297–1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: February 7, 2006.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–1933 Filed 2–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the AD Hoc Committee of the 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 Thursday, March 9, 2006 at 2 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez De Jesus at 1–888–912–1227, or 954–423–7977.

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 Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, March 9, 2006 at 2 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Road, 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 Inez De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: February 7, 2006.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–1934 Filed 2–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the 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 Thursday, March 2, 2006 at 11 a.m. ET.

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 Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, March 2, 2006, at 11 a.m. ET 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 Road, 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 6, 2006.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–1935 Filed 2–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before April 14, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Form Number: PD F 3871.

Abstract: The information is used to establish and maintain Tax and Loss Bond Accounts.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

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.

Dated: February 7, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–1951 Filed 2–10–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and Request for Comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request By Fiduciary For Reissue of United States Savings Bonds/Notes.

DATES: Written comments should be received on or before April 14, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Fiduciary For Reissue Of United States Savings Bonds/Notes.

OMB Number: 1535–0012.

Form Number: PD F 1455.

Abstract: The information is requested to support a request for reissue by the fiduciary of a decedent's estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or businesses.

Estimated Number of Respondents: 17,700.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 8,850.

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.

Dated: February 7, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–1952 Filed 2–10–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition Of Retirement Plan and/or Individual Retirement Bonds Without Administration Of Deceased Owner's Estate.

DATES: Written comments should be received on or before April 14, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition Of Retirement Plan and/or Individual Retirement Bonds Without Administration Of Deceased Owner's Estate.

OMB Number: 1535–0032.

Form Number: PD F 3565.

Abstract: The information is used to support a request for disposition by the heirs of deceased owners or Retirement Plan and/or Individual Retirement bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 17.

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.

Dated: February 7, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–1953 Filed 2–10–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Supporting Statement of Ownership for Overdue United States Bearer Securities.

DATES: Written comments should be received on or before April 14, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Supporting Statement of Ownership for Overdue United States Bearer Securities.

OMB Number: 1535–0102.

Form Number: PD F 1071.

Abstract: The information is requested to establish ownership and support a request for payment.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or businesses.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 250.

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.

Dated: February 7, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–1954 Filed 2–10–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Creditor's Consent To Disposition Of United States Securities And Related Checks Without Administration Of Deceased Owner's Estate.

DATES: Written comments should be received on or before April 14, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Creditor's Consent To Disposition Of United States Securities And Related Checks Without Administration Of Deceased Owner's Estate.

OMB Number: 1535–0055.

Form Number: PD F 1050.

Abstract: The information is requested to obtain a creditor's consent to dispose of savings bonds/notes in settlement of a deceased owner's estate without administration.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or businesses.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 150.

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.

Dated: February 7, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–1955 Filed 2–10–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Order For Series EE and Series I U.S. Savings Bonds, and Order For Series EE and Series I U.S. Savings Bonds To Be Registered In Name Of Fiduciary.

DATES: Written comments should be received on or before April 14, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Order For Series EE U.S. Savings Bonds, Order For Series I U.S. Savings Bonds, Order For Series EE U.S. Savings Bonds To Be Registered In Name of Fiduciary, and Order for Series I U.S. Savings Bonds To Be Registered In Name of Fiduciary.

OMB Number: 1535–0084.

Form Number: PD F 5263 and 5263–1 and PD F 5374 and 5374–1.

Abstract: The information is requested from the purchaser to issue Series EE/I Savings Bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 830,000.

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.

Dated: February 7, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–1956 Filed 2–10–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Release of Non-Public Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before April 14, 2006.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Thomas J. Segal, (202) 906–7230, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Release of Non-Public Information.

OMB Number: 1550–0081.

Form Number: N/A.

Regulation requirement: 12 CFR 510.5.

Description: The information collection provides an orderly mechanism for expeditious processing of requests from the public (including litigants in lawsuits where OTS is not a party) for non-public or confidential OTS information (documents and testimony), while preserving OTS's need to maintain the confidentiality of such information.

Type of Review: Renewal.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 10.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 5 hours.

Estimated Total Burden: 50 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: February 7, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E6–1904 Filed 2–10–06; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 71, No. 29
Monday, February 13, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22157; Directorate Identifier 2005–CE–44–AD; Amendment 39–14464; AD 2006–02–12]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Models DG–100 and DG–400 Sailplanes and DG Flugzeugbau GmbH Models DG–500 Elan Series and DG–500M Sailplanes

Correction

In rule document 06–735 beginning on page 5584 in the issue of Thursday, February 2, 2006 make the following correction:

§39.13 [Corrected]

On page 5586, in §39.13(c), the table is corrected to read as follows:

Model	Serial numbers
DG–100	All Serial Numbers.
DG–400	All Serial Numbers.
DG–500 Elan Series	All Serial Numbers Through 5E23.
DG–500M	All Serial Numbers Through 5E23.

[FR Doc. C6–735 Filed 2–10–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 13, 2006

Part II

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions; Harris Nesbitt Corporation (Harris Nesbitt) and Its Affiliates (the Affiliates); Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11281, et al.]

Proposed Exemptions; Harris Nesbitt Corporation (Harris Nesbitt) and Its Affiliates (the Affiliates)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffitt.betty@dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Harris Nesbitt Corporation (Harris Nesbitt) and Its Affiliates (the Affiliates) (collectively, the Applicant) Located in New York, NY

[Application No. D–11281]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

Section I. Covered Transactions

A. Effective for transactions occurring on or after October 15, 2004, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving issuers (Issuers) and securities (Securities) evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the sponsor (Sponsor) or underwriter (Underwriter) and an employee benefit plan when the Sponsor, servicer (Servicer), trustee (Trustee) or insurer (Insurer) of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an obligor (Obligor) is a party in interest with respect to such plan.

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an excluded plan (the Excluded Plan), by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[2]

B. Effective for transactions occurring on or after, October 15, 2004, the restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the restricted group (Restricted Group), and at least 50 percent of the aggregate interest in the Issuer is

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR 2510.3–21(c).

acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Security does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[3] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after October 15, 2004, the restrictions of sections 406(a), 406(b), and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code by reason of Code section 4975(c), shall not apply to the transactions in connection with the servicing, management and operation of an Issuer, including the use of the any eligible swap transaction (the Eligible Swap Transaction); or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed designated transaction (the Designated Transaction), provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement (the Pooling and Servicing Agreement);

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[4] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a rating agency (the Rating Agency) and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a qualified administrative fee (Qualified Administrative Fee).

D. Effective for transactions occurring after October 15, 2004, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary), with respect to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

Section II. General Conditions

A. The relief provided under Section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as such terms would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date (the Closing Date) of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than reasonable compensation (Reasonable Compensation) for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation

[3] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the pre-funding period (Pre-Funding Period) in exchange for amounts credited to the pre-funding account (Pre-Funding Account), provided that:

(a) The pre-funding limit (Pre-Funding Limit) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders (Securityholders) or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency, upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred on the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust, will enforce all the rights created in favor of Securityholders of the Issuer, including employee benefit plans subject to the Act.

(8) In order to ensure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a ratings dependent swap (the Ratings Dependent Swap) or a non-ratings dependent swap (the Non-Ratings Dependent Swap) entered into by the Issuer, then each particular swap transaction relating to such Security:

(a) Shall be an eligible swap (the Eligible Swap);

(b) Shall be with an eligible swap counterparty (the Eligible Swap Counterparty);

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan Securityholders will be notified in the immediately following Trustee's periodic report which is provided to Securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan Securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in Section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from excess spread (the Excess Spread) or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon the underwriter exemptions (the Underwriter Exemptions) only by qualified plan investors (Qualified Plan Investors); and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer, nor any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under Section I., if the provision in subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation of each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III. Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent; or

(2) A Certificate denominated as a debt instrument that represents an interest in either a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of the section 860D(a) or section 860L of the Internal Revenue Code; and that is issued by and is an obligation of a Trust, with respect to Certificates defined in Section III.A. (1) and (2) above, for which the Underwriter is either (i) the sole Underwriter or the manager or co-manager of the Underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "Certificates representing an interest in a Trust" include Certificates denominated as debt, which are issued by a Trust.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consists solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases (Qualified Equipment Notes Secured by Leases)); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential and commercial real property (including obligations secured by leasehold interest on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(1)(2);[5] and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1);[6]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that (i) the rights and interests evidenced by Securities issued in such Designated Transactions (as defined in Section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Trust and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to Securityholders; and/or

[5] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation (Farmer Mac) meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[6] It is the Department's view that the definition of "Issuer" contained in Section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemptions generally provide relief for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

(b) Cash or investments made therewith which are credited to an account to provide payments to Securityholders pursuant to any eligible swap agreement (Eligible Swap Agreement) meeting the conditions of subsection II.A.(9) or pursuant to any eligible yield supplement agreement (Eligible Yield Supplement Agreement), and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraph (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a capitalized interest account (the Capitalized Interest Account); and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to Securityholders occurring after the end of the Pre-Funding Period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) are either (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in paragraph (a)–(f) of subsection III.B.(1) which have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to the Underwriter Exemptions.

C. "Underwriter" means

(1) Harris Nesbitt;

(2) Any U.S.-domiciled person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and

(3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities.

D. "Sponsor" means the entity that organizes as an Issuer by depositing obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer, which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust, which issues Securities, and in the case of Securities which are denominated as debt instruments, also means the Trustee of an indenture trust (the Indenture Trust). "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Trust, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an Insurer solely because it holds Securities representing an interest in an Issuer, which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Trust. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of Section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer; or

(7) Each counterparty in an Eligible Swap Agreement;

(8) Any Affiliate of a person described in III.M. (1)–(7) above.

N. "Affiliate" of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

Q. "Sale" includes the entrance into a forward delivery commitment

(Forward Delivery Commitment), provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contact for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured By a Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as would be the case if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. In the case of Securities which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Fitch, Inc. or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account:

(i) which is established to compensate Securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the pass-through rate payable under the Securities; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issue's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered which is less than or equal to 25 percent.

CC. "Pre-Funding Period" means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or 90 days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this Section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Securities rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap." With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemptions, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemptions, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[7] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An "in-house asset manager" (INHAM),[8] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to Securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (*e.g.*, LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

Effective Date: If granted, this proposed exemption will be effective for all transactions described herein which occurred on or after October 15, 2004.

Summary of Facts and Representations

1. Harris Nesbitt (or the Applicant), a Delaware corporation, is an indirect, wholly owned subsidiary of the Bank of Montreal. Harris Nesbitt maintains its principal office at 3 Times Square, New York, New York and it also maintains branch sales offices in seven states. Harris Nesbitt is a registered broker-dealer, a registered investment adviser, and a member of the New York Stock Exchange, the National Association of Securities Dealers, Inc., and other major securities exchanges, as well as the Securities Investor Protection Corporation.

Harris Nesbitt engages in the purchase and sale of securities for the account of its customers which include individual and institutional accounts. Harris Nesbitt also purchases and sells securities for its own proprietary trading accounts and for the accounts of its Affiliates. Harris Nesbitt engages in trading mortgage-related and other securities, including pass-through certificates issued by GNMA, FNMA and FHLMC, callable agency debt, and collateralized mortgage obligations for the account of its customers and for its own accounts.

Issuer Assets

2. Harris Nesbitt seeks exemptive relief to permit employee benefit plans to invest in pass-through securities representing undivided interests in the following categories of investments, which are held by an Issuer:[9] (a) Single and multi-family residential or commercial mortgages; (b) motor vehicle receivables; (c) consumer or commercial receivables; and (d) guaranteed governmental mortgage pool certificates.[10]

[7] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[8] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million

[9] An issuer is an investment pool, the corpus or assets of which are held in trust or whose assets are held by a partnership, special purpose corporation or limited liability company.

[10] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying

Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the terms of such mortgages.[11]

Residential and home equity loan receivables which are issued in certain Designated Transactions, may be less than fully secured, provided that: (a) The rights and interests evidenced by the Securities issued in such Designated Transactions are not subordinated to the rights and interests evidenced by the Securities of the same Issuer; (b) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (c) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (i) The outstanding principal balance due under the obligation which is held by the Issuer; and (ii) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral. Securitization transactions in which the assets of the securitization vehicle reflect the following categories of receivables (all of which are also described in more detail below) are referred to herein as "Designated Transactions': (a) Automobile and other motor vehicle loans, (b) residential and home equity loans (which may have HLTV ratios in excess of 100%), (c) manufactured housing loans and (d) commercial mortgages.

Issuer Structure

3. Each Issuer is established under a Pooling and Servicing Agreement between a Sponsor, a Servicer and a Trustee. Prior to the Closing Date under the Pooling and Servicing Agreement, the Sponsor or Servicer of an Issuer establishes the trust, partnership, the special purpose corporation or limited liability company, designates an entity as Trustee, and, except to the extent a Pre-Funding Account, as described below, will be used, selects assets to be included in the Issuer. The assets are receivables, which may have been originated by a Sponsor or Servicer of an Issuer, an Affiliate of the Sponsor or Servicer, or by an unrelated lender and subsequently acquired by the Issuer, Sponsor or Servicer.[12]

Typically, on or prior to the Closing Date, the Sponsor acquires legal title to all assets selected for the Issuer. In some cases, legal title to some or all of such assets continues to be held by the originator of the receivable until the Closing Date. On the Closing Date, the Sponsor and/or the originator of the receivables conveys to the Issuer legal title to the assets, and the Trustee issues Securities representing fractional undivided interests in the Issuer's assets. The Applicant, alone or together with other broker-dealers, acts as Underwriter or placement agent with respect to the sale of the Securities. The Applicant currently anticipates that the public offerings of Securities will be underwritten by it on a firm commitment basis. In addition, the Applicant anticipates that it may privately place Securities on both a firm commitment and an agency basis. The Applicant may also act as the lead or co-managing Underwriter for a syndicate of securities Underwriters.

4. Securityholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable and paid monthly, quarterly, or semi-annually as specified in the related prospectus or private placement memorandum.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the Servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the Trustee (on behalf of Securityholders) to hold funds received between distribution dates. The account is under the sole control of the Trustee, who invests the account's assets in short-term securities, which have received a rating comparable to the rating assigned to the Securities. In some cases, the Servicer may be permitted to make a single deposit into the account once a month. When the Servicer makes such monthly deposits, payments received from Obligors by the Servicer may be commingled with the Servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the Servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semiannually, the Servicer will furnish a report on the operation of the Trust to the Trustee on a monthly basis. At or about the time this report is delivered to the Trustee, it will be made available to Securityholders and delivered to or made available to each Rating Agency that has rated the Securities.

A Trust may elect to be treated as a real estate mortgage investment conduit (REMIC) or a financial asset securitization investment trust (FASIT), or may be treated as a grantor trust or a partnership, for Federal income tax purposes.

5. Some of the Securities will be multi-class Securities. Harris Nesbitt requests exemptive relief for two types

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such certificate. The Applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in such trusts may be plan assets.

[11] Trust assets may also include obligations that are secured by leasehold interests on residential real property. *But see* PTE 90–32 involving Prudential-Bache Securities, Inc., 55 FR 23147, 23150 (June 6, 1990). The Department received one comment from an affiliate of the applicant with respect to the notice of proposed exemption for PTE 90–32. The comment requested clarification that the definition of trust in section III.B. would include trusts containing certain obligations secured by leasehold interests on residential real property (Residential Leasehold Mortgages or RLMs). The comment noted that RLMs are originated in jurisdictions such as Hawaii in which they are a "necessary alternative to mortgages secured by fee simple interests" and that these RLMs are "in essence, the same as, and provide substantially the same degree of security to investors as, mortgages secured by fee simple interests."

The comment represented that both the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) have purchase programs for these RLMs and that such RLMs included in pools underlying mortgage pass-through certificates would "generally conform" with either Freddie Mac or Fannie Mae leasehold guidelines. In this regard, the term of the leasehold underlying such RLMs would extend for at least five years beyond the term of the RLM. The comment noted that the affiliate of the applicant would "comply with the requirement under the Freddie Mac and Fannie Mae leasehold guidelines that such mortgages constitute obligations secured by real property or an interest in real estate."

In PTE 90–32, the Department concurred with the views expressed by the affiliate of the applicant that the definition of trust includes RLMs as described in the comment.

[12] It is the Applicant's understanding that the Department has indicated that the definition of the term "trust" includes rights under any yield supplement or similar arrangement which obligates the Sponsor or Master Servicer, or another party specified in the relevant Pooling and Servicing Agreement, to supplement the interest rates otherwise payable on the permissible obligations held in the trust, in accordance with the terms of a yield supplement arrangement described in the Pooling and Servicing Agreement, provided that such arrangements do not involve certain swap agreements or other notional principal contracts.

of multi-class Securities: "strip" Securities and "senior/subordinate" (also sometimes referred to as "fast pay/slow pay") Securities. Strip Securities are a type of Security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of Securities are established, each representing rights to disproportionate payments of principal and interest.[13]

"Senior/subordinate" Securities involve the issuance of classes of Securities having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of Securities having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of Securities has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of Securities. Distributions on Securities having later stated maturities will proceed in like manner until all the Securityholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to Securityholders. In each case, Securityholders will have a beneficial ownership interest in the underlying assets. Except as permitted in a Designated Transaction, the rights of a plan purchasing a Security will not be subordinated to the rights of another Securityholder in the event of default on any of the underlying obligations. In particular, unless the Securities are issued in a Designated Transaction, if the amount available for distribution to Securityholders is less than the amount required to be so distributed, all senior Securityholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[14]

6. For tax reasons, the Issuer will be maintained as an essentially passive entity. Therefore, both the Sponsor's discretion and the Servicer's discretion with respect to assets included in an Issuer are severely limited. Pooling and Servicing Agreements provide for the substitution of receivables by the Sponsor only in the event of defects in documentation discovered within a short time after the issuance of investor Securities (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to Securityholders.

Conditions to Interest Rate Swaps

7. The Applicant requests relief for both ratings dependent and non-ratings dependent swaps as described in Prohibited Transaction Exemption 2000–58 (65 FR 67765, November 13, 2000) (PTE 2000–58), subject to the same terms and conditions regarding interest rate swaps contained in that exemption.

In this regard, an Eligible Swap will be a swap transaction:

(a) Which is denominated in U.S. Dollars;

(b) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the applicable class of Securities, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and being obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(c) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) The portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3) of the requested exemption;

(d) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above and the difference between the products thereof, calculated on a one-to-one ratio and not on a multiplier of such difference);

(e) Which has a final termination date that is the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(f) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (a) through (e) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Issuer will be with an "Eligible Swap Counterparty," which will be a bank or other financial institution with a rating at the date of issuance of the Securities by the Issuer which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

Under any termination of a swap, the Issuer will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor.

With respect to a Rating Dependent Swap, the Servicer shall either cause the eligible counterparty to establish certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency (which will be no lower than the level which would make such counterparty an eligible counterparty), or the Servicer shall obtain a replacement swap with an Eligible Swap Counterparty acceptable to the Rating Agencies with substantially similar terms. If the Servicer fails to do so, the plan Securityholders will be notified in the immediately following Trustee's

[13] When a plan invests in REMIC "residual" interest Securities to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to federal income tax under the Code. The prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in Securities pursuant to this exemption

[14] If an Issuer issues subordinated Securities, holders of such subordinated Securities may not share in the amount distributed on a pro rata basis with the senior Securityholders. The Department notes that the proposed exemption does not provide relief for plan investments in such subordinated Securities, unless issued in a Designated Transaction.

periodic report to Securityholders and will have a 60-day period thereafter to dispose of the Securities, at the end of which period the exemptive relief provided under Section I.C. of the requested exemption (relating to the servicing, management and operation of the Issuer) would prospectively cease to be available. With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer that entering into the swap transactions with the eligible counterparty will not affect the rating of the Securities.

Any class of Securities to which one or more swap agreements entered into by the Issuer applies will be acquired or held only by Qualified Plan Investors. Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of Securities to be purchased and the effect such swap would have upon the credit rating of the Securities to which the swap relates.

For purposes of the proposed exemption, such a qualified independent fiduciary will be either:

(a) A "qualified professional asset manager" (i.e., QPAM), as defined under Part V(a) of PTE 84–14;

(b) An "in-house asset manager" (i.e., INHAM), as defined under Part IV(a) of PTE 96–23; or

(c) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

Yield Supplement Agreements

8. A yield supplement agreement (the Yield Supplement Agreement) is a contract under which the Issuer makes a single cash payment to the contract provider in return for the contract provider promising to make certain payments to the Issuer in the event of market fluctuations in interest rates. For example, if a class of Securities promises an interest rate which is the greater of 7% or LIBOR and LIBOR increases significantly, the Yield Supplement Agreement might obligate the contract provider pay to the Issuer the excess of LIBOR over 7%. In some circumstances, the contract provider's obligation may be capped at a certain aggregate maximum dollar liability under the contract. Alternatively, a cap could be placed on the supplemental interest that would be paid to a Securityholder from monies paid under the Yield Supplement Agreement. For example, the Yield Supplement Agreement would provide the difference between LIBOR and 7% but only to the extent that the Securityholder would be paid a total of 9%. The interest to be paid by the contract provider to the Issuer under the Yield Supplement Agreement is usually calculated based on a notional principal balance which may mirror the principal balances of those classes of Securities to which the Yield Supplement Agreement relates or some other fixed amount. This notional amount will not exceed either: (a) The principal balance of the class of Securities to which such agreement or arrangement relates, or (b) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3) of the proposed exemption. In all cases, the Issuer makes no payments other than the fixed purchase price for the Yield Supplement Agreement and may, therefore, be distinguished from an interest rate swap agreement, notwithstanding that both types of agreements may use an International Swaps and Derivatives Association, Inc. (ISDA) form of contract.

The Applicant notes that no "plan assets" within the meaning of the plan asset regulation (under 29 CFR 2510–3–101) are utilized in the purchase of the Yield Supplement Agreement, as the Sponsor or some other third party funds such arrangement with an up-front single-sum payment. The Issuer's only obligation is to receive payments from the counterparty if interest rate fluctuations require them under the terms of the contract and to pass them through to Securityholders. The Rating Agencies examine the creditworthiness of the counterparty in a ratings dependent yield supplement agreement.

Pre-Funding Accounts

9. Although many transactions occur as described above, it is also common for other transactions to be structured using a Pre-Funding Account and/or a Capitalized Interest Account as described below.

The Pre-Funding Period for any Issuer will be defined as the period beginning on the Closing Date and ending on the earliest to occur of (a) the date on which the amount on deposit in the Pre-Funding Account is less than a specified dollar amount, (b) the date on which an event of default occurs under the related Pooling and Servicing Agreement [15] or (c) the date which is the later of three months or ninety days after the Closing Date. If pre-funding is used, the Sponsor or originator will transfer to the Issuer on the Closing Date cash sufficient to purchase the receivables to be transferred after the Closing Date. During the Pre-Funding Period, such cash and temporary investments, if any, made therewith will be held in a Pre-Funding Account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the Issuer on the Closing Date. Certain specificity and monitoring requirements described below must be met and will be disclosed in the Pooling and Servicing Agreement and/or the prospectus [16] or private placement memorandum.

For transactions involving an Issuer using pre-funding, on the Closing Date, a portion of the offering proceeds will be allocated to the Pre-Funding Account generally in an amount equal to the excess of (a) the principal amount of Securities being issued over (b) the principal balance of the receivables being transferred to the Issuer on such Closing Date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the Issuer may be larger than the total principal balance of the Securities being issued. In these cases, the cash deposited in the Pre-Funding Account will equal the excess of the principal balance of the total receivables intended to be transferred to the Issuer over the principal balance of the receivables being transferred on the Closing Date.

On the Closing Date, the Sponsor transfers the assets to the Issuer in exchange for the Securities. The Securities are then sold to an Underwriter for cash or to the Securityholders directly if the Securities are sold through an initial purchaser or placement agent. The cash received by the Sponsor from the Securityholders (or the Underwriter) from the sale of the Securities issued by the Issuer in excess of the purchase price for the receivables and certain other Issuer expenses such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the Pre-Funding Account. Such funds are either held in the Issuer and accounted for separately, or held in a

[15] The minimum dollar amount is generally the dollar amount below which it becomes too uneconomical to administer the Pre-Funding Account. An event of default under the Pooling and Servicing Agreement generally occurs when: (a) A breach of a covenant or a breach of a representation and warranty concerning the Sponsor, the Servicer or certain other parties occurs which is not cured; (b) a required payment to Securityholders is not made; or (c) the Servicer becomes insolvent.

[16] References to the term "prospectus" herein shall include any prospectus supplement related thereto, pursuant to which Securities are offered to investors.

sub-account or sub-trust. In either event, these funds are not part of assets of the Sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the Securities and the transaction fees (i.e., servicing fees, Trustee fees and fees to credit support providers). In such cases, the receivables are sold to the Issuer at a discount, based on an objective, written, mechanical formula which is set forth in the Pooling and Servicing Agreement and agreed upon in advance between the Sponsor, the Rating Agency and any credit support provider or other Insurer. The proceeds payable to the Sponsor from the sale of the receivables transferred to the Issuer may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the Sponsor may be required by the Rating Agencies or credit support providers to set up Issuer reserve accounts to protect the Securityholders against credit losses.

The percentage or ratio of the amount allocated to the Pre-Funding Account, less the principal amount of any loan specifically identified for subsequent delivery to the Issuer as of the Closing Date, as compared to the total principal amount of the Securities being offered (the Pre-Funding Limit) will not exceed 25%. The Pre-Funding Limit (which may be expressed as a ratio or as a stated percentage or as a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the Pre-Funding Account are used solely to purchase receivables and to support the Securities pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the Issuer, any funds remain in the Pre-Funding Account, such funds will be paid to the Securityholders as principal prepayments. Upon termination of the Issuer, if no receivables remain in the Issuer and all amounts payable to Securityholders have been distributed, any amounts remaining in the Issuer would be returned to the Sponsor.

A dramatic change in interest rates on the receivables to be transferred to an Issuer using a Pre-Funding Account is handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the Closing Date, no action would be required, as the fluctuations in market interest rates would not affect the receivables transferred to the Issuer after the Closing Date. In contrast, if interest rates fall after the Closing Date, receivables originated after the Closing Date will tend to be originated at lower rates, with the possible result that the receivables will not support the interest rate payable on the Securities. In such situations, the Sponsor could sell the receivables into the Issuer at a discount and more receivables will be used to fund the Issuer in order to support the pass-through rate. In a situation where interest rates drop dramatically and the Sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the Pooling and Servicing Agreement, the Securityholders would receive a repayment of principal from the unused cash held in the Pre-Funding Account. In transactions where the pass-through rates of the Security are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivables affect the pass-through rate for fixed rate Securities.

The cash deposited into the Issuer and allocated to the Pre-Funding Account is invested in certain permitted investments, which may be commingled with other accounts of the Issuer. The allocation of investment earnings to each Issuer account is made periodically as earned in proportion to each account's allocable share of the investment returns. As Pre-Funding Account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the Securityholders with respect to a periodic distribution date, the Trustee is necessarily required to make periodic, separate allocations of the Issuer's earnings to each Issuer account, thus ensuring that all allocable commingled investment earnings are properly credited to the Pre-Funding Account on a timely basis.

Capitalized Interest Accounts

10. When a Pre-Funding Account is used, the Sponsor and/or originator may also transfer to the Issuer additional cash on the Closing Date, to be deposited in a Capitalized Interest Account and used during the Pre-Funding Period to compensate the Securityholders for any shortfall between the investment earnings on the Pre-Funding Account and the pass-through interest rate payable under the Securities.

Because the Securities are supported by the receivables in the Issuer and the earnings on the Pre-Funding Account, the Capitalized Interest Account is needed when the investment earnings on the Pre-Funding Account and the interest paid on the receivables are less than the interest payable on the Securities. The Capitalized Interest Account funds are paid out periodically to the Securityholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the Sponsor from time to time as the receivables are transferred into the Issuer and the need for the Capitalized Interest Account diminishes. Any amounts held in the Capitalized Interest Account generally will be returned to the Sponsor and/or originator either at the end of the Pre-Funding Period or periodically as receivables are transferred and the proportionate amount of funds in the Capitalized Interest Account can be reduced. Generally, the Capitalized Interest Account terminates no later than the end of the Pre-Funding Period. However, there may be some cases where the Capitalized Interest Account remains open until the first date distributions are made to Securityholders following the end of the Pre-Funding Period.

In other transactions, a Capitalized Interest Account is not necessary because the interest paid on the receivables exceeds the interest payable on the Securities at the applicable interest rate and the fees payable by the Issuer. Such excess is sufficient to make up any shortfall resulting from the Pre-Funding Account earning less than the interest rate payable on the Securities. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of Securities.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

11. Pending the acquisition of additional receivables during the Pre-Funding Period, it is expected that amounts in the Pre-Funding Account and the Capitalized Interest Account will be invested in certain permitted investments or will be held uninvested. Pursuant to the Pooling and Servicing Agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types

of investments in the Pre-Funding Account and Capitalized Interest Account are investments which either: (a) Are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (b) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories (or four, in the case of Designated Transactions) by a Rating Agency, as set forth in the Pooling and Servicing Agreement and as required by the Rating Agencies. The credit grade quality of the permitted investments is generally no lower than that of the Securities. The types of permitted investments will be described in the Pooling and Servicing Agreement.

The ordering of interest payments to be made from the Pre-Funding and Capitalized Interest Accounts is pre-established and set forth in the Pooling and Servicing Agreement. The only principal payments which will be made from the Pre-Funding Account are those made to acquire the receivables during the Pre-Funding Period and those distributed to the Securityholders in the event that the entire amount in the Pre-Funding Account is not used to acquire receivables. The only principal payments which will be made from the Capitalized Interest Account are those made to Securityholders if necessary to support the Security pass-through rate or those made to the Sponsor either periodically as they are no longer needed or at the end of the Pre-Funding Period when the Capitalized Interest Account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

12. In order to ensure that there is sufficient specificity as to the representations and warranties of the Sponsor regarding the characteristics of the receivables to be transferred after the Closing Date:

(a) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding Securityholders or by a Rating Agency;[17]

(b) The transfer of the receivables acquired during the Pre-Funding Period will not result in the Securities receiving a lower credit rating from the Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(c) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(d) The Trustee of the Trust (or any agent with which the Trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in Issuer activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the receivables in the Issuer or the holder of a security interest in the receivables, will enforce all the rights created in favor of Securityholders of such Issuer, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to receivables that were acquired as of the Closing Date, the characteristics of the additional receivables subsequently acquired will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustees) stating whether or not the characteristics of the additional receivables acquired after the Closing Date conform to the characteristics of such receivables described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date.

Each prospectus, private placement memorandum and/or Pooling and Servicing Agreement will set forth the terms and conditions for eligibility of the receivables to be included in the Issuer as of the related Closing Date, as well as those to be acquired during the Pre-Funding Period, which terms and conditions will have been agreed to by the Rating Agencies which are rating the applicable Securities as of the Closing Date. Also included among these conditions is the requirement that the Trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the Pre-Funding Account and will describe the Pre-Funding Period for the Issuer.

Parties to Transactions

13. The originator of a receivable is the entity that initially lends money to a borrower (Obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a Sponsor.

Originators of receivables held by the Issuer will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each Issuer may contain assets of one or more originators. The originator of the receivables may also function as the Sponsor or Servicer.

14. The Sponsor will be one of three entities: (a) A special-purpose or other corporation unaffiliated with the Servicer, (b) a special-purpose or other corporation affiliated with the Servicer, or (c) the Servicer itself. Where the Sponsor is not also the Servicer, the Sponsor's role will generally be limited to acquiring the receivables to be held by the Issuer, establishing the Issuer, designating the Trustee, and assigning the receivables to the Issuer.

[17] In some transactions, the Insurer and/or credit support provider may have the right to veto the inclusion of receivables, even if such receivables otherwise satisfy the underwriting criteria. This right usually takes the form of a requirement that the Sponsor obtain the consent of these parties before the receivables can be included in the Issuer. The Insurer and/or credit support provider may, therefore, reject certain receivables or require that the Sponsor establish certain Issuer reserve accounts as a condition of including these receivables. Virtually all Issuers which have Insurers or other credit support providers are structured to give such veto rights to these parties. The percentage of Issuers that have Insurers and/or credit support providers, and accordingly feature such veto rights, varies.

15. The Trustee of a Trust (or the Issuer if it is not a Trust) is the legal owner of the obligations held by the Issuer and would hold a security interest in the collateral securing such obligations. The Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such is responsible for enforcing all the rights created thereby in favor of Securityholders, including those rights arising in the event of default by the Servicer. The Trustee generally will be an independent entity, although the Trustee may be related to the Applicant.[18] The Applicant represents that the Trustee will be a substantial financial institution or trust company experienced in trust activities. The Trustee receives a fee for its services, which will be paid from cash flows in the Trust. The method of compensating the Trustee, which is specified in the Pooling and Servicing Agreement, will be disclosed in the prospectus or private placement memorandum relating to the offering of the Securities.

The rights and obligations of the Indenture Trustee are no different than those of the Trustee of an Issuer which is a Trust. The Indenture Trustee is obligated to oversee and administer the activities of all of the ongoing parties to the transaction and possesses the authority to replace those entities, sue them, liquidate the collateral and perform all necessary acts to protect the interests of the debt holders. If debt is issued in a transaction, there may not be a Pooling and Servicing Agreement. Instead, there is a sales agreement and servicing agreement (or these two agreements are sometimes combined into a single agreement). The agreement(s) set(s) forth, among other things, the duties and responsibilities of the parties to the transaction relating to the administration of the Issuer. The Indenture Trustee is often a party to these agreements. At a minimum, the Indenture Trustee acknowledges its rights and responsibilities in these agreements or they are contractually set forth in the indenture agreement pursuant to which the Indenture Trustee is appointed.

16. The Servicer of an Issuer administers the receivables on behalf of the Securityholders. The Servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and transferred to an Issuer, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of Securities. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local Subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central Master Servicer who collects payments from the local Subservicers and passes them through to Securityholders.

A Servicer's default is treated in the same manner whether or not the Issuer is a Trust. The original Servicer can be replaced, and the entity replacing the Servicer varies from transaction to transaction. In certain cases, it may be the Trustee (or Indenture Trustee if the Issuer is not a Trust) or it may be a third party satisfactory to the Rating Agencies and/or credit support provider. In addition, there are transactions where the Trustee or Indenture Trustee will assume the Servicer's responsibilities on a temporary basis until the permanent replacement takes over. In all cases, the replacement entity must be capable of satisfying all of the duties and responsibilities of the original Servicer and must be an entity that is satisfactory to the Rating Agencies.

If, after the initial issuance of Securities, a Servicer of receivables held by an Issuer which has issued Securities in reliance upon the Underwriter Exemptions (or an Affiliate thereof) merges with or is acquired by (or acquires) the Trustee of such Trust (or an Affiliate thereof), and thereby becomes an Affiliate of the Trustee, the requirement that the Trustee not be an Affiliate of the Restricted Group (other than the Underwriter) will not be violated, provided that: (a) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and (b) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the Closing Date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee.

The Underwriter will be a U.S. registered broker-dealer that acts as Underwriter or placement agent with respect to the Sale of the Securities. Public offerings of Securities are generally made on a firm commitment basis. Private placements of Securities may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing Underwriters will make a market in Securities offered to the public.

In most cases, the originator and Servicer of receivables to be held in an Issuer and the Sponsor of the Issuer (although they may themselves be related) will be unrelated to Harris Nesbitt. In other cases, however, Affiliates of Harris Nesbitt may originate or service receivables held by an Issuer or may Sponsor a Trust.

Certificate Price, Interest Rate and Fees

17. In some cases, the Sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the Sponsor continually buys receivables. In other cases, the Sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and Sale agreement related to the specific offering of Securities. In other cases, the Sponsor will originate the receivables, itself.

As compensation for the receivables transferred to the Issuer, the Sponsor receives Securities representing the entire beneficial interest in the Issuer, or the cash proceeds of the sale of such Securities. If the Sponsor receives Securities from the Issuer, the Sponsor sells all or a portion of these Securities for cash to investors or securities underwriters.

18. The price of the Securities, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the specified interest rate on the Securities in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The interest rate for Securities is typically equal to the interest rate on receivables included in the Issuer minus a specified servicing fee.[19] This rate is

[18] See PTE 2002–41 (67 FR 54487, August 22, 2002), an amendment to the prior individual exemptions granted for mortgage-backed and other asset-backed securities (the Underwriter Exemptions), which permits the trustee of the trust to be an affiliate of the Underwriter of the certificates.

[19] The interest rate on Securities representing interests in Issuers holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest

generally determined by the same market forces that determine the price of a Security. The price of a Security and its interest, or coupon, rate together determine the yield to investors. If an investor purchases a Security at less than par, that discount augments the stated interest rate; conversely, a Security purchased at a premium yields less than the stated coupon.

19. As compensation for performing its servicing duties, the Servicer (who may also be the Sponsor or an Affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables held by an Issuer and payments payable (at the interest rate) to Securityholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support.

The Servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the Servicer and the time they are due to the Issuer (which time is set forth in the Pooling and Servicing Agreement). The Servicer typically will be required to pay the administrative expenses of servicing the Issuer, including in some cases the Trustee's fee, out of its servicing compensation.

20. The Servicer is also compensated to the extent it may provide credit enhancement to the Issuer or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the Issuer is established.

The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the Obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation. Compensation payable to the Servicer will be set forth or referred to in the Pooling and Servicing Agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the Securities.

21. Payments on receivables may be made by Obligors to the Servicer at various times during the period preceding any date on which pass-through payments to the Issuer are due. In some cases, the Pooling and Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments by a date specified in the Pooling and Servicing Agreement into an account from which the Issuer makes payments to Securityholders.

22. The Underwriter will receive a fee in connection with the Securities underwriting or private placement of Securities. In a firm commitment underwriting, this fee would consist of the difference between what the Underwriter receives for the Securities that it distributes and what it pays the Sponsor for those Securities. In a private placement, the fee normally takes the form of an agency commission paid by the Sponsor. In a best efforts underwriting in which the Underwriter would sell Securities in a public offering on an agency basis, the Underwriter would receive an agency commission rather than a fee based on the difference between the price at which the Securities are sold to the public and what it pays the Sponsor. In some private placements, the Underwriter may buy Securities as principal, in which case its compensation would be the difference between what it receives for the Securities that it sells and what it pays the Sponsor for these Securities.

Purchase of Receivables by the Servicer

23. As the principal amount of the receivables held in an Issuer is reduced by payments, the cost of administering the Issuer generally increases, making the servicing of the Issuer prohibitively expensive at some point. Consequently, the Pooling and Servicing Agreement generally provides that the Servicer may purchase the receivables remaining in the Issuer when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance. The purchase price of a receivable is specified in the Pooling and Servicing Agreement and generally will be at least equal to: (a) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the Servicer; or (b) the greater of (i) the amount in (a) or (ii) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of an Issuer that is not a REMIC.

Securities Ratings

24. The Securities for which exemptive relief is requested will have received one of the three highest ratings (four, in the case of Designated Transactions) available from the Rating Agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the Sponsor to the extent necessary for Securities to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the Issuer.

Subordination

25. The Applicant explains that the market has now evolved to the point where asset-backed securities/mortgage-backed securities (ABS/MBS) offerings typically include multiple tranches of senior and subordinated investment-grade securities.

The Applicant believes that Rating Agencies can rate subordinated classes of securities with a high level of expertise, thereby ensuring the safety of these investments for plans through the use of other credit support (including increased levels of non-investment-grade securities). The subordination of a Security, while factored into the evaluation made by the Rating Agencies in their assessment of credit risk, is not indicative of whether a Security is more or less safe for investors. In fact, there are "AAA" rated subordinated Securities.[20] Subordination is simply another form of credit support. The Rating Agencies, after determining the level of credit support required to achieve a given rating level, are essentially indifferent as to how these credit support requirements are implemented—whether through subordination or other means. If

rate. Securities issued by Issuers that are classified as REMICs for Federal income tax purposes may use different formulas for setting the specified interest rate with respect to Securities.

[20] For example, a transaction may have two classes of "AAA" rated Securities and one is subordinated to the other. The subordinated class would be required to have more credit support to qualify for the "AAA" rating than the more senior "AAA" rated class.

subordination is used, however, the subordinated class will have no greater credit risks or fewer legal protections in comparison with other credit-supported classes that possesses the same rating.

26. The Applicant represents that there is much benefit to plan investors in having subordinated Securities eligible for exemptive relief. First, credit support provided through third-party credit providers is more expensive than an equal amount of credit support provided through subordination. As a result, the ability to use subordinated tranches to provide credit support for the more senior classes (which may or may not themselves be subordinated) creates economic savings for all the parties to the transaction which, in turn, can allow greater returns to investors. In addition, if the credit rating of a third-party credit support provider is downgraded, the rating of the Securities is also downgraded. Second, the yields available on subordinated Securities are often higher than those paid on comparably rated non-subordinated Securities because investors expect to receive higher returns for subordinated Securities. Third, subordinated Securities are usually paid after other more senior Securities, which results in their having longer terms to maturity. This is appealing to many investors who are looking for medium-term fixed income investments to diversify their portfolios. The combination of these factors benefits investors by making available Securities which can provide higher yields for longer periods. It should be noted that as the rating of a Security generally addresses the probability of all interest being timely paid and all principal being paid by maturity under various stress scenarios, the Rating Agencies are particularly concerned with the ability of the pool to generate sufficient cash flow to pay all amounts due on subordinated tranches, and several features of the credit support mechanisms discussed below are designed to protect subordinated classes of Securities.

Provision and Types of Credit Support

27. Credit support consists of two general varieties: external credit support and internal credit support. The Applicant notes that the choice of the type of credit support depends on many factors. Internal credit support, which is generated by the operation of the Issuer, is preferred because it is less expensive than external credit support which must be purchased from outside third parties. In addition, there is a limited number of appropriately rated third-party credit support providers available. Further, certain types of credit support are not relevant to certain asset types. For example, there is generally little or no Excess Spread available in residential or CMBS transactions because the interest rates on the obligations being securitized are relatively low. Third, the Ratings Agencies may require certain types of credit support in a particular transaction. In this regard, the selection of the types and amounts of the various kinds of credit support for any given transaction are usually a product of negotiations between the Underwriter of the securities and the Ratings Agencies. For example, the Underwriter might propose using Excess Spread and subordination as the types of credit support for a particular transaction and the Rating Agency might require cash reserve accounts funded up front by the Sponsor, Excess Spread and a smaller sized subordinated tranche than that proposed by the Underwriter. In addition, market forces can affect the types of credit support. For example, there may not be a market for subordinated tranches because the transaction cannot generate sufficient cash flow to pay a high enough interest rate to compensate investors for the subordination feature, or the market may demand an insurance wrap on a class of securities before it will purchase certain classes of securities. All of these considerations interact to dictate which particular combination of credit support will be used in a particular transaction.

External Credit Support

28. The Applicant represents that in the case of external credit support, credit enhancement for principal and interest repayments is provided by a third party so that if required collections on the pooled receivables fall short due to greater than anticipated delinquencies or losses, the credit enhancement provider will pay the Securityholders the shortfall. Examples of such external credit support features include: Insurance policies from "AAA" rated monoline [21] insurance companies (referred to as "wrapped" transactions), corporate guarantees, letters of credit and cash collateral accounts. In the case of wrapped or other credit supported transactions, the Insurer or other credit provider will usually take a lead role in negotiating with the Sponsor concerning levels of overcollateralization and selection of receivables for inclusion into the pool as it is the Insurer or credit provider that will bear the ultimate risk of loss. As mentioned above, one disadvantage of insurance, corporate guarantees and letters of credit is that they are relatively expensive in comparison with other types of credit support. The Applicant also notes that, if the credit rating of the insurance company or other credit provider is downgraded, the rating of the Securities is correspondingly downgraded because the Rating Agencies will only rate the Securities as highly as the credit rating of the credit support provider. However, there are only a handful of "AAA" monoline insurance providers, and investors do not want to have too high a concentration of Securities which are backed by such insurers. There are also few providers of letters of credit or corporate guarantees that have sufficiently high long-term debt credit ratings. These disadvantages are some of the reasons why subordination is often used as an alternative form of credit support. Cash collateral accounts include reserve accounts which are funded, usually by the Sponsor, on the Closing Date and are available to cover principal and/or interest shortfalls as provided in the documents.

Internal Credit Support

29. The Applicant explains that internal credit support relies upon some combination of utilization of excess interest generated by the receivables, specified levels of overcollateralization and/or subordination of junior classes of Securities. Transactions that look almost exclusively to the underlying pooled assets for cash payments (or "senior/subordinated" transactions) will contain multiple classes of Securities, some of which bear losses prior to others and, therefore, support more senior Securities. A subordinate Security will absorb realized losses from the asset pool, and have its principal amount "written down" to zero, before any losses will be allocated to the more senior classes. In this way, the more senior classes will receive higher rating classifications than the more subordinate classes. However, the Rating Agencies require cash flow modeling of all senior/subordinated structures. These cash flows must be sufficient so that all rated classes, including the subordinated classes, will receive timely payment of interest and ultimate repayment of principal by the maturity date. The cash flow models are tested assuming a variety of stressed prepayment speeds, declining weighted average interest payments and loss assumptions. Other structural mechanisms to assure payment to subordinated classes are to allow collections held in the reserve account for the next payment date to be used if necessary to pay current interest to the

[21] The term "monoline" is used to describe such insurance companies because writing these types of insurance policies is their sole business activity.

subordinated class or to create a separate interest liquidity reserve. The collections held in the reserve account are from principal and interest paid on the underlying mortgages or other receivables held in the Issuer and are not from the Securities issued by the Issuer.[22] Also, some structures allow both principal and interest to be applied to all payments to Securityholders, and in others, principal can be used to pay interest to the subordinate tranches.

Interest which is received but is not required to make monthly payments to Securityholders (or to pay servicing or other administrative fees or expenses) can be used as credit support. This excess interest is known as "Excess Spread" or "excess servicing" and may be paid out to holders of certain Securities, returned to the Sponsor or used to build up overcollateralization or a loss reserve. The credit given to Excess Spread is conservatively evaluated to ensure sufficient cash flow at any one point in time to cover losses. The Rating Agencies reduce the credit given to Excess Spread as credit support to take into account the risk of higher coupon loans prepaying first, higher than expected total prepayments, timing mismatching of losses with Excess Spread collections and the amounts allowed to be returned to the Sponsor once minimum overcollateralization targets are met (thereby reducing the amounts available for credit support).

"Overcollateralization" is the difference between the outstanding principal balance of the pool of assets and the outstanding principal balance of the Securities backed by such pool of assets. This results in a larger principal balance of underlying assets than the amount needed to make all required payments of principal to investors. In all senior/subordinated transactions, the requisite level of overcollateralization and the amount of principal that may be paid to holders of the more subordinated Securities before the more senior Securities are retired (since once such amounts are paid, they are unavailable to absorb future losses) is determined by the Rating Agencies and varies from transaction to transaction, depending on the type of assets, quality of the assets, the term of the Securities and other factors.

The senior/subordinated structure often combines the use of subordinated tranches with overcollateralization that builds over time from the application of excess interest to pay principal on more senior classes. This is often referred to as a "turbo" structure. The credit enhancement for each more senior class is provided by the aggregate dollar amount of the respective subordinated classes, plus overcollateralization that results from the payment of principal to the more senior classes using Excess Spread prior to payment of any principal to the more subordinated classes. As overcollateralization grows, the pool of loans can withstand a larger dollar amount of losses without resulting in losses on the senior Securities. This also has the effect of increasing the amount of funds available to pay the more subordinated classes as an ever-decreasing portion of the principal cash flow is needed to pay the more senior classes. Excess interest is used to pay down the more senior Securities balances until a specific dollar amount of overcollateralization is achieved. This is referred to as the overcollateralization target amount required by the Rating Agencies. Typically, the targeted amount is set to ensure that even in a worst-case loss scenario commensurate with the assigned rating level, all Securityholders, including holders of subordinated classes, will receive timely payment of interest and ultimate payment of principal by the applicable maturity date. In these transactions, the targeted amount is usually set as a percentage of the original pool balance. It may be reduced after a fixed number of years after the Closing Date, subject to the satisfaction of certain loss and delinquency triggers. These triggers ensure that overcollateralization continues to be available if pool performance begins to deteriorate. In a senior/subordinated structure, every investment-grade class (whether or not subordinated) is protected by either a lower rated subordinated class or classes or other credit support.

Provision of Credit Support Through Servicer Advancing

30. In some cases, the Master Servicer, or an Affiliate of the Master Servicer, may provide credit support to the Issuer. In these cases, the Master Servicer, in its capacity as Servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the Obligors, (b) from the credit support provider (which may be the Master Servicer or an Affiliate thereof) or (c) in the case of an Issuer that issues subordinated Securities, from amounts otherwise distributable to holders of subordinated Securities; and the Master Servicer will advance such funds in a timely manner. When the Servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the Trustee, or on its own initiative on behalf of the Trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the Master Servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as Insurer. Moreover, a Master Servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets. If the Master Servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the Trustee would be required and would be able to enforce the Securityholders' rights, as both a party to the Pooling and Servicing Agreement and the owner of the Trust estate where the Issuer is a Trust (or as holder of the Security interest in the receivables), including rights under the credit support mechanism. Therefore, the Trustee, who is independent of the Servicer, will have the ultimate right to enforce the credit support arrangement.

When a Master Servicer advances funds, the amount so advanced is recoverable by the Master Servicer out of future payments on receivables held by the Issuer to the extent not covered by credit support. However, where the Master Servicer provides credit support to the Issuer, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations held by the Issuer as

[22] A collections reserve account is established for almost all transactions to hold interest and principal payments on the mortgages or receivables as they are collected until the necessary amounts are paid to Securityholders on the next periodic distribution date. In some transactions, the Rating Agencies or other interested parties may require, in order to protect the interests of the Securityholders, that excess interest in amount(s) equal to a specified number of future period anticipated collections be retained in the collection account. This protects both senior and subordinated Securityholders in situations where there are shortfalls in collections on the underlying obligations because it provides an additional source of funds from which these Securityholders can be paid their current distributions before the holders of the residual or more subordinated Securities receive their periodic distributions, if any. Accordingly, any reference to "collections" from principal and interest paid on the mortgages is intended to describe such excess interest or principal not required to cover current payments to the senior and subordinated class eligible to be purchased by plans. Thus, this mechanism is not harmful to the interests of senior Securityholders.

payments on receivables are passed through to investors.[23]

Description of Designated Transactions

31. The Applicant requests relief for senior and/or subordinated investment-grade Securities with respect to a limited number of asset categories: Motor vehicles, residential/home equity, manufactured housing and commercial mortgage backed Securities. Accordingly, set forth below are separate profiles of a typical transaction for each asset category. Each profile describes specifically how each type of transaction generally is structured. Information on the due diligence that the Rating Agencies conduct before assigning a rating to a particular class of such securities, the calculations that are performed to determine projected cash flows, loss frequency and loss severity and the manner in which credit support requirements are determined for each rating class is not included because such information has been provided previously to the Department in connection with PTE 2000–58. The motor vehicle, residential/home equity, manufactured housing and commercial mortgage backed transactions, as described in this section, are collectively referred to herein as "Designated Transactions."

(a) Motor Vehicle Loan Transactions

In a typical motor vehicle transaction, "AAA" rated senior Securities are issued that might represent approximately 90% or more of the principal balances of the Securities, with "A" rated subordinated Securities issued that might represent the remaining 10% or less of the principal balance of the Securities. The total level of credit enhancement from all sources, including Excess Spread, typically averages approximately 7% of the initial principal balance of Securities issued by prime issuers and 14% for subprime Issuers in order to obtain an "AAA" rated Securities. Credit support equaling 3% for prime issuers is usually required in order to obtain an "A" or better rating on the subordinated Securities. Typical types of credit support used in auto transactions are subordination, reserve accounts, Excess Spread and financial guarantees from "AAA" rated monoline insurance companies. Transactions with subprime Sponsors generally use surety bonds as credit enhancement, so there is no subordinated class.

(b) Residential/Home Equity Mortgage Transactions

In a typical prime residential mortgage transaction, "AAA" rated senior Securities might be issued which represent approximately 95% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 2%; "A" rated subordinated 1%; "BBB" rated subordinated 1% and junior subordinated Securities might constitute 1%. The total level of credit enhancement from all sources averages about 4% in order to obtain "AAA" rated Securities, 2% for an "AA" rating, 1.5% for an "A" rating and 1% for a "BBB" rating. Subordination is the predominant type of credit support used in traditional prime residential mortgage transactions.

In a typical "B&C home/equity loan" transaction (loans made primarily to B and C quality borrowers for consolidating credit card and other consumer debt or refinancing mortgage loans), "AAA" rated senior Securities might be issued which represent 80% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 11%; "A" rated subordinated 6%; "BBB" or lower rated subordinated Securities might constitute 3%. The total level of credit enhancement from all sources averages about 13% in order to obtain "AAA" rated Securities, 10% for an "AA" rating, 7% for an "A" rating and 3% for a "BBB" rating.

In a typical high LTV ratio (i.e., above 100%) second-lien loan transaction, "AAA" rated senior Securities might be issued which represent approximately 76% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 10%; "A" rated subordinated 3%; "BBB" rated subordinated 4% and junior subordinated Securities might constitute 7%. The total level of credit enhancement from all sources averages about 24% in order to obtain "AAA" rated Securities, 14% for an "AA" rating, 10% for an "A" rating and 7% for a "BBB" rating.

Typical types of credit support used in home equity transactions are subordination, reserve accounts, Excess Spread, overcollateralization and in transactions which do not use subordination, financial guarantees from "AAA" rated monoline insurance companies or highly rated Sponsors.

(c) Manufactured Housing Transactions

In a typical manufactured housing transaction, "AAA" rated senior Securities might be issued which represent approximately 80% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 6%; "A" rated subordinated 5%; "BBB" rated subordinated 5% and junior subordinated Securities might constitute 4%. The total level of credit enhancement from all sources including Excess Spread averages about 15%–16% in order to obtain "AAA" rated Securities, 10%–11% for an "AA" rating, 7.5%–8.5% for an "A" rating and 3.5%–9% for a "BBB" rating. Typical types of credit support used in manufactured housing transactions are subordination, reserve accounts, Excess Spread, overcollateralization and financial guarantees from "AAA" rated monoline insurance companies or highly rated sponsors.

Overcollateralization is also used as credit support for the subordinated Securities once the seniors have been paid. Because the coupon rate on manufactured housing loans is substantially higher than that charged on traditional residential mortgages, there is a large amount of Excess Spread (typically more than 300 bps) that can be used for credit support of both senior and subordinated tranches. In other structures, the Excess Spread is trapped into a reserve fund which provides the credit support for the subordinated tranches. In still other cases, credit support is provided to an investment-grade subordinated tranche through a junior subordinated tranche which receives principal only after the more senior subordinated tranches are paid. Sponsor guarantees are also used as credit support.

(d) Commercial Mortgage-Backed Securities (CMBS)

In a typical CMBS transaction, two classes of "AAA" rated Securities might be issued which represent approximately 78% of the principal balances of the Securities (one such "AAA" class will be issued with a shorter, and the other "AAA" class with a longer, expected maturity); "AA" rated subordinated Securities might represent 5%; "A" rated subordinated 5%; "BBB" rated subordinated 5% and junior subordinated Securities 7%. The total level of credit enhancement from all sources averages about 23% in order to obtain "AAA" rated Se, 18% for an "AA" rating, 13% for an "A" rating and 7% for a "BBB" rating. Subordination is generally the only type of credit support used in CMBS transactions.

The Servicer function in a CMBS transaction is particularly important because not only does the Servicer or Servicers fulfill the normal functions of

[23] See PTE 2000–58, an amendment to PTE 97–34 Morgan Stanley & Co., for a discussion on the credit support safeguards.

collecting and remitting loan payments from borrowers to Securityholders and advancing funds for such purposes, but the Servicer may also become responsible for activities relating to defaulted or potentially defaulting loans (which are more likely to be restructured than in non-commercial transactions where the loans are usually liquidated). If a Servicer advances funds, its credit rating cannot be more than one rating category below the highest rated tranche in the securitization and no less than "BBB" unless it has a qualifying back-up advancer. All entities servicing CMBS transactions must be approved by the Rating Agencies.

An additional responsibility of the Servicer is ensuring that insurance is maintained by each borrower covering each mortgaged property in accordance with the applicable mortgage documents. Insurance coverage typically includes, at a minimum, fire and casualty, general liability and rental interruption insurance but may include flood and earthquake coverage depending on the location of a particular mortgaged property. If a borrower fails to maintain the required insurance coverage or the mortgaged property defaults and becomes an asset of the trust, the Servicer is obligated to obtain insurance which, in pool transactions, may be provided by a blanket policy covering all pool properties. Generally, the blanket policy must be provided by an insurance provider with a rating of at least "BBB."

Each Servicer, special Servicer and Subservicer is required to maintain a fidelity bond and a policy of insurance covering loss occasioned by the errors and omissions of its officers and employees in connection with its servicing obligations unless the Rating Agency allows self-insurance. All fidelity bonds and policies of errors and omissions insurance must be issued in favor of the Trustee or other Issuer by insurance carriers which are rated by the Rating Agency with a claims-paying ability rating no lower than two categories below the highest rated Securities in the transaction but no less than "BBB." Subservicers may not make important servicing decisions (such as modifications of the mortgage loans or the decision to foreclose) without the involvement of the Master Servicer or special Servicer, and the Trustee or any successor Servicer may be permitted to terminate the subservicing agreement without cause and without cost or further obligation to the Issuer or the holders of the rated Securities.

Loans secured by credit tenant leases require special analysis. Credit enhancement for credit tenant loans is based on an analysis of the probability that the lessee will file bankruptcy, and the likelihood that the lessee will disaffirm the lease and loan structures that may present a risk other than that of the lessee filing bankruptcy.

Environmental reports for each property are generally required. A reserve is usually required for any reported remediation costs, and any actions covenanted must be completed within a specified period. Risks that cannot be quantified or that have not been mitigated through either remediation or reserves are assumed to pose a risk to the Trust and are reflected in the credit enhancement requirements. Properties with certain types of asbestos problems, or those that are assumed to have such problems given their date of construction, are assumed to have higher losses due to the clean-up costs and increased difficulty or cost in leasing or selling the asset. Seasoned or acquired pools that may not have current reports for each property are also assumed to have higher environmental losses.

In general, although there are other types of credit support available, subordination is the only type of credit support used in CMBS. However, protection is also provided to subordinated classes through the concept of a "directing class" which has evolved to give those holders of rated subordinated Securities in the first loss position some control over the servicing and realization on defaulted mortgage loans. In a typical transaction, the Servicer might be required to obtain the consent of the directing class before proceeding with any of the following: Any modification, consent or forgiveness of principal or interest with respect to a defaulted mortgage loan; any proposed foreclosure or acquisition of a mortgaged property by deed-in-lieu of foreclosure; any proposed sale of a defaulted mortgage loan and any decision to conduct environmental clean up or remediation. The directing class might also have the right to remove a Servicer, with or without cause, subject to the Rating Agency's confirmation that appointment of the successor Servicer would not result in a qualification, withdrawal or downgrade of the then-applicable rating assigned to the rated Securities, compliance with the terms and conditions of the Pooling and Servicing Agreement and payment by the directing class of any and all termination or other fees relating to such removal. Holders of CMBS enjoy additional protection, in that the Master Servicer or Servicer occupies a first-loss position and usually holds an equity stake in the offering, which gives it an incentive to maximize recoveries on defaulted loans. The Master Servicer and Servicer are in a first loss position because they hold the most subordinated equity position interest(s) in the Trust. Accordingly, they absorb losses before any other classes of Securityholders.

Additional cash flow stability is created through call protection features on the commercial mortgages held in the Issuer. Call protection prevents the borrowers from prepaying the mortgage loans during a fixed "lock-out period." In certain transactions, under the terms of the mortgage agreement, the borrower is only allowed to prepay the loan at the end of the lock-out period if it provides "yield maintenance" [24] whereby it is required to contribute a cash payment derived from a formula which is calculated based on current interest rates and is intended to offset the borrower's refinancing incentive. This amount also effectively compensates the Issuer for the loss of interest payable on the mortgage loan.

Another mechanism, referred to as "defeasance", assures stability of cash flow and operates as follows. If a borrower wishes to have the mortgage lien released on the property (for example, where it is being sold), the original obligation either remains an asset of the Issuer and is assumed by a third party, or a new obligation with the same outstanding principal balance, interest rate, periodic payment dates, maturity date and default provisions is entered into with such third party. The new obligation replicates the cash flows over the remaining term of the original Obligor's obligation. In either case, the property or assets originally collateralizing the obligation are replaced by collateral consisting of United States Treasury securities or any other security guaranteed as to principal and interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States (referred to herein as "Government Securities"). Defeasance generally operates so that, pursuant to an assumption and release or similar arrangement valid under applicable state law, the original Obligor is replaced with a new Obligor.

The new Obligor is generally a bankruptcy-remote special purpose entity (SPE), the assets of which consist of Government Securities. In the

[24] The Applicant represents that the yield maintenance provision in the mortgage agreement would meet the definition of a "Yield Supplement Agreement" currently permitted under section III.B.(3)(b) of the Underwriter Exemptions.

defeasance of a mortgage loan held in a CMBS pool, a new entity must be created (the SPE) which becomes the Obligor on the mortgage loan and holds the Government Securities being substituted for the original collateral securing the mortgage loan. This newly formed entity is required by the Rating Agencies to be an SPE in order to assure that the owner of the securities to be pledged has no liabilities or creditors other than the CMBS pool Trustee, has no assets or business other than the ownership of the Government Securities and is not susceptible to substantive consolidation with the original mortgage borrower in the event of the original mortgage borrower's bankruptcy. Such an SPE is purely passive and does not engage in any activities other than the ownership of securities. Although there is no prescribed market requirement as to ownership of the SPE, the securitization sponsor (e.g., the original mortgage lender) is usually its owner, except that in certain circumstances the original mortgage borrower may own the SPE for a variety of reasons; e.g., to be entitled to any excess value of securities pledged as collateral at maturity of the new defeasance note over the amount due at such time. As a condition to defeasance, all fees and expenses are paid at the substitution of the government securities for the mortgage lien. Mechanically, the Government Securities are transferred to a custodian, which holds then as collateral for the securitization trust. The payments on the Government Securities are actually made directly to the Issuers so that the SPE does not receive any payments or make any payments.

Whether the original mortgage obligation is replaced with a new securitized obligation or the original obligation remains an asset of the Issuer, is usually dictated by how the transaction is treated for mortgage recording tax purposes under state law. Both call protection and defeasance are intended to protect investors from the risk of prepayments of the loans.

Disclosure

32. In connection with the original issuance of Securities, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the Securities, including:

(a) Information concerning the payment terms of the Securities, the rating of the Securities, any material risk factors with respect to the Securities and the fact that principal amounts left in the Pre-Funding Account at the end of the Pre-Funding Period will be paid to Securityholders as a repayment of principal;

(b) A description of the Issuer as a legal entity and a description of how the Issuer was formed by the seller/Servicer or other Sponsor of the transaction;

(c) Identification of the Independent Trustee;

(d) A description of the receivables contained in the Issuer, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects and a description of any Pre-Funding Account used or Capitalized Interest Account used in connection with a Pre-Funding Account;

(e) A description of the Sponsor and Servicer;

(f) A description of the Pooling and Servicing Agreement, including a description of the Sponsor's principal representations and warranties as to the Issuer's assets, including the terms and conditions for eligibility of any receivables transferred during the Pre-Funding Period, and the Trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any Pre-Funding Account or Capitalized Interest Account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the Trustee, and provided to or made available to investors by the Trustee; and a description of the events that constitute events of default under the Pooling and Servicing Agreement and a description of the Trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the Securities by a typical investor;

(i) A description of the Underwriters' plan for distributing the Securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the Securities; and

(k) A statement as to the duration of any Pre-Funding Period and the Pre-Funding Limit for the Trust.

Reports indicating the amount of payments of principal and interest are provided to Securityholders at least as frequently as distributions are made to Securityholders. Securityholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

In the case of an Issuer that offers and sells Securities in a registered public offering, the Issuer, the Servicer or the Sponsor will file periodic reports in the form and to the extent required under the Securities Exchange Act of 1934 and current interpretations thereof.

At or about the time distributions are made to Securityholders, a report will be delivered to the Trustee as to the status of the Issuer and its assets, including underlying obligations. Such report will typically contain information regarding the Issuer's assets (including those purchased by the Trust from any Pre-Funding Account), payments received or collected by the Servicer, the amount of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report also will be delivered to or made available to the Rating Agency or agencies that have rated the Securities.

In addition, promptly after each distribution date, Securityholders will receive a statement prepared by the Servicer, paying agent or Trustee summarizing information regarding the Issuer and its assets. Such statement will include information regarding the Issuer and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

33. To date, no Forward Delivery Commitments have been entered into by Harris Nesbitt in connection with the offering of any Securities, but Harris Nesbitt may contemplate entering into such commitments. The utility of Forward Delivery Commitments has been recognized with respect to offering similar Securities backed by pools of residential mortgages, and Harris Nesbitt may find it desirable in the future to enter into such commitments for the purchase of Securities.

Secondary Market Transactions

34. It is Harris Nesbitt's normal policy to attempt to make a market for

Securities for which it is lead or co-managing Underwriter, and it is Harris Nesbitt's intention to make a market for any Security for which Harris Nesbitt is a lead or co-managing Underwriter, although it will have no obligation to do so. At times Harris Nesbitt will facilitate Sales by investors who purchase Securities if Harris Nesbitt has acted as agent or principal in the original private placement of the Securities and if such investors request Harris Nesbitt's assistance.

Retroactive Relief

35. Harris Nesbitt represents that it has not assumed that retroactive relief would be granted prior to the date of its application, and therefore has not engaged in transactions related to mortgage-backed and asset-backed securities based on such an assumption. Nevertheless, Harris Nesbitt requests that any exemptive relief granted be retroactive to the date of its application.

Summary

36. In summary, Harris Nesbitt represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The Issuers contain "fixed pools" of assets. There is little discretion on the part of the Sponsor to substitute receivables contained in the Issuer once the Issuer has been formed;

(b) In the case where a Pre-Funding Account is used, the characteristics of the receivables to be transferred to the Issuer during the Pre-Funding Period must be substantially similar to the characteristics of those transferred to the Issuer on the Closing Date thereby giving the Sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the exemptive relief proposed. In addition, certain cash accounts will be established to support the Security interest rate and such cash accounts will be invested in short-term, conservative investments; the Pre-Funding Period will be of a reasonably short duration; a Pre-Funding Limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the Issuer will be met. The fiduciary of the plans making the decision to invest in Securities is thus full apprised of the nature of the receivables which will be held in the Issuer and has sufficient information to make a prudent investment decision;

(c) Securities for which exemptive relief is requested will have been rated in one of the three highest rating categories (or four in the case of Designated Transactions) by a Rating Agency. The Rating Agency, in assigning a rating to such Security, will take into account the fact that Issuers may hold interest rate swaps or yield supplement agreements with notional principal amounts or, in Designated Transactions, Securities may be issued by Issuers holding residential and home equity loans with LTV ratios in excess of 100%. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) Securities will be issued by Issuers whose assets will be protected from the claims of the Sponsor's creditors in the event of bankruptcy or other insolvency of the Sponsor, and both equity and debt Securityholders will have a beneficial or Security interest in the receivables held by the Issuer. In addition, an independent Trustee will represent the Securityholders' interests in dealing with other parties to the transaction;

(e) All transactions for which Harris Nesbitt seeks exemptive relief will be governed by the Pooling and Servicing Agreement, which is summarized in the prospectus or private placement memorandum and distributed to plan fiduciaries for their review prior to the plan's investment in Securities; exemptive relief from sections 406(b) and 407 for Sales to plans is substantially limited; and

(f) Harris Nesbitt anticipates that it will make a secondary market in Securities (although it is under no obligation to do so).

FOR FURTHER INFORMATION CONTACT: Ms. Silvia Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Fortunoff Fine Jewelry and Silverware, Inc. Cash Balance Pension Plan (the FFJS Cash Balance Plan), M. Fortunoff of Westbury Corp. Cash Balance Pension Plan (the MFW Cash Balance Plan), and Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the FFJS Profit Sharing Plan, Collectively, the Plans) Located in Westbury, NY

[Application Nos. D–11307, D–11308 and D–11309, respectively]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[25] If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply (1) effective November 26, 2003 until February 28, 2005, to the leasing of certain improved real property (the Property) by the Plans directly and then through One MH Plaza Realty LLC (the Plans' LLC), a special purpose entity designed to hold the Plans' interests in the Property, to Fortunoff Fine Jewelry and Silverware, Inc. (FFJS) under the provisions of a written lease (the Interim Lease); and (2) effective March 1, 2005 through August 31, 2006, the 18 month extension of the Interim Lease (the Interim Lease Extension) between the Plans[26] through the Plans' LLC and FFJS and its successors in interest, Fortunoff Fine Jewelry and Silverware, LLC (FFJS LLC) and M. Fortunoff of Westbury, LLC (MFW LLC), provided that the following conditions are satisfied:

(a) Since November 26, 2003, the Plans have been and continue to be represented for all purposes under the Interim Lease, by Independent Fiduciary Services (IFS), a qualified, independent fiduciary, which also represents the interests of the Plans under the Interim Lease Extension.

(b) IFS has (1) reviewed and approved the continued adherence by the Plans and the Plans' LLC with the terms and conditions of the Interim Lease under the facts and circumstances in existence on and after November 26, 2003; (2) negotiated, reviewed, and expressly approved the terms and conditions of the Interim Lease Extension on behalf of the Plans; and (3) determined that the leasing of the Property since November 26, 2003 pursuant to the Interim Lease and, since March 1, 2005, pursuant to the Interim Lease Extension, (i) complies with the relevant provisions of Prohibited Transaction Exemption (PTE) 93–8 (58 FR 7258, February 5, 1993), as amended by PTE 98–22 (63 FR 27329, May 18, 1998), (except as modified by this proposed exemption); (ii) continues to be an appropriate investment for the

[25] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[26] As of January 1, 2006, all references to the Plans shall mean the Fortunoff, the Source, Cash Balance Plan (the Merged Cash Balance Plan), which resulted from the merger of the FFJS Cash Balance Plan and the MFW Cash Balance Plan, and the FFJS Profit Sharing Plan.

Plans on and after November 26, 2003, consistent with each Plan's investment policies and liquidity needs; and, (iii) is in the best interests of each Plan and its respective participants and beneficiaries on and after November 26, 2003.

(c) The rent paid to the Plans under the Interim Lease and the Interim Lease Extension is no less than the fair market rental value of the Property, as established by a qualified, independent appraiser. Effective March 1, 2006, the rent is adjusted to the greater of the current annualized rental of $656,400 or the then-current, fair market rental value, as determined by IFS on the basis of an appraisal conducted by the independent appraiser selected by IFS.

(d) The base rent has been adjusted or is adjusted annually by IFS based upon an independent appraisal of the Property.

(e) Under both the Interim Lease and the Interim Lease Extension, FFJS pays for property and liability insurance on the Property, property taxes, utility costs, other costs for maintaining the Property including environmental assessments, engineering inspection reports, as well as all other expenses that are incident to such agreements.

(f) IFS has monitored, and continues to monitor compliance with the terms of the Interim Lease since November 26, 2003 and the terms of the Interim Lease Extension throughout the duration of these agreements.

(g) IFS is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of FFJS and its successors in interest, FFJS LLC and MFW LLC, under the terms of such agreements.

(h) IFS makes determinations, on behalf of the Plans, with respect to any sale or future leasing of the Property.

(i) IFS has determined that (1) the leasing of the Property pursuant to the Interim Lease on and after November 26, 2003 was no less favorable to the Plans than similar leasing arrangements between unrelated parties; (2) the then-prevailing rent received by the Plans was no less favorable to the Plans than the rent the Plans would have received under similar circumstances if the rent had been negotiated at arm's length with unrelated third parties and (3) the terms and conditions of the Interim Lease Extension were no less favorable to the Plans than those obtainable by the Plans under similar circumstances when negotiated at arm's length with unrelated third parties.

(j) With respect to the Interim Lease Extension, FFJS (1) has made a two-month security deposit pursuant to the agreement; and (2) is required to pay an additional four-month security deposit (Additional Deposit) after the expiration of the first 12 months of the Interim Lease Extension, calculated at the rental amount to be effective March 1, 2006.

(k) Over the last six months of the Interim Lease Extension, one-sixth of the Additional Deposit is applied to the rent each month, so long as there is no uncured default.

Effective Date: If granted, this proposed exemption will be effective November 26, 2003 until February 28, 2005 with respect to the Interim Lease and from March 1, 2005 until August 31, 2006 with respect to the Interim Lease Extension.

Summary of Facts and Representations

The Plans

1. The FFJS Cash Balance Plan was established in September 1976 as a trusteed defined benefit plan for eligible employees of FFJS and its affiliates.[27] Employees who were at least 21 years of age and who had completed one year of service (1,000 hours) were eligible to participate in the FFJS Cash Balance Plan on the January 1 or July 1 coincident with or next following completion of such eligibility requirements.

As of January 1, 2005, there were 880 active participants, 316 vested terminees, and 318 retirees receiving benefits under the FFJS Cash Balance Plan. The assets of the FFJS Cash Balance Plan were held by Wachovia Bank, as custodian. As of December 31, 2005, the total assets of the FFJS Cash Balance Plan were $22,753,815.

The trustees (the Trustees) of the FFJS Cash Balance Plan were Andrea Fortunoff, David Fortunoff, Esther Fortunoff, Louis Fortunoff, Ruth Fortunoff, Helene Fortunoff and Leonard Tabs. With the exception of Leonard Tabs, each of the Trustees of the FFJS Cash Balance Plan had an ownership interest in FFJS.

The FFJS Cash Balance Plan administrator was FFJS. PriceWaterhouseCoopers (PWC) acted as investment adviser to the Trustees with respect to investments other than the Property.

2. The MFW Cash Balance Plan was established in September 1976 as a trusteed defined benefit plan for eligible employees of MFW and its affiliates.[28] Employees who were at least 21 years of age and who had completed one year of service (1,000 hours) were eligible to participate in the MFW Cash Balance Plan on the January 1 or July 1 coincident with or next following the completion of such eligibility requirements.

As of January 1, 2005, there were 1,319 active participants, 363 vested terminees and 40 retirees receiving benefits under the MFW Cash Balance Plan. The assets of the MFW Cash Balance Plan were held by M&T Trust Co. (M&T Trust), as custodian. As of December 31, 2005, the total assets of the MFW Cash Balance Plan were $17,626,550.

The Trustees of the MFW Cash Balance Plan were Isidore Mayrock, Elliot Mayrock, Rachel Sands, Martin Merkur and Leonard Tabs. Each of the Trustees of the MFW Cash Balance Plan, other than Leonard Tabs and Martin Merkur, had an ownership interest in MFW.

The MFW Cash Balance Plan administrator was MFW. PWC acted as investment adviser to the Trustees with respect to investments other than the Property.

3. The FFJS Profit Sharing Plan was established in 1976 as a trusteed defined contribution plan for eligible employees of FFJS and its affiliates.[29] As with the FFJS Cash Balance Plan and the MFW Cash Balance Plan, an employee's attainment of the eligibility requirements are also age 21 and completion of one year of service (1,000 hours). Employees completing such requirements may begin to participate in the FFJS Profit Sharing Plan on the January 1 or July 1 coinciding with or next following the completion of such eligibility requirements.

As of January 31, 2005, there were 646 active participants, approximately 183 vested terminees and approximately 13 retirees receiving benefits under the FFJS Profit Sharing Plan. The assets of the FFJS Profit Sharing Plan are held by Fleet Bank, as custodian, and are managed by Deutsche Bank Private Wealth Management. As of January 31, 2005, the total assets of the FFJS Profit Sharing Plan were $5,010,813.

The Trustees of the FFJS Profit Sharing Plan are Andrea Fortunoff, David Fortunoff, Helene Fortunoff, Esther Fortunoff, Louis Fortunoff, Ruth Fortunoff and Leonard Tabs. With the exception of Leonard Tabs, each of the Trustees currently has an ownership interest in FFJS. The FFJS Profit Sharing Plan administrator is FFJS.

4. The Merged Cash Balance Plan is a defined benefit retirement plan

[27] At present, participating affiliates are Fortunoff Information Services and Fortunoff Shopping Center, Inc.

[28] At present, participating affiliates are Woodbridge Service Company, MFW & Fortunoff Silver of New Jersey and White Plains Service Co.

[29] At present, participating affiliates are Fortunoff Shopping Center, Inc. and Fortunoff Information Services.

resulting from the merger of the FFJS Cash Balance Plan with and into the MFW Cash Balance Plan, effective January 1, 2006. The Merged Cash Balance Plan has been established for eligible employees of Source Financing Corp. (Source Financing), FFJS LLC, MFW LLC and any participating affiliates. Employees who participated in either of the prior cash balance plans and continue to be employed by the prior plan sponsor entities or their affiliates are eligible for continued participation in the Merged Cash Balance Plan. Employees who are at least 21 years of age and who complete one year of service (1,000 hours) are eligible to participate in the Merged Cash Balance Plan on the January 1 or July 1 coincident with or next following completion of such eligibility requirements.

As of January 1, 2005, there were a combined total of 2,199 active participants, 679 vested terminees, and 356 retirees and beneficiaries receiving benefits under the FFJS Cash Balance Plan and the MFW Cash Balance Plan. Although participant census data is not yet available for the plan year ending December 31, 2005, it is anticipated that there should be no significant changes in participant information as compared to the prior plan year.

The assets of the Merged Cash Balance Plan are held by M&T Trust as custodian and directed Trustee. PWC acts as investment adviser with respect to investments other than the Property described herein. As of December 31, 2005, the total combined assets of the two prior cash balance plans were $40,380,365.

In addition to M&T Trust acting as the directed trustee, the individual Trustees of the Merged Cash Balance Plan are Leonard Tabs, Patrick Shanley and Robert Fioretti. The Trustees of the Merged Cash Balance Plan do not have an ownership interest in Source Financing or any of its affiliates. The Plan administrator of the Merged Cash Balance Plan is Source Financing's compensation committee.

Sponsors of the Plans

5. FFJS, the sponsor of the former FFJS Cash Balance Plan and the FFJS Profit Sharing Plan, is engaged in the retail business of selling fine jewelry, high quality silverware, china, glass and crystal items. FFJS is located in Westbury, New York.

MFW, the sponsor of the former MFW Cash Balance Plan, is engaged in the business of selling rugs, furniture, lamps, linens, draperies, hardware, kitchenware and other similar household items. MFW is also located in Westbury, New York.[30]

Source Financing, the sponsor of the Merged Cash Balance Plan, is engaged in the business of selling fine jewelry, high quality silverware, china, glass, crystal items, rugs, furniture, lamps, linens, draperies, hardware, kitchenware and other similar household items, in its role as the sole managing member of FFJS LLC and MFW LLC. Source Financing and the two LLC entities are located in Westbury, New York.

The Property

6. The Property is a 4.6 acre parcel located at 1 MH Plaza, Axinn Avenue, Garden City, New York. The Property is improved with a 100,991 square foot building that is used as a warehouse facility and also contains a parking area. The Property was originally acquired by MFW in May 1977 from Ciara Investors, an unrelated party, and then acquired by the Plans from MFW, a party in interest to the Plans, in 1993. The FFJS Cash Balance Plan, the MFW Cash Balance Plan and the FFJS Profit Sharing Plan originally acquired 40%, 40% and 20% ownership interests in the Property, respectively. FFJS was the original tenant of the Property. The Property is not encumbered by a mortgage.

Currently, the Plans hold fee simple title to the Property through the Plans' LLC, a special purpose entity designed to hold the Plans' interests in the Property and to protect the Plans from liability. Title to the Property was transferred from the Plans to the Plans' LLC on May 18, 2005.

The Plans' LLC was established on April 5, 2005 by IFS, the independent fiduciary. The Plans are the sole members of the Plans' LLC and therefore are its sole owners holding membership interests in the Property. IFS is the non-member Manager of the Plans' LLC with sole authority to run it pursuant to such LLC's Operating Agreement.

The Prior Exemptions

7. On February 5, 1993, the Department granted PTE 93–8 at 58 FR 7258. PTE 93–8 permitted the Plans to purchase undivided interests in the Property, for the total cash consideration of $6 million, from MFW. In addition, PTE 93–8 allowed the Plans to commence leasing the Property to FFJS, under the provisions of an amended lease (the Amended Lease). Further, PTE 93–8 permitted the use of space in the Property by Fortunoff Information Services (FIS), a partnership providing data processing services to FFJS and MFW pursuant to the terms of a license agreement (the License) between FFJS and FIS.

At the time PTE 93–8 was granted, the Property consisted of a one story office and warehouse building containing approximately 116,000 square feet of gross building area on a site of approximately 4.0663 acres of land. There was also a parking area. The Property was originally leased by MFW to FFJS for its warehouse and data processing services under the provisions of a written, triple net lease (the Original Lease) that commenced on March 1, 1989. The annual rental under the Original Lease was $554,232. Such rent was payable in monthly installments of $46,186. In addition to the Original Lease, FFJS gave FIS an exclusive right to use, for $3,850 per month, approximately 8,041 square feet in the building area for FIS's information systems and data processing operations. The term of the License coincided with the term of the Original Lease.

Upon the granting of PTE 93–8, the Plans purchased the Property from MFW for the total cash consideration of $6 million, which was less than the independently appraised value of the Property. The Property was then allocated among the Plans such that the FFJS Cash Balance Plan and the MFW Cash Balance Plan each acquired 40 percent interests in the Property with each Plan paying $2.4 million. The FFJS Profit Sharing Plan acquired the remaining 20 percent interest in the Property for $1.2 million. At the time of acquisition, the Property represented approximately 19 percent of the FFJS Cash Balance Plan's assets, 22 percent of the MFW Cash Balance Plan's assets and 13 percent of the assets of the FFJS Profit Sharing Plan. With the exception of mandatory title insurance charges, no Plan paid any real estate fees or commissions in connection with its acquisition of an interest in the Property.

8. Following the purchase transaction, the Original Lease and the License were assigned to the Plans. As modified by the Lease Assignment and Assumption Agreement, the Amended Lease between the Plans and FFJS had a twelve year term with an initial expiration date of February 28, 2005. The annual rental under the Amended Lease, which was the same as that paid under the Original Lease, was $554,232 (the Base Rent). The Base Rent was payable in monthly installments of $46,186. Commencing on March 1, 1993

[30] For purposes of this proposed exemption FFJS and MFW are together referred to herein as Fortunoff.

and including the year ending February 28, 2005, FFJS was required to pay, in addition to the Base Rent, an annual Escalation Amount based upon the fair market rental value of the Property as determined by a qualified, independent appraiser. Effective October 1, 1997, FFJS commenced paying an annual Escalation Amount of $35,048 on a monthly basis in equal installments of $2,920.67. Therefore, the total rental amount being paid was set at $589,280 annually or $49,107 monthly. In the event that the fair market rental value of the Property declined to an amount which was less than the Base Rent, the Amended Lease provided that the Plans would be paid the Base Rent. The Amended Lease was also a triple net lease.

The License between FFJS and FIS, which was similarly modified by the Lease Assignment and Assumption Agreement, required FIS to pay its proportionate share of utilities as well as repair and maintain that portion of space that it occupied, also on a triple net basis. Although the License had a term that was commensurate with that of the Amended Lease and required that FIS pay FFJS a base fee that was proportional to the amount that FFJS paid the Plans under the Amended Lease, it was terminated on or about January 1, 1995 after FIS vacated the Property. Currently, FFJS occupies that space.

9. To secure its obligations under the Amended Lease, FFJS obtained a one year, irrevocable letter of credit (the Letter of Credit) in favor of the Plans. The Letter of Credit, which was in the face amount of $550,000, provided that Mr. Sanford Browde, the independent fiduciary for the Plans with respect to the transactions, could draw upon amounts available thereunder if FFJS ever defaulted in its rental payments under the Amended Lease and the default continued for more than ten days after notice of the default had been given. On February 25, 1994, the Letter of Credit expired.

To further secure FFJS's obligations to the Plans under the Amended Lease, MFW entered into an escrow agreement (the Escrow Agreement) with the Plans whereby at least one year's rental under the Amended Lease would be maintained through the sixth anniversary date of the Property's assignment to the Plans. In this regard, on February 23, 1993, MFW established a $1.65 million special escrow account (the Escrow Account) over which it would have no withdrawing power or authority. If, at any time funds in the Escrow Account were depleted, MFW would be required to make up the shortfall. The Escrow Agreement also provided for periodic payouts to MFW from the Escrow Account over the six year term.

10. On May 18, 1998, the Department issued PTE 98–22 at 63 FR 27329. This exemption, which amended and superseded PTE 93–8, permitted the Plans to lease another parcel of real property (the Substitute Property) to FFJS under the provisions of the Amended Lease. The Plans acquired the Substitute Property, which was contiguous to the Property along the northern border, from Corporate Property Investors (CPI), an unrelated party. The Plans and CPI exchanged the "pole" portion of the Property for nearly equivalent portions of two lots owned by CPI in accordance with the like-kind exchange provisions of section 1031 of the Code. The purpose of the exchange was to make the Property regular in shape and more suitable for expansion. Once reconfigured, it was intended that the Property would provide additional parking for employees of FFJS and for others using the warehouse facility.

Because of the nature of the modification discussed above, the Department determined that the exemptive relief provided under PTE 93–8 was no longer available. Therefore, the Department granted PTE 98–22, which allowed the Plans to lease the Substitute Property to FFJS along with the remaining Property under the provisions of the Amended Lease. In effect, PTE 98–22 incorporated by reference many of the facts, representations and continuing conditions that were contained in PTE 93–8. However, PTE 98–22 did not cover FIS's use of space in the Property pursuant to the terms of the License as such arrangement had been terminated. As with PTE 93–8, the transaction was approved and monitored on behalf of the Plans by Mr. Browde, the independent fiduciary.

Renovations to the Property

11. In 1998, the Plans, as landlord, paid for renovations to the warehouse comprising the Property. The renovations cost approximately $500,000. These renovations were permanent in nature. In part, the renovations transformed the vacated office space into additional storage space. This alteration resulted in a 15,009 square foot reduction in the overall square footage of the Property, from 116,000 square feet to 100,991 square feet. However, the Amended Lease was not modified at the time to reflect the reduced square footage of the Property, even though FFJS continued to lease space from the Plans.

Field Investigation and Independent Fiduciary Appointment

12. In early 2003, the New York Regional Office of the Department (the Regional Office) conducted an audit of the Plans. By letter dated April 14, 2003, the Regional Office alleged that the Trustees of the Plans violated certain provisions of the Act as a result of, among other things: (a) Failure to obtain annual Property appraisals; (b) failure to implement and collect annual rent increases; and (c) payment by the Plans for a renovation of the Property in 1998.

The Plans' Trustees submitted a formal response to the Department on September 30, 2003, and, by letter agreement (the Original IFS Agreement) dated November 26, 2003, engaged IFS to act as the sole independent fiduciary of the Plans with respect to certain functions associated with the Plans' ownership of the Property.

13. IFS, with offices located in Washington, DC and Newark, New Jersey, is an independent investment advisory firm with experience acting as an independent fiduciary. Among other things, IFS structures and monitors pension and welfare fund investment programs, advises plan fiduciaries concerning investment risk and expense, measures and evaluates investment returns and decides whether proposed transactions and arrangements are in the interests of a plan and its participants.

With respect to its qualifications, IFS states that it specializes in acting as a fiduciary to ERISA-covered plans and that the firm is highly experienced as a fiduciary in making and evaluating investment decisions. IFS further states that, as an investment adviser registered with the Securities and Exchange Commission, it has acted in a variety of independent fiduciary roles, including independent fiduciary, named fiduciary, investment manager and adviser or special consultant. Specifically, IFS represents that it has acted as independent fiduciary with respect to several transactions, including real estate transactions, which required and received prohibited transaction exemptions from the Department. IFS confirms that it is not affiliated with the Employer, and derives less than two percent of its gross annual income from FFJS and MFW and their affiliates.

By voluntarily engaging IFS to act on behalf of the Plans, at Fortunoff's expense, it is represented that Fortunoff and the Plans' Trustees implemented an independent process to assist in investigating and resolving the issues raised by the Regional Office. IFS hired a qualified, independent appraiser,

Integra Realty Resources " Northern New Jersey of Morristown, New Jersey (Integra), to conduct retrospective and current appraisals of the Property, so that IFS could assess: (a) The current and retrospective fair market rental and valuations of the Property; and (b) the commercial reasonableness of the Plans' payment for the renovations of the Property in 1998. After evaluating all material factors, including, among other things, reviewing and analyzing (with the assistance of legal counsel retained by IFS) the Interim Lease, PTEs 93–8 and 98–22, and the Integra appraisals, IFS concluded that a payment of $669,660 by Fortunoff, including interest, should be made to the Plans.

Shortly thereafter, the Regional Office advised Fortunoff of their determination that a payment of $706,740, i.e., $7,080 more than the amount determined by IFS, should be made to the Plans. On August 31, 2004, Fortunoff made a $706,740 payment to the Plans in order to resolve the issues raised by the Regional Office and to carry out the process inherent in the retention of IFS.[31] IFS continues to act as the independent fiduciary of the Plans with respect to the Property.

Interim Lease

14. The Interim Lease between FFJS and the Plans began on November 26, 2003, the date IFS was engaged to act as the Plans' independent fiduciary. The Interim Lease had a 15 month term with an expiration date of February 28, 2005 and it included the same terms (see Representation 7) as the Amended Lease, which it superseded. The Interim Lease was modified (the Interim Lease Modification) by an agreement between FFJS and the Plans executed in October 2004 by FFJS and IFS on behalf of the Plans. The Interim Lease Modification reflected the 1998 renovation and reconfiguration of the Property, which reduced the square footage from 106,362 square feet, as recited in the Original Lease, to 100,991 square feet. The Interim Lease Modification also referenced the November 26, 2003 agreement between the Trustees of the Plans and IFS, in which the Trustees engaged IFS to perform certain duties on behalf of the Plans with respect to the Property.

A. Interim Lease Extension

15. Pursuant to the Interim Lease Extension agreement executed on February 28, 2005, between the Plans and FFJS, the parties agreed to abide by the terms of the Interim Lease subject to certain modifications. Specifically, the expiration date of the Interim Lease was extended from February 28, 2005 until August 31, 2006. In addition, the rent was modified so that commencing on March 1, 2005 and ending on February 28, 2006, the rent will be $656,400 per annum, payable in equal monthly installments of $54,700. Further, the tenant is required to pay rent for the six month period commencing March 1, 2006 and ending August 31, 2006 in an amount which is equal to the greater of (a) $656,400 per annum (*i.e.*, equal monthly installments of $54,700) or (b) the annual fair market rental value of the Property as determined by an independent appraisal (performed by an independent appraiser reasonably selected by IFS on behalf of the Plans) dated on or before December 31, 2005.

In addition, FFJS is required to make a two-month security deposit of $109,400 and pay an Additional Deposit applicable to the period commencing on March 1, 2006 after the expiration of the first 12 months of the Interim Lease Extension, calculated at the rental amount to be effective March 1, 2006. During the last six months of the Interim Lease Extension period, one-sixth of the Additional Deposit will be applied against the monthly rent, so long as there is no uncured default. Also, a two-month security deposit will remain at the end of the Interim Lease Extension.

FFJS will maintain increased levels of property and liability insurance coverage for the Property. In addition, FFJS will pay the cost of an environmental assessment and engineering inspection report on the Property for the benefit of the Plans, to be performed by environmental and engineering firms IFS will select on behalf of the Plans.

Finally, if FFJS (or any of its shareholders or family members of shareholders) wished to purchase the Property or to enter into a long-term lease with respect to the Property, it was required to provide, by August 31, 2005, written notice of its intent to (a) purchase the Property at a purchase price of no less than $7,500,000 or the fair market value as determined by a qualified, independent appraiser, or (b) rent the Property pursuant to a long-term lease with rental price of no less than the current fair market rental amount. IFS would have 90 days in which to decide whether to accept the offer, but would not be obligated to accept it. Although these options were never exercised, the applicants represent that a separate, administrative exemption would have been requested from the Department.

Sale of Controlling Interest in Fortunoff (the Sale)

16. In November 2004, the Fortunoff owners, the Fortunoff and Mayrock families (the Families), announced that they had agreed to sell a controlling interest in Fortunoff to Trimaran Capital Partners, LLC (Trimaran) and Kier Group (K Group), two New York-based private equity firms that are unrelated parties. Since 1995, Trimaran has invested over $1.2 billion of equity in more than 50 portfolio companies in transactions totaling in excess of $10 billion. Since 1993, K Group has completed more than $3 billion in transactions.

Trimaran and K Group have previously made investments in the consumer products and services industry and their principals have been involved as senior executive management or investors, in among other things, traditional and direct-to-consumer retailers, including, for example, retailers of fine diamonds and jewelry (Harry Winston/K Group), housewares (Rubbermaid/K Group) and apparel products (Urban Brands/Trimaran).

The Sale occurred on July 22, 2005 for approximately $140 million. Approximately 60% of the Sale proceeds were allocated to MFW and approximately 40% of the Sale proceeds were allocated to FFJS, subject in each case to post-closing adjustments, if any. Following the completion of the Sale, the Families hold a 25% interest and continue to be involved in the management and operations of Fortunoff. Trimaran and K Group hold the 75% majority stake in Fortunoff.

In connection with the Sale, FFJS LLC and MFW LLC were created to succeed to the operating business of FFJS and MFW, respectively, with common ownership through Source Financing, a holding company that acts as the sole managing member of each LLC. Source Financing is owned by Trimaran Capital and Kier Group with a combined interest of 75% (approximately 10% of Source Financing is held by Kier Group and 65% is held by Trimaran Capital), and the remaining 25% of Source Financing is owned by FFJS and MFW through which the Families hold an ownership interest.

Also as part of the Sale, a transfer of substantially all of the employees and substantially all of the business assets of FFJS and MFW were made to FFJS LLC and MFW LLC. In addition, FFJS LLC and MFW LLC succeeded to the obligations of FFJS as tenant under the

[31] In addition to making a payment to the Plans, Fortunoff also filed a Form 5330 with the Internal Revenue Service and paid all applicable excise taxes with respect to the violations alleged by the Regional Office.

Interim Lease and Interim Lease Extension. Prior to the Sale, FFJS and MFW operated as two separate controlled groups of corporations, and FFJS was the sole tenant under the Interim Lease and Interim Lease Extension. As a result of the Sale and common ownership, the interest of FFJS as tenant under the Interim Lease and the Interim Lease Extension was assigned to FFJS LLC and MFW LLC as of July 22, 2005, and consequently each LLC entity became a joint and several tenant under the Interim Lease and Interim Lease Extension. Thus, any reference to tenant herein (see Representation 15) means FFJS and its successors in interest, FFJS LLC and MFW LLC.

Further, consistent with the corporate consolidation, the FFJS Cash Balance Plan and the MFW Cash Balance Plan merged, effective January 1, 2006, and Source Financing became the new sponsor as described above. The Merged Cash Balance Plan and the FFJS Profit Sharing Plan currently hold 80% and 20% membership interests in the Plans' LLC, respectively, as tenants in common.

There are no parties in interest with respect to the Plans acting as service providers to the Plans' LLC except that (a) M&T Bank, which served as custodian to the MFW Cash Balance Plan and currently serves as custodian and directed trustee of the Merged Cash Balance Plan, also provides commercial banking services for the Plans' LLC independently pursuant to arrangements made by IFS on behalf of the Plans' LLC as such LLC's non-member manager; and (b) FFJS and its assignees, FFJS LLC and MFW LLC, as tenants under the Interim Lease, as further amended and extended by the Interim Lease Extension described herein, have performed or will perform repairs and maintenance of the Property.

Request for Exemptive Relief

17. Fortunoff and IFS, on behalf of the Plans, request an administrative exemption from the Department to cover the past and current leasing of the Property under relevant provisions of the Interim Lease and Interim Lease Extension. If granted, the exemption would apply retroactively from November 26, 2003, the date Fortunoff retained IFS to act as the sole independent fiduciary of the Plans with respect to the Property, through August 31, 2006. The applicants state that issuing this exemption is in the best interests of the Plans in the context of the sale of the controlling interest in Fortunoff by the Families. The applicants state that with the revised ownership structure of Fortunoff, a business review process will be undertaken with respect to Fortunoff's long-term strategic planning and its accompanying real estate needs, and IFS, with assistance from its legal counsel and own appraiser, will have the opportunity to evaluate and explore alternatives regarding the use of the Property. These alternatives may include finding another tenant, deciding to sell the Property or negotiating a new lease with FFJS. Further, the applicants believe that extension of the Amended Lease ensures that the Plans will continue to receive the fair market rental value of the Property for another 18 months while IFS considers the Plans' options.

Independent Appraisal of the Property

18. In an independent appraisal report dated May 18, 2004 (the 2004 Appraisal), Raymond T. Cirz, MAI, CRE, a qualified independent real estate appraiser with Integra, placed the Property's fair market value and annual fair market rental value at $7,300,000 and $656,400, respectively, as of December 31, 2003. Mr. Cirz updated the 2004 Appraisal with an independent appraisal report dated February 18, 2005 (the 2005 Appraisal), which placed the Property's fair market value and annual fair market rental value at $7,500,000 and $656,400, respectively, as of December 31, 2004. This was the rental amount being paid by FFJS under the Interim Lease at the time of the 2005 Appraisal and it is currently the rental amount being paid by FFJS under the Interim Lease Extension.

Mr. Cirz states that he is Managing Director of Integra and is actively engaged in real estate appraisals and consulting, including acquisition and disposition analyses, portfolio valuations for major public and private institutions, financial analyses, market and feasibility studies and other advisory services. In addition, Mr. Cirz represents that his experience is concentrated in major urban properties including such developments as the Pacific Design Center in Los Angeles, International Place in Boston, the Willard Hotel in Washington DC, and the World Trade Center in New York City. Mr. Cirz further represents that he was the first president of Valuation International, Ltd., a full service international valuation and consulting firm with affiliated offices located throughout the world. He also certifies that Integra does not have any relationship with Fortunoff and that it did not receive more than two percent of its annual income from the party in interest or its affiliates.

Role of the Independent Fiduciary

19. At the time of its appointment, IFS evaluated the adequacy of the rents previously paid to the Plans, relative to the fair market rental value of the Property at each applicable point in time taking into account Mr. Cirz's appraisals on behalf of Integra. IFS concluded that the amount of rent previously paid was insufficient and thus, that certain additional payments were due (which payments to the Plans were subsequently made) and that the rent, as so supplemented, was no less favorable than the rent that would have been paid by a third party in similar circumstances when negotiated at arm's length with unrelated third parties. Given the facts and circumstances in existence and the retrospective evaluation of the rent, IFS considered the following alternatives: (1) Whether to continue the Interim Lease in accordance with its existing terms and conditions; (2) whether to void the Interim Lease; and (3) whether to renegotiate the terms and conditions of the Interim Lease. IFS analyzed the three alternatives and concluded that the interests of the Plans' participants and beneficiaries would best be served by continuing to operate under the Interim Lease in accordance with its existing terms and conditions. Given that the Interim Lease was already in place and pursuant to its contract with the Plans, IFS did not seek to determine whether all of the terms and conditions of the Interim Lease as of November 26, 2003 were similar to a lease with a third party. However, IFS did conclude on the basis of its retrospective review that the rent being received for the balance of the Interim Lease after August 31, 2004, on which date all retrospective corrective payments were made, was no less favorable than the rent that would be payable in similar circumstances when negotiated at arm's length with unrelated third parties.

20. IFS, acting as the Plans' independent fiduciary, represents that it has examined each Plan's overall investment portfolio, liquidity needs and diversification requirements [32] in

[32] While IFS has concluded that the Plans' ownership of the Property is not detrimmental to the Plans' current and anticipated cash flow needs, IFS remains concerned with the significant concentration to a single real estate asset with a single tenant that the Property represents for each Plan. This concern is heightened in the case of the FFJS Profit Sharing Plan, where the interest in the Property at January 1, 2005 represented almost 30% of the Plan's assets. In this regard, IFS notes that PTE 93–8 and PTE 98–22 states in the operative language that, "the value of the proportionate

light of the exemption transactions. IFS states that it has also extensively analyzed the Plans' interests in the Property from the investment perspective of the Plans in view of the condition of the Property, its appraised value, the terms of the Interim Lease and the Interim Lease Extension and the Plans' financial and actuarial conditions. IFS explains that this analysis has included a critical review of retrospective and current appraisals of the Property by Mr. Cirz on behalf of Integra; on-site inspection of the Property; interviews with FFJS personnel involved with the operation of the Property; and a review of the Plans' financial and actuarial reports and investment policies. Based on this analysis, IFS has concluded that the Plans' ownership and leasing of the Property is consistent with each Plan's investment policies and liquidity needs and that the leasing of the Property to FFJS, both retroactive to November 26, 2003 and March 1, 2005 under the Interim Lease Extension, is in the interest of each Plan and its respective participants and beneficiaries. Further, IFS represents that the Plans' interests are protected by the terms of the Interim Lease Extension. Finally, IFS has concluded that under the circumstances, the Interim Lease Extension was no less favorable to the Plans than would be a comparable arm's length transaction with an unrelated third party.

IFS certifies that (a) the continued leasing of the Property pursuant to the terms and conditions of the Interim Lease under the facts and circumstances in existence on and after November 26, 2003 was no less favorable to the Plans than the continued leasing of the Property under similar facts and circumstances between unrelated parties, and (b) that the then-prevailing rent received by the Plans was no less favorable than the rent the Plans would have obtained under similar circumstances when negotiated at arm's length with unrelated third parties.

IFS also determined that the terms and conditions of the Interim Lease Extension were no less favorable to the Plans than those obtainable by the Plans under similar circumstances when negotiated at arm's length with unrelated third parties. In reaching this conclusion, IFS represents that it utilized the experience of the IFS professional staff who has been involved in the performance of IFS" duties as independent fiduciary for the Plans, and it engaged independent real estate legal counsel, Morgan, Lewis & Bockius LLP (Morgan Lewis), experienced in the negotiation and drafting of similar leases between unrelated parties, to advise IFS in connection with the negotiation, review and approval of the terms and conditions of the Interim Lease Extension. IFS relied on Morgan Lewis's legal analysis and advice in negotiating, reviewing and approving the terms and conditions of the Interim Lease Extension. Morgan Lewis advised IFS that the terms of the Interim Lease Extension are no less favorable to the Plans than those they have negotiated and/or reviewed between unaffiliated entities in similar arms-length transactions.

Moreover, IFS represents that it has the authority to monitor and enforce the Plans' rights throughout the term of the Interim Lease Extension.

21. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Since November 26, 2003, the Plans have been and will continue to be represented for all purposes under the Interim Lease by IFS, a qualified, independent fiduciary, which also represents the interests of the Plans under the Interim Lease Extension.

(b) IFS has (1) reviewed and approved the continued adherence by the Plans and the Plans' LLC with the terms and conditions of the Interim Lease under the facts and circumstances in existence on and after November 26, 2003; (2) negotiated, reviewed, and expressly approved the terms and conditions of the Interim Lease Extension on behalf of the Plans; and (3) determined that the leasing of the Property since November 26, 2003 pursuant to the Interim Lease and, since March 1, 2005, the Interim Lease Extension, (i) has complied, and will continue to comply, with the relevant provisions of PTE 93–8 as amended by PTE 98–22 (except as modified by this proposed exemption); and (ii) will continue to be an appropriate transaction for the Plans on and after November 26, 2003, consistent with each Plan's investment policies and liquidity needs, and (iii) is in the best interests of each Plan and its respective participants and beneficiaries on and after November 26, 2003.

(c) The rent paid to the Plans under the Interim Lease and the Interim Lease Extension has been and will be no less than the fair market rental value of the Property, as established by a qualified, independent appraiser.

(d) The base rent has been adjusted or will be adjusted annually by IFS based upon an independent appraisal of the Property.

(e) Under both the Interim Lease and the Interim Lease Extension, FFJS has paid or will pay for property and liability insurance on the Property, property taxes, utility costs, other costs for maintaining the Property including environmental assessments, engineering inspection reports, as well as all other expenses that are incident to such agreements.

(f) IFS has monitored and will continue to monitor compliance with the terms of the Interim Lease since November 26, 2003 and the terms of the Interim Lease Extension throughout the duration of these agreements.

(g) IFS has been responsible or will be responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of FFJS and its successors in interest, FFJS LLC and MFW LLC, under the terms of such agreements.

(h) IFS has made or will make determinations, on behalf of the Plans, with respect to any sale or future leasing of the Property.

(i) IFS has determined that (1) the leasing of the Property pursuant to the Interim Lease on and after November 26, 2003 has been, and will continue to be, no less favorable to the Plans than similar leasing arrangements between unrelated parties; (2) the then-prevailing rent received by the Plans has been, and will continue to be, no less favorable to the Plans than the rent the Plans would have received under similar circumstances if the rent had been negotiated at arm's length with unrelated third parties; and (3) the terms and conditions of the Interim Lease Extension have been, and will continue to be, no less favorable to the Plans than those obtainable by the Plans under similar circumstances when negotiated at arm's length with unrelated third parties.

(j) With respect to the Interim Lease Extension, FFJS (1) has made a two-month security deposit on signing the agreement and; (2) will be required to pay an Additional Deposit after the expiration of the first 12 months of the Interim Lease Extension, calculated at the rental amount to be effective March 1, 2006.

(k) Over the last six months of the Interim Lease Extension, one-sixth of

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interests in the Property that are acquired by each Plan does not exceed 25 percent of the Plan's assets." However, IFS does not believe there is a market for any individual Plan's minority interest in the Property, other than possibly to a party in interest. Under the terms of the Original IFS Agreement, IFS explains that it did not have the authority to consider a sale of the Property until the Interim Lease Extension was executed. However, IFS states that it will explore the prospects of selling all of the Plans' interests in the Property.

the Additional Deposit will be applied to the rent each month, so long as there is no uncured default.

FOR FURTHER INFORMATION CONTACT: Anna M. N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of February, 2006.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 06–1220 Filed 2–10–06; 8:45 am]

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Part III

Department of Labor

Employment and Training Administration

20 CFR Parts 656

Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

[RIN 1205–AB42]

Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is publishing a Notice of Proposed Rulemaking (NPRM or proposed rule) with request for comments to enhance program integrity and reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States. First, DOL is proposing to eliminate the current practice of allowing the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. Second, DOL is proposing a 45-day period for employers to file approved permanent labor certifications in support of a petition with the Department of Homeland Security, United States Citizenship and Immigration Services (DHS). Third, the proposed rule expressly prohibits the sale, barter, or purchase of permanent labor applications and certifications, as well as other related payments. Finally, the proposed rule includes provisions highlighting existing law pertaining to submission of fraudulent or false information, clarifying current DOL procedures for responding to possible fraud, and adding procedures for debarment from the permanent labor certification program. Under this proposed regulation, these provisions to enhance program integrity and reduce fraud and abuse would apply to permanent labor certification applications and approved certifications filed under both the regulation effective March 28, 2005, and any prior regulation implementing the permanent labor certification program. This proposed rule also proposes clarifying modifications of applications filed after March 28, 2005, under the new streamlined permanent labor certification process. The Department solicits comments on each provision contained in this NPRM.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before April 14, 2006.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB42, by any of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- E-mail: Comments may be submitted by e-mail to *fraud.comments@dol.gov*. Include RIN 1205–AB42 in the subject line of the message.
- *Mail:* Submit written comments to the Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, Attention: John R. Beverly, Interim Chief, Division of Foreign Labor Certification. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

Instructions: All submissions received must include the RIN 1205–AB42 for this rulemaking. Receipt of submissions, whether by U.S. Mail or e-mail, will not be acknowledged. Because DOL continues to experience occasional delays in receiving postal mail in the Washington, DC, area, commenters are encouraged to submit comments via e-mail.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (*e.g.*, large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at (202) 693–3010 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: John R. Beverly, Interim Chief, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Telephone (202) 693–3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this proposed rule is to impose clear limitations on the acquisition and use of permanent labor certification applications and approved permanent labor certifications in order to reduce incentives and opportunities for fraud and abuse in the permanent labor certification program, and to propose measures to enhance the integrity of the permanent labor certification program.

A. Statutory Standard and Current Department of Labor Regulations

Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)), before the Department of Homeland Security (DHS) may approve petition requests and the Department of State (DOS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must certify to the Secretary of Homeland Security and to the Secretary of State that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers.

If the Secretary of Labor, through the Employment and Training Administration (ETA), determines there are no able, willing, qualified, and available U.S. workers and employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, the Secretary so certifies to DHS and to DOS by granting a permanent labor certification. If DOL can not make both of the above findings, the application for permanent labor certification is denied.

The INA does not address substitution of aliens in the permanent labor certification process. Similarly, the Department of Labor's regulations are silent regarding substitution of aliens.

The Department of Labor's regulation, found at 20 CFR part 656, governs the labor certification process for the permanent employment of immigrant aliens in the United States and sets forth the responsibilities of employers who

desire to employ immigrant aliens permanently in the United States.

On May 6, 2002, the Department of Labor published a Notice of Proposed Rulemaking (PERM NPRM) to streamline the permanent labor certification program. 67 FR 30466. A final rule implementing the streamlined permanent labor certification program through revisions to 20 CFR part 656 was published on December 27, 2004, and took effect on March 28, 2005. 69 FR 77326. The prior part 656 governs processing of permanent labor certification applications filed prior to March 28, 2005, except as previously filed applications may be refiled under the new rule, and except as certain provisions of this proposed rule would impact applications filed prior to March 28, 2005.

B. General Immigration Process Involving Permanent Labor Certifications

To obtain permanent foreign workers, U.S. employers generally must engage in a multi-step process that involves the DOL and DHS, and in some instances, the Department of State (DOS). The INA classifies employment-based (EB) immigrant workers into categories, based on the general job requirements, and the perceived benefit to American society. The United States employer must demonstrate the job requirements fit into one of these classifications. The first step in the process for the EB2 and EB3 classifications, described below, generally begins with the U.S. employer filing a labor certification application with the DOL under 20 CFR part 656. The U.S. employer must demonstrate to DOL through a test of the labor market there are no U.S. workers able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work. The employer must also demonstrate to DOL the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. After a review of the labor certification application, DOL may either approve or deny the labor certification application.

The Form I–140 is a petition filed with DHS by a United States employer for a prospective permanent alien employee. Most Form I–140 petitions filed under Sections 203(b)(2) and 203(b)(3) of the Act, which are commonly called the EB2 and EB3 classifications, must be accompanied by an approved labor certification issued by DOL. DHS has established procedures for filing Form I–140 petitions under 8 CFR 204.5.

DHS reviews the approved labor certification in conjunction with the I–140 petition and other supporting documents to evaluate whether the position being offered to the alien worker in the petition is the same as the position specified on the labor certification and the employment qualifies for the immigrant classification requested by the employer. In addition, DHS evaluates the alien worker's education, training, and work experience to determine whether the particular alien worker meets the job requirements specified on the labor certification. The approved labor certification is also used to establish the priority in which an immigrant visa will be made available to the alien worker, based on the date the labor certification application was filed with DOL.

A. Current Practices Involving Permanent Labor Certifications

DOL, as an accommodation to U.S. employers, has traditionally allowed employers to substitute an alien named on a pending or approved labor certification with another prospective alien employee. Labor certification substitution has occurred either while the certification application is pending at DOL or while a Form I–140 petition. filed with an approved labor certification, is pending with DHS. Historically, this substitution practice was permitted because of the length of time it took to obtain a labor certification or receive approval of the Form I–140 petition.

In addition to the substitution issue, another concern arises because once issued by DOL, labor certifications are valid indefinitely. Another issue stems from the fact that the current regulations do not address payments related to the permanent labor certification program or debarment authority. The Department now seeks to address problems that have arisen related to substitution, lack of validity periods for certifications, and financial transactions related to the permanent labor certification program.

II. Issues Arising From Current Practices

For a number of years, the Department has expressed concern that various immigration practices, including substitution, are subject to a high degree of fraud and abuse. *See, e.g.,* Interim Final Rule, 56 FR 54920 (1991).[1] This concern has been heightened by (1) A number of recent criminal prosecutions by the Department of Justice, (2) recommendations from the Department of Justice and the Department of Labor's Office of Inspector General, and (3) public comments concerning fraud received in response to the May 6, 2002, PERM NPRM. *See, e.g.,* 69 FR at 77328, 77329, 77363, 77364.

The Department's review of recent prosecutions by the Department of Justice, in particular, has revealed the ability to substitute alien beneficiaries has turned labor certifications into a commodity which can be sold by unscrupulous employers, attorneys, and agents to those seeking a "green card." Similarly, the ability to sell labor certifications is enhanced by their current open-ended validity, providing a lengthy period when a certification can be marketed. In many of those applications, the job offer is fictitious. In others, the job in question exists but is not truly open to U.S. workers. Rather, the job is steered to a specific alien in return for a substantial fee or kickback. The Federal Government has prosecuted a number of cases resulting from employers, agents, or attorneys seeking to fraudulently profit on the substitution of aliens on approved labor certifications and applications. For example, one attorney filed approximately 2,700 fraudulent applications with DOL that he later sold to aliens for at least $20,000 a piece so they could be substituted for the named beneficiary on approved labor certifications. *See U.S.* v. *Kooritzky,* No. 02–502–A (E.D. Va.). Additional prosecutions have involved the sale of fraudulent applications or certifications. *See, e.g., U.S.* v. *Mir,* No. 8:03–CR–00156–AW–ALL (D. Md.); *U.S.* v. *Fredman et al.,* No. WMN–05–198 (D. Md.); *U.S.* v. *Lee,* No. 03–947–M (E.D. Va.); and *U.S.* v. *Mederos,* No. 04–314–A (E.D. Va.).

The final rule implementing the streamlined permanent labor certification program discussed DOL's concerns about the possibility of fraud in the permanent labor certification program and the steps the Department is taking to minimize the filing of fraudulent or non-meritorious applications. 69 FR at 77328. The Department noted the practice of allowing the substitution of alien beneficiaries may provide an incentive for fraudulent applications to be filed with the Department. 69 FR at 77363. The Department also concluded in the final rule the emerging "black market"

[1] The 1991 Interim Final Rule included a provision prohibiting substitution. That provision was overturned by the U.S. Court of Appeals for the DC Circuit on a technical Administrative Procedures Act ground. *Kooritzky* v. *Reich,* 17 F.3d 1509 (DC Cir. 1994). The publication of this proposed rule for public notice and comment addresses the Court's concern.

for purchase and sale of approved labor certifications is not consistent with the purpose of the labor certification statute at § 212(a)(5)(A) of the INA. However, DOL was not able to address many of these fraud issues as they arguably involved matters that were not a logical outgrowth of the proposals contained in the PERM NPRM. The Department indicated it would be exploring regulatory solutions to address this issue. 69 FR at 77363.

III. Proposed Amendments to the Permanent Labor Certification Regulations

In order to protect the integrity of the permanent labor certification program, deter fraud, and comply with the Department's statutory obligation to protect the wages and working conditions of U.S. workers, the Department has determined a number of amendments are appropriate. The first amendment would prohibit the substitution of alien beneficiaries on pending applications for permanent labor certification and on approved permanent labor certifications not yet filed with DHS. This amendment could, at least to some degree, affect DHS's current practice of allowing U.S. employers to substitute an alien through the filing of a new Form I–140 petition, supported by a labor certification in the name of the original beneficiary. The second amendment would require a permanent labor certification be filed with DHS within 45 calendar days of the date it is certified by DOL. The third amendment would prohibit the sale, barter, and purchase of applications and approved labor certifications, as well as other related payments. Finally, the Department is proposing enforcement mechanisms, including debarment with appeal rights, to protect the integrity of the permanent labor certification program and deter individuals or entities from engaging in prohibited transactions or abusing the labor certification process. The Department invites public comment regarding all aspects of each of these proposed changes.

The Department believes these changes should be broadly implemented both to achieve greater impact in fraud deterrence and enhancement of program integrity. In addition to applications for permanent labor certification filed under the new PERM regulation that became effective March 28, 2005, approximately 355,000 applications for permanent labor certification are pending that will be processed under the prior regulation in the Department's new "backlog elimination" centers unless the employer chooses to re-file the application under the new regulation. *See* 69 FR 43716 (July 21, 2004) (Interim Final Regulation regarding backlog center procedures); 20 CFR 656.17(d) (refiling procedures under new regulation). Program integrity and fraud deterrence are concerns both for labor certifications filed under the current regulation effective March 28, 2005, and the prior regulation. Additionally, the proposed debarment and other program integrity mechanisms should be available for all actions should this rule be finalized.

Accordingly, the Department intends to make the amendments proposed in this NPRM generally applicable to applications and labor certifications under both the prior and current regulations, as further described below. This action would modify the statement in the preamble to the December 27, 2004, final rule that applications filed before that final rule's effective date will continue to be processed and governed by the then-current regulation. 69 FR at 77326. Specifically, the Department proposes as follows regarding applicability:

**Substitution*—Substitution of alien beneficiaries will be prohibited as of the effective date of a final rule resulting from this NPRM and that prohibition will apply to all pending permanent labor certification applications and to approved certifications not yet filed with DHS, whether the application was filed under the prior or current regulation. This regulatory change would not affect substitutions approved prior to the final rule's effective date.

**Validity period*—All permanent labor certifications approved on or after the effective date of a final rule issued in response to this NPRM will expire within 45 calendar days of certification, whether the original application was filed under the prior or current regulation. Likewise, all certifications approved prior to a final rule's effective date, whether filed under the prior or current regulation, will expire within 45 calendar days of that effective date unless filed in support of an I–140 petition with the Department of Homeland Security.

**Ban on sale, barter, purchase and certain payments*—The ban on sale, barter, purchase, and related payments will apply to all such transactions on or after the effective date of a final rule resulting from this NPRM, regardless of whether the labor certification application involved was filed under the prior or current regulation implementing the permanent labor certification program.

**Debarment and program integrity*—Last, on or after the effective date of a final rule resulting from this NPRM, the Department may debar an employer, attorney, or agent based upon any actions that were improper or prohibited at the time the action occurred, regardless of whether the labor certification application involved was filed under the prior or current regulation. New provisions applicable to applications filed under the prior or current regulation also highlight existing law pertaining to submission of fraudulent or false information, and clarify procedures for responding to possible fraud.

A. Elimination of the Practice of Allowing Substitution of Alien Beneficiaries on Labor Certifications and Applications, and Other Changes to Applications

The DOL's program experience, supplemented by information from other Federal agencies with an interest in the permanent labor certification program, and particularly Federal Government prosecutions, indicates the current practice of allowing substitution of alien beneficiaries provides a strong incentive for the filing of fraudulent labor certification applications, and creates an opportunity for fraud throughout the lawful permanent resident process.

If substitution is permitted, the certification or an application can be marketed to an alien who is willing to pay a considerable sum of money to be substituted for the named alien on the application or certification. The possibility of lucrative substitutions has encouraged several types of fraud. For example, to obtain permanent labor certifications that could be marketed to substitute aliens, fraudulent labor certification applications have been submitted on behalf of nonexistent employers, submitted without the knowledge of the employer, or submitted on behalf of employers who are paid for the use of their names. In many such cases, the named alien on the application may be fictitious or the same alien may be fraudulently named on multiple labor certification applications.

The Department has concluded these experiences provide sufficient reasons for eliminating the practice of allowing the substitution of alien beneficiaries on permanent labor certifications or permanent labor certification applications. No statutory entitlement exists to allow substitution of aliens on labor certifications or applications, nor do DOL regulations authorize or address the practice of alien substitutions. Rather, substitution has been permitted

as a procedural accommodation to employer applicants.

The DOL also has concluded the emerging "black market" in labor certifications or applications conflicts with the purpose of the permanent labor certification statute at section 212(a)(5)(A) of the INA and the Department's labor certification regulations at 20 CFR part 656. The purpose of the statute and regulations is to allow an employer to obtain a needed immigrant worker only if a qualified U.S. worker is not available and the admission of such an immigrant worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers.

If the original alien beneficiary is no longer available, then the employer must use some means to find a new worker. Prohibiting substitution will ensure the employer again makes the employment opportunity available to U.S. workers. In the event another alien is again the only qualified person available, the employer should be required to submit a new application reflecting the new recruitment process undertaken. Because the Department's role is to allow employers access to the international labor market only if there is no U.S. worker able, willing, qualified, and available for the employment opportunity, elimination of substitution will strengthen program integrity and will assist employers with a legitimate need for alien workers by ensuring appropriate use of the labor certification process and the judicious use of the limited number of available visas involving permanent labor certifications.

The DOL acknowledges that concerns have been expressed that substitution is unfair to other aliens waiting in queue for visas because, under existing practices, the substituted alien obtains a priority date [2] based on an application filed for a different alien and the date is often years earlier than the substituted alien would receive if named in a newly filed application.

The DOL has concluded that tolerating the sale of a public benefit is simply bad government. Allowing such a practice to continue would serve to undermine the belief and confidence of the public in the objectives and integrity of government programs in general and the permanent labor certification program in particular. By banning substitution, the Department does not undertake to determine the visa eligibility status of individual aliens. Rather, the Department has developed the proposed substitution prohibition to enhance program integrity and eliminate the current "black market" in labor certifications and applications. The Department also recognizes that banning substitution on pending or approved labor certifications could, at least to some degree, affect DHS's current practice of allowing U.S. employers to substitute an alien through the filing of a new Form I–140 petition, supported by a labor certification in the name of the original beneficiary.

In the past, the strongest argument in support of allowing substitutions was the long time it took to obtain a permanent labor certification. The streamlined process introduced by the new regulation, however, has reduced significantly the processing time for those employers who legitimately need to file a new application. If substitution is no longer necessary to accommodate long wait times, the Department believes there is no longer a compelling reason to allow the practice. Because the Department's primary concern in the permanent labor certification area is the protection of U.S. workers, if the original alien is no longer available, the purposes of the permanent labor certification program are most advanced if the employer is required to seek a new employee first among U.S. workers.

Accordingly, the Department is proposing in a new 20 CFR 656.11(a) and a revised 656.30(c) that only the alien named on the originally filed *Application for Alien Employment Certification* (ETA Form 750) or *Application for Permanent Employment Certification* (ETA Form 9089) may be the beneficiary of an approved labor certification. This regulatory change would not affect substitutions approved prior to the final rule's effective date.

DOL proposes to accomplish this change by explicitly providing in § 656.11(a) that substitution or change to the identity of an alien beneficiary is prohibited on any application filed with DOL for permanent labor certification, and on any resulting certification, whether filed under the current or any prior regulation. Further, DOL proposes to revise § 656.30(c) to provide that a certification resulting from an application filed under the current or prior regulation is only valid for the alien named on the original permanent labor certification application.

The Department is also proposing to clarify procedures for modifying applications filed under the new permanent labor certification regulation. Under proposed § 656.11(b), DOL clarifies that requests for modifications to an application submitted under the current regulation will not be accepted. This proposed clarification is consistent with the streamlined labor certification procedures of the new regulation. Nothing in the streamlined regulation contemplates allowing or permits employers to make changes to applications after filing. The re-engineered program is designed to streamline the process and an open amendment process that freely allows changes to applications or results in continual back and forth exchange between the employer and the Department regarding amendment requests is inconsistent with that goal. Further, the re-engineered certification process has eliminated the need for changes. The online application system is designed to allow the user to proofread and revise before submitting the application, and the Department expects and assumes users will do so. Moreover, in signing the application, the employer declares under penalty of perjury that he or she has read and reviewed the application and the submitted information is true and accurate to the best of his or her knowledge. In the event of an inadvertent error or any other need to refile, an employer can withdraw an application, make the corrections and file again immediately. Similarly, after an employer receives a denial under the new system, employers can choose to correct the application and file again immediately if they do not seek reconsideration or appeal. In addition, the entire application is a set of attestations and freely allowing changes undermines the integrity of the labor certification process because changing one answer on the application could impact analysis of the application as a whole.

B. Labor Certification Validity and Filing Period

The current indefinite validity of approved permanent labor certifications has contributed to the growth of the "black market" in approved labor certifications. Under the current regulations, labor certifications never expire, and they can be traded indefinitely and sold to the highest bidder. The Federal Government has prosecuted several cases involving the sale of fraudulent applications or certifications. Moreover, over time, the likelihood the certified job opportunity still exists as it appeared on the original application becomes more doubtful, and the labor market test and the prevailing

[2] The Department of State uses the filing date of the permanent labor certification application to establish the priority date of a preference visa applicant under Section 203(b)(2) and (3) of the Immigration and Nationality Act. See 20 CFR 656.17(c); 20 CFR 656.30(b); 8 CFR 204.5(d) and 22 CFR 42.53.

wage determination become less accurate or "stale."

To address these concerns, the Department is proposing in 20 CFR 656.30(b) that an approved permanent labor certification must be filed in support of a petition with DHS within 45 calendar days of the date DOL grants certification. For those labor certifications granted before the effective date of a final rule resulting from this NPRM, employers would have 45 calendar days from a final rule's effective date to file the labor certification in support of a petition with DHS. These expiration provisions are proposed to apply whether the application was filed under the regulation effective March 28, 2005, or any prior regulation.

C. Prohibition on the Sale, Barter, or Purchase of Applications for Permanent Labor Certification and of Approved Permanent Labor Certifications, and Prohibition on Related Payments

The Department is proposing in 20 CFR 656.12 to prohibit improper commerce and several types of payments related to permanent labor certification applications and certifications. As noted above, permanent labor certifications have become commodities that too often are bought and sold by aliens seeking "green cards." A "black market" has been created in which employers or agents agree to broker applications for permanent labor certifications on behalf of aliens in exchange for payment of some kind. Such payments are not compatible with the purposes of the permanent labor certification program and may indicate lack of a bona fide position truly open to U.S. workers. Further, these payments may indicate the wage stated on the application is not the true amount the employer will pay the alien. As with the substitution practice, the Department has concluded that allowing sales of a government benefit to continue is simply bad government, and therefore proposes in § 656.12(a) to create an explicit and complete ban on the sale, barter, and purchase of labor certification applications and certifications.

In addition, the Department is proposing in § 656.12(b) to prohibit employers from seeking or receiving payment of any kind, from any source, for filing an ETA Form 750 or an ETA Form 9089 or for other actions in connection with the permanent labor certification process. Prohibited payments would include, but not be limited to: Employer fees for hiring the alien beneficiary; receiving "kickbacks" of part of the alien beneficiary's pay whether through a payroll deduction or otherwise; paying the alien beneficiary less than the rate of pay stated on the application; goods and services or other wage or employment concessions; or receiving payment from aliens, attorneys, or agents for allowing a permanent labor certification application to be filed on behalf of the employer. The Department proposes to include in this prohibition a ban on alien payment, directly or indirectly, of the employer's attorney's fees and costs related to preparing, filing, and obtaining a permanent labor certification. Employers, not aliens, file a permanent labor certification application and, therefore, these employer costs are not to be paid or reimbursed in any way by the alien beneficiary.

In some instances, an alien's payment of these costs may indicate there is not a bona fide position and wage available to U.S. workers. Further, alien subsidization of employer costs adversely affects the likelihood that a U.S. worker would be offered the job when, for example, the alien is paying for the recruitment effort.

The Department recognizes the possibility that legitimate employers may have a practice of seeking reimbursement from the aliens they hire for the expenses the employers incur in acquiring the labor certification. The Department, however, believes that any such reimbursement, *e.g.*, of attorneys fees to prepare an employer's application or of recruitment expenses to determine whether domestic labor is available or other such employer expenses, is contrary to the purpose of the labor certification process and should be a cost borne exclusively by the employer.

For these reasons, the Department is proposing a complete prohibition on employers being reimbursed for the expenses they incur in acquiring permanent labor certifications, including payment by the alien of the employer's attorney's fees. The Department welcomes comments from the public on this issue.

D. Debarment and Program Integrity

This NPRM also contains several provisions to promote the program's integrity and assist the Department in obtaining compliance with the proposed amendments and existing program requirements. The Department proposes several revisions to § 656.31, the regulation section regarding the Department's response to instances of potential fraud or misrepresentation, including making the section applicable to applications filed under the current regulation and the regulation in effect prior to March 28, 2005. The Department proposes to revise 20 CFR 656.31(a) and (b) to clarify that the Department may suspend processing of any permanent labor certification application if an employer, attorney, or agent connected to that application is involved in either possible fraud or willful misrepresentation or is named in a criminal indictment or information related to the permanent labor certification program, and to clarify the Department's response to potential fraud. Given the breadth and increased sophistication of the immigration fraud that has been identified in the recent past, the Department needs added flexibility to respond to potential improprieties in labor certification filings. Although the Department already has the authority, this proposed rule also will clarify § 656.31(a) to state the Department may deny any application for permanent labor certification which contains false statements, is fraudulent, or otherwise was submitted in violation of the permanent labor certification regulations.

Proposed § 656.31(c) continues to provide that the Certifying Officer will decide each application on the merits in the event the employer, attorney, or agent is acquitted of wrongdoing or if criminal charges otherwise fail to result in a finding of fraud or willful misrepresentation. Where a court, DHS or the Department of State finds the employer, attorney, or agent did commit fraud or willful misrepresentation, the proposed revision to § 656.31(d) provides that any pending applications related to that employer, attorney, or agent will be decided on the merits and may be denied in accordance with § 656.24. For instances in which a pending application involves an attorney or agent who is the subject of a finding of fraud or willful misrepresentation, the proposed revision to § 656.31(d) also includes a procedure for notifying employers associated with those applications of the finding.

Further, in § 656.31(e), the Department proposes to create a debarment mechanism, with appeal rights as delineated in a proposed revision to § 656.26, to deter individuals or entities from engaging in fraudulent permanent labor certification activities, prohibited transactions, or otherwise abusing the permanent labor certification process. The Department acknowledges that not all debarment triggers should be treated equally, and will therefore take steps to ensure any debarment is reasonable and

proportionate to the improper activity. Debarment from the program is a necessary and reasonable mechanism to enforce permanent labor certification requirements and statutory objectives.

Finally, in this NPRM, the Department is proposing to add a new § 656.31(f) to emphasize existing laws codified under 18 U.S.C. 2, 1001, 1546, and 1621 that prohibit knowingly and willingly furnishing false information to the government, misusing immigration documents, and committing perjury. Although the Employment and Training Administration (ETA) does not have authority to investigate or prosecute these violations, ETA will refer suspected violations to the appropriate authority.

IV. Required Administrative Information

A. Regulatory Flexibility Act

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule would not have a significant economic impact on a substantial number of small entities. The rule would affect only those employers seeking immigrant workers for permanent employment in the United States. Since any employer can file an application for permanent labor certification, the Department has assessed that the appropriate universe to determine the impact of the proposed rule on a substantial number of small entities in the United States is the entire universe of small businesses in the United States. The Department estimates in the upcoming year 60,000 employers will file approximately 100,000 applications for permanent employment certification. Some large employers file several hundred applications in a year. Therefore, the number of small entities that file applications is significantly less than the 60,000 employers that will file applications in the coming year. According to the Small Business Administration's publication, *The Regulatory Flexibility Act; An Implementation Guide for Federal Agencies*, there were 22,900,000 small businesses in the United States in 2002. Thus the percentage of small businesses that file applications for permanent alien employment certification is less than 0.27 percent (60,000 ÷ 22,900,000 = 0.262%).

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an "economically significant rule under Executive Order 12866." Because we certified that this Notice of Proposed Rulemaking is not a major rule under Executive Order 12866, we certify it is also not a major rule under SBREFA. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866

We have determined this proposed rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866. This rule will not have an annual effect on the economy of $100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The direct incremental costs employers would incur because of this rule, above business practices required of employers that are applying for permanent alien workers by the current rule, will not amount to $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities. The Department believes any potential increase in applications filed as a result of either employers withdrawing and then filing a corrected application, employers allowing a certification to expire and then filing a new application, or recruitment costs associated with this proposed rule would be more than offset by an anticipated reduction in average processing time, because the Department will not expend resources to process as many fraudulent applications. Aliens will save money if they are not forced to pay employer expenses nor provide kickbacks to certain agents and employers. Any cost savings realized, however, will not be greater than $100 million. This is a significant rulemaking, although not an economically significant one, and has therefore been reviewed by the Office of Management and Budget.

E. Executive Order 13132

This proposed rule will not have a substantial direct effect 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, in accordance with Executive Order 13132, we have determined this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

F. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The collection of information under part 656 is currently approved under OMB control number 1205–0015. This proposed rule does not include a substantive or material modification of that collection of information, because it will not add to or change paperwork requirements for employers applying for permanent labor certification. The only consequence of the proposed amendment eliminating the current practice allowing substitution of alien beneficiaries on applications and approved permanent labor certifications would be to require those relatively few employers that could have availed themselves of the substitution practice to file new applications on behalf of alien beneficiaries. The Department does not anticipate any paperwork burden resulting from the creation of a 45-day validity period for approved certifications, the prohibition on sale, purchase, and barter of applications and labor certifications and on related payments, the ban on changes to applications filed under the new streamlined permanent labor certification procedures, nor the

additional enforcement mechanisms in the NPRM. The Department anticipates an insignificant increase in volume of permanent labor certification applications filed as a result of either employers withdrawing and then filing a corrected application or employers allowing a certification to expire and then filing a new application. In either situation, employers could avoid the need to file additional applications by proofreading and complying with regulatory requirements. The Department invites the public to comment on its Paperwork Reduction Act analysis. Comments should be sent directly to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management Budget, Washington, DC 20503.

H. Assessment of Federal Regulations and Policies on Families

The proposed regulation does not affect family well-being.

I. Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at Number 17.203, "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Employment and training, Enforcement, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

Accordingly, we propose that part 656 of Title 20, Code of Federal Regulations, be amended as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1189(p)(1); 29 U.S.C. 49 *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978; and Title IV, Pub. L. 105–277, 112 Stat. 2681.

2. Add § 656.11 to read as follows:

§ 656.11 Substitutions and modifications to applications.

(a) Substitution or change to the identity of an alien beneficiary is prohibited on any application filed with the Department of Labor for permanent labor certification, whether filed under the current or any prior regulation, and on any resulting certification.

(b) After submission of a permanent labor certification application under this part, requests for modifications to the submitted application will not be accepted.

3. Add § 656.12 to read as follows:

§ 656.12 Improper commerce and payment

The following provisions apply to applications filed under both this regulation and the regulation in effect prior to March 28, 2005, and to any certifications resulting from those applications:

(a) Applications for permanent labor certification and approved labor certifications are not articles of commerce. They may not be sold, bartered, or purchased by individuals or entities. Any evidence that an application for permanent labor certification or an approved labor certification has been sold, bartered, or purchased shall be grounds for investigation under this part or any appropriate Government agency's procedures, denial under § 656.24, revocation under § 656.32, debarment under § 656.31(e), or any combination thereof.

(b) An employer shall not seek or receive payment of any kind for any activity related to obtaining a permanent labor certification. Payment or reimbursement of the employer's attorney's fees or other employer costs related to preparing and filing a permanent labor certification application and obtaining permanent labor certification is prohibited. For purposes of this subsection, payment includes, but is not limited to, monetary payments, wage and employment concessions, and goods and services. Evidence an employer has sought or received payment from any source in connection with an application for permanent labor certification or an approved labor certification shall be grounds for investigation under this part or any appropriate Government agency's procedures, denial under § 656.24, revocation under § 656.32, debarment under § 656.31(e), or any combination thereof.

4. Amend § 656.26 by revising paragraph (a) and adding a new paragraph (c), to read as follows:

§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.

(a) *Request for review.* (1) If a labor certification is denied, or revoked pursuant to § 656.32, or if a debarment is rendered under § 656.31(e), a request for review of the denial, revocation, or debarment may be made to the Board of Alien Labor Certification Appeals by the employer or debarred person or entity by making a request for such an administrative review in accordance with the procedures provided in this paragraph (a). The request for review must be made in accordance with paragraph (a)(2) of this section for denials and revocations or paragraph (a)(3) of this section for debarment.

(2) Request for review of denials and revocations:

(i) Must be sent within 30 days of the date of the determination to the Certifying Officer who denied the application or revoked the certification;

(ii) Must clearly identify the particular labor certification determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the Final Determination.

(3) Request for review of debarment:

(i) Must be sent to the Chief, Division of Foreign Labor Certification within 30 days of the date of the debarment determination;

(ii) Must clearly identify the particular debarment determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the *Notice of Debarment.*

(4) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal argument and only such evidence that was within the record upon which the denial of labor certification, revocation, or debarment determination was based.

* * * * *

(c) *Debarment Appeal File.* Upon the receipt of a request for review of debarment, the Chief, Division of Foreign Labor Certification, immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file(s), and copies of all the written material, such as pertinent parts and pages of surveys and/or reports or documents received from any court, DHS, or the Department of State, upon which the debarment was based.

(2) The Chief, Division of Foreign Labor Certification, must send the

Appeal File to the Board of Alien Labor Certification Appeals, Office of Administrative Law Judges, 800 K Street, NW, Suite 400–N, Washington, DC 20001–8002.

(3) The Chief, Division of Foreign Labor Certification, must send a copy of the Appeal File to the debarred person or entity. The debarred person or entity may furnish or suggest directly to the Board of Alien Labor Certification Appeals the addition of any documentation that is not in the Appeal File, but that was submitted before the issuance of the *Notice of Debarment*. The debarred person or entity must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

5. Amend § 656.30 by: revising paragraphs (a), (b), and (c); and adding a new paragraph (e)(3), to read as follows:

§ 656.30 Validity of and invalidation of labor certifications

(a) *Priority Date.* (1) The filing date for a Schedule A occupation or sheepherders is the date the application was dated by the Immigration Officer.

(2) The filing date, established under § 656.17(c), of an approved labor certification will be used by the Department of Homeland Security and the Department of State as appropriate.

(b) *Expiration of labor certifications.* For certifications resulting from applications filed under this regulation and the regulation in effect prior to March 28, 2005:

(1) An approved permanent labor certification granted on or after [effective date of the final rule] expires if not filed in support of a petition with the Department of Homeland Security within 45 calendar days of the date the Department of Labor granted the certification.

(2) An approved permanent labor certification granted before [effective date of the final rule] expires if not filed in support of a petition with the Department of Homeland Security within 45 calendar days of [effective date of the final rule].

(c) *Scope of validity.* For certifications resulting from applications filed under this regulation and the regulation in effect prior to March 28, 2005:

(1) A permanent labor certification for a Schedule A occupation or sheepherders is valid only for the occupation set forth on the *Application for Alien Employment Certification* (ETA Form 750) or the *Application for Permanent Employment Certification* (ETA Form 9089) and only for the alien named on the original application, unless a substitution was approved prior to [effective date of the final rule]. The certification is valid throughout the United States unless the certification contains a geographic limitation.

(2) A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to [effective date of the final rule]), and the area of intended employment stated on the *Application for Alien Employment Certification* (ETA Form 750) or the *Application for Permanent Employment Certification* (ETA Form 9089).

* * * * *

(e) * * *

(3) A duplicate labor certification shall be issued by the Certifying Officer with the same filing and expiration dates, as described in paragraphs (a) and (b) of this section, as the original approved labor certification.

6. Revise § 656.31 to read as follows:

§ 656.31 Labor certification applications involving fraud, willful misrepresentation, or violations of this part.

The following provisions apply to applications filed under both this regulation and the regulation in effect prior to March 28, 2005, and to any certifications resulting from those applications:

(a) Possible fraud or willful misrepresentation. If the Department discovers an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department will refer the matter to DHS for investigation, and send a copy of the referral to the Department of Labor's Office of Inspector General. DOL may suspend processing of any permanent labor certification application involving such employer, attorney, or agent until completion of any investigation and/or judicial proceedings. If 180 days pass without the filing of a criminal indictment or information, the initiation of judicial proceedings, or receipt of a notification from DHS, DOL OIG, or other appropriate authority that an investigation is being conducted, the Certifying Officer may continue to process some or all of the applications, or may continue the suspension in processing until completion of any investigation and/or judicial proceeding. A Certifying Officer may deny any application for permanent labor certification if the officer finds the application contains false statements, is fraudulent, or was otherwise submitted in violation of the DOL permanent labor certification regulations.

(b) Criminal indictment or information. If DOL learns an employer, attorney, or agent is named in or under investigation connected to a criminal indictment or information in connection with the permanent labor certification program, the processing of any applications related to that employer, attorney, or agent may be halted until the judicial process is completed. Unless the employer is under investigation, the Department must provide written notification to the employer of the suspension in processing.

(c) No finding of fraud or willful misrepresentation. If an employer, attorney, or agent is acquitted of fraud or willful misrepresentation charges, or if such criminal charges are withdrawn or otherwise fail to result in a finding of fraud or willful misrepresentation, the Certifying Officer shall decide each pending permanent labor certification application related to that employer, attorney, or agent on the merits of the application.

(d) Finding of fraud or willful misrepresentation. If an employer, attorney, or agent is found to have committed fraud or willful misrepresentation involving the permanent labor certification program, whether by a court, the Department of State or DHS as referenced in § 656.30(d), or through other proceedings:

(1) Any suspension of processing of pending applications related to that employer, attorney, or agent will terminate.

(2) The certifying officer will decide each such application on the merits, and may deny any such application as provided in § 656.24.

(3) In the case of a pending application involving an attorney or agent who is the subject of a finding of fraud or willful misrepresentation, DOL may notify the employer associated with that application of the finding and require the employer to notify DOL in writing, within 30 days of the notification, of whether the employer will withdraw the application, designate a new attorney or agent, or continue the application without representation. Failure of the employer to respond within 30 days of the notification will result in a denial. If the employer elects to continue representation by the attorney or agent, DOL will suspend processing of affected applications while debarment proceedings are conducted under subsection (e).

(e) *Debarment.* (1) The Chief, Division of Foreign Labor Certification, may issue to an employer, attorney, agent, or any combination thereof, a *Notice of Debarment* from the permanent labor certification program for a reasonable period of no more than three years, based upon any action that was improper or prohibited at the time the action occurred, upon determining the employer, attorney, and/or agent has participated in or facilitated:

(i) The sale, barter, or purchase of permanent labor applications or certifications, or any other action prohibited under § 656.12;

(ii) The provision of false or inaccurate information in applying for permanent labor certification;

(iii) Failure to comply with the terms of the ETA Form 9089 or ETA Form 750;

(iv) Failure to comply in the audit process pursuant to § 656.20;

(v) Failure to comply in the supervised recruitment process pursuant to § 656.21; or

(vi) Conduct resulting in a determination by a court, the DHS or the Department of State of fraud or willful misrepresentation involving a permanent labor certification application, as referenced in § 656.31(d).

(2) The notice shall be in writing, shall state the reason for the debarment finding, the start and end dates of the debarment, and shall identify appeal opportunities under § 656.26. Debarment shall take effect on the start date indicated unless a request for review is filed within the time permitted by § 656.26. DOL will coordinate with DHS and the Department of State regarding any *Notice of Debarment.*

(f) *False Statements.* To knowingly and willingly furnish any false information in the preparation of the *Application for Permanent Employment Certification* (ETA Form 9089) or the *Application for Alien Employment Certification* (ETA Form 750) and any supporting documentation, or to aid, abet, or counsel another to do so is a Federal offense, punishable by fine or imprisonment up to five years, or both under 18 U.S.C. 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. 1546 and 1621.

Signed in Washington, DC, this 6th day of February, 2006.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 06–1248 Filed 2–10–06; 8:45 am]

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Part IV

Department of Housing and Urban Development

Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Department of Defense Appropriations Act, 2006; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5051–N–01]

Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Department of Defense Appropriations Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the allocations for grant funds for Community Development Block Grant (CDBG) disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes the common application and reporting waivers and the common alternative requirements for the grants. Each State receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that State's recovery activities.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense Appropriations Act, 2006 (Public Law 109–148, approved December 30, 2005) (Appropriations Act) appropriates $11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the State and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following application and reporting waivers and alternative requirements are in response to requests from each of the States receiving an allocation under this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**.

Except as described in this Notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the appropriations act, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

Additional Waivers

The Department will respond separately to each State's requests for waivers of provisions not covered in this Notice, after working with the State to tailor the program to best meet the unique disaster recovery needs in its impacted areas.

Allocations

Public Law 109–148 (effective December 30, 2005) provides $11.5 billion of supplemental appropriation for the CDBG program for:

> Necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005.

The conference report (H.R. Rep. No. 109–359) echoes and expands on this direction, stating:

> The conference agreement includes $11.500,000,000 for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and mitigation in communities in any declared disaster area in Louisiana, Mississippi, Alabama, Florida, and Texas related to Hurricanes Katrina, Rita or Wilma. * * *
> The conference agreement emphasizes the requirement that the States with the most impacted and distressed areas in connection with the Gulf of Mexico hurricanes receive priority consideration in the allocation of funds by HUD.

The law further notes:

> That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each State. And that: No state shall receive more than 54 percent of the amount provided under this heading.

Funds allocated are intended by HUD to be used toward meeting unmet housing needs in areas of concentrated distress. "Unmet housing needs" is defined to include, but not be limited to, those of uninsured homeowners whose homes had major or severe damage. "Concentrated distress" is defined as the total number of housing units with major or severe housing damage in counties where 50 percent or more of units had major or severe damage. As provided for in Public Law 109–148, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers.

The allocations are as follows:

State	Disaster	Amount
Alabama	Hurricane Katrina (FEMA–1605–DR)	$74,388,000
Florida	Hurricane Katrina (FEMA–1602–DR), Hurricane Wilma (FEMA–1609–DR)	82,904,000
Louisiana	Hurricane Katrina (FEMA–1603–DR), Hurricane Rita (FEMA–1607–DR)	6,210,000,000
Mississippi	Hurricane Katrina (FEMA–1604–DR)	5,058,185,000
Texas	Hurricane Rita (FEMA–1606–DR)	74,523,000

HUD will invite each grantee named above to submit an Action Plan for Disaster Recovery in accordance with this Notice.

The appropriations statute requires funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery how the use of the grant funds will address long-term recovery and infrastructure restoration. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not disaster-related, or funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

Prevention of Fraud, Abuse, and Duplication of Benefits

The statute also directs the Secretary to:

> Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

To meet this directive, HUD is pursuing four courses of action. First, this Notice includes specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds.

Waiver Justification

This section of the Notice briefly describes the basis for each waiver and related alternative requirements, if any.

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in Public Law 109–148, not to funds provided under the regular CDBG program. These actions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

Application for Allocation

These waivers and alternative requirements streamline the pre-grant process and set the guidelines for the State's application for its allocation. HUD encourages each of the five eligible grantees to submit an Action Plan for Disaster Recovery to HUD within 60 days of the publication date of this Notice.

Overall benefit to low- and moderate-income persons. Pursuant to explicit authority in the appropriations act, HUD is granting an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual State CDBG program. The primary objective of Title I of the Housing and Community Development Act and of the funding program of each grantee is "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." The statute goes on to set the standard of performance for this primary objective at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Since extensive damage to community development and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving the 70 percent overall benefit requirement, leaving the 50 percent requirement, to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD may only provide additional waivers of this requirement if it makes a finding of compelling need. The requirement that each activity meet one of the three national objectives is not waived.

Expanded distribution and direct action. The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly rather than distribute all funds to units of local government are consistent with waivers granted for previous similar disaster recovery cases. HUD believes that, in recommending the Lower Manhattan Development Corporation (LMDC) as a model and in increasing the administrative cap, Congress is signaling its intent that the States under this appropriation also be able to carry out activities directly. Therefore, HUD is waiving program requirements to support this. HUD is also including in this Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and disposition of funds during the grant execution and at closeout.

Consistency with the consolidated plan. HUD is waiving the requirement for consistency with the consolidated plan because the effects of a major disaster usually alter a grantee's priorities for meeting housing, employment, and infrastructure needs. To emphasize that uses of grant funds must be consistent with the overall purposes of the Housing and Community Development Act of 1974, HUD is limiting the scope of the waiver for consistency with the consolidated plan; it applies only until the grantee first updates its consolidated plan priorities following the disaster.

Action Plan for Disaster Recovery. HUD is waiving the CDBG action plan requirements and substituting an Action Plan for Disaster Recovery. This will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Appropriations Act. Where possible, the Action Plan for Disaster Recovery, including certifications, does not repeat common action plan elements the grantee has already committed to carry out as part of its annual CDBG submission. Although a State as the grantee may designate an entity or entities to administer the funds, the State is responsible for compliance with Federal requirements. During the course of the grant, HUD will monitor the State's use of funds *and* its actions for consistency with the Action Plan. The State may submit an initial partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the total grant amount. The State may also amend activities in its Action Plan.

Citizen participation. The citizen participation waiver and alternative requirements will permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG disaster recovery grant funds. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting

citizen comments. Instead, grantees are encouraged to employ innovative methods to communicate with citizens and solicit their views on proposed uses of disaster recovery funds, and to indicate in the Action Plan how it has addressed these views.

Administration limitation. State program administration requirements must be modified to be consistent with the appropriations act, which allows up to five percent of the grant to be used for the State's administrative costs. The provisions at 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap State administration expenditures and require a dollar for dollar match of State funds for administrative costs exceeding $100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the State to exceed the overall planning, management and administrative cap of 20 percent.

Use of Subrecipients

The State CDBG program rule does not make specific provision for the treatment of the entities called "subrecipients" in the CDBG entitlement program. The waiver allowing the state to carry out activities directly creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring that a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice when using subrecipients.

Reporting

HUD is waiving the annual reporting requirement because the Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report to HUD quarterly using the online Disaster Recovery Grant Reporting system, which has just converted to a streamlined, re-engineered, Internet-based format. HUD will use grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, fund draws, and expenditures; and to calculate applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons, and as a basis for risk analysis in determining a monitoring plan.

After HUD reviews each report and accepts a report, the grantee must post the report on a Web site for its citizens. If a grantee chooses, it may use this report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, other HUD monitoring and technical assistance activities undertaken during the quarter, and any significant conclusions related to fraud or abuse of funds or duplication of benefits.

Certifications

HUD is waiving the standard certifications and substituting alternative certifications. The alternative certifications are tailored to CDBG disaster recovery grants and remove certifications and references that are redundant or appropriate to the annual CDBG formula program.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

Pre-Grant Process

1. *General note.* Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, shall apply to the use of these funds.

2. *Overall benefit waiver and alternative requirement.* The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), and 24 CFR 570.484 that 70 percent of funds are for activities that benefit low- and moderate-income persons are waived to stipulate that at least 50 percent of disaster recovery grant funds are for activities that principally benefit low- and moderate-income persons.

3. *Direct grant administration by States and means of carrying out eligible activities.* Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow the State to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to State law, by the recipient through its employees, or through procurement contracts, or through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the State. Activities made eligible under section 105(a)(15) of the Housing and Community Development Act of 1974, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the State or from a unit of general local government.

4. *Consolidated Plan waiver.* Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. These waivers apply only until the time that the grantee first updates the consolidated plan priorities following the disaster.

5. *Citizen participation waiver and alternative requirement.* Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

a. Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication (including prominent posting on the state, local, or other relevant website) must afford citizens, affected local governments and other interested parties a reasonable opportunity to examine the plan or

amendment's contents. Subsequent to publication, the grantee must provide a reasonable time period and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. The grantee's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan.

b. In the action plan, each grantee will specify its criteria for determining what changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. The grantee may modify or substantially amend the action plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. The grantee must notify HUD, but is not required to notify the public, when it makes any plan amendment that is not substantial.

c. The grantee must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of those comments and the grantee's response with the action plan or substantial amendment.

d. The grantee must make the action plan, any substantial amendments, and all performance reports available to the public. HUD recommends posting them on the Internet. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of this grant, the grantee will provide citizens, affected local governments, and other interested parties reasonable and timely access to information and records relating to the action plan and the grantee's use of this grant.

e. The grantee will provide a timely written response to every citizen complaint. Such response will be provided within 15 working days of the receipt of the complaint, if practicable.

6. *Modify requirement for consultation with local governments.* Currently, the statute and regulations require consultation with affected units of local government in the non-entitlement area of the State regarding the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the State consult with all disaster-affected units of general local government, including any CDBG entitlement communities, in determining the use of funds.

7. *Action Plan waiver and alternative requirement.* The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 1003.604, and 24 CFR 91.320 are waived for these disaster recovery grants. Each State must submit to HUD an Action Plan for Disaster Recovery that describes:

a. The effects of the covered disaster, especially in the most impacted areas and populations, and the greatest recovery needs resulting from the covered disaster that have not been addressed by insurance proceeds, other federal assistance or any other funding source;

b. The grantee's overall plan for disaster recovery including:

(i) How the State will promote sound short and long-term recovery planning at the state and local levels, especially land use decisions that reflect responsible flood plain management, removal of regulatory barriers to reconstruction, and prior coordination with planning requirements of other State and Federal programs and entities;

(ii) How the State will encourage construction methods that emphasize high quality, durability, energy efficiency, and mold resistance including how the State will promote enactment and enforcement of modern building codes and mitigation of flood risk where appropriate;

(iii) How the State will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster impacted areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with 24 CFR 91.315(d);

c. Monitoring standards and procedures that are sufficient to ensure program requirements, including non-duplication of benefits, are met and that provide for continual quality assurance, investigation, and internal audit functions, with responsible staff reporting independently to the Governor of the State or, at a minimum, to the chief officer of the governing body of any designated administering entity;

d. A description of the steps the State will take to avoid or mitigate occurrences of fraud, abuse, and mismanagement, especially with respect to accounting, procurement, and accountability, with a description of how the State will provide for increasing the capacity for implementation and compliance of local governments, subrecipients, subgrantees, contractors, and any other entity responsible for administering activities under this grant; and

e. The state's method of distribution. The method of distribution shall include descriptions of the method of allocating funds to units of local government and of specific projects the state will carry out directly, as applicable. The descriptions will include:

(i) When funds are to be allocated to units of local government, all criteria used to select applications from local governments for funding, including the relative importance of each criterion, and including a description of how the disaster recovery grant resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied; and

(ii) When the State will carry out activities directly, the projected uses for the CDBG disaster recovery funds by responsible entity, activity, and geographic area;

(iii) How the method of distribution or use of funds described in accordance with the above subparagraphs will result in eligible uses of grant funds related to long-term recovery from specific effects of the disaster(s) or restoration of infrastructure; and

(iv) Sufficient information so that citizens, units of general local government and other eligible subgrantees or subrecipients will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the State.

f. Required certifications (see the applicable Certifications section of this Notice); and

g. A completed and executed Federal form SF–424.

8. *Allow reimbursement for pre-agreement costs.* The provisions of 24 CFR 570.489(b) are applied to permit a grantee to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster.

9. *Clarifying note on the process for environmental release of funds when a State carries out activities directly.* Usually, a State distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the

grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

10. *Duplication of benefits.* In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. The Appropriations Act stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by the Federal Emergency Management Agency or by the Army Corps of Engineers.

11. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.*

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government in entitlement communities and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to State or Federally recognized Indian tribes. The state is required instead to distribute funds to the most affected and impacted areas related to the consequences of the covered disaster(s) without regard to a local government or Indian tribe status under any other CDBG program.

b. Additionally, because a State grantee under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the State has failed to carry out its certifications so that such basis shall be that the State has failed to carry out its certifications in compliance with applicable program requirements. Also, 24 CFR 570.494 regarding timely distribution of funds is waived. However, HUD expects each State grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

12. *Note that use of grant funds must relate to the covered disaster(s).* In addition to being eligible under 42 U.S.C. 5305(a) or this Notice and meeting a CDBG national objective, the Appropriations Act requires that activities funded under this Notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the hurricanes in communities included in Presidential disaster declarations.

13. *Note on change to administration limitation.* Up to five percent of the grant amount may be used for the State's administrative costs. The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap State administration expenditures and require a dollar for dollar match of State funds for administrative costs exceeding $100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the State to exceed the overall planning. management and administrative cap of 20 percent.

Reporting

14. *Waiver of performance report and alternative requirement.* The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C.12708 and 24 CFR 91.520 are waived. The alternative requirement is that—

a. Each grantee must submit its Action Plan for Disaster Recovery, including performance measures, into HUD's Web-based Disaster Recovery Grant Reporting (DRGR) system. (The signed certfications and the SF–424 must be submitted in hard copy.) As additional detail about uses of funds becomes available to the grantee, the grantee must enter this detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but not limited to) the project name, activity, location, and national objective, funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Web-based DRGR system.

15. *Use of subrecipients.* The following alternative requirement applies for any activity that a state carries out directly by funding a subrecipient:

a. 24 CFR 570.503, except that specific references to 24 CFR parts 84 and 85 need not be included in subrecipient agreements.

b. 570.502(b).

16. *Recordkeeping.* Recognizing that the State may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply: State records. The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

17. *Change of use of real property.* This waiver conforms the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "'unit of general local government or State."

18. *Responsibility for State review and handling of noncompliance.* This change conforms the rule with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The State shall make reviews and audits including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Housing and Community Development Act of 1974, as amended, as modified by this Notice. In the case of noncompliance with these requirements, the State shall take such

actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence. The State shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

19. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165, which expires August 31, 2007. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Certifications

20. *Certifications for state governments, waiver and alternative requirement.* Section 91.325 of title 24 Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

a. The state certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2)(ii).)

b. The state certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

c. The state certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

d. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the State, possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The state certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

f. The state certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

g. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

h. The state certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the nonentitlement, entitlement and tribal areas of the state in determining the method of distribution of funding;

i. The state certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the Gulf Coast hurricanes of 2005 in communities included in Presidential disaster declarations.

(2) With respect to activities expected to be assisted with CDBG disaster recovery funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the amount is expended for activities that benefit such persons during the designated period.

(4) The state will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

j. The state certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

l. The state certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or the state has a plan to increase the capacity of any state grant recipient or administering entity who lacks such capacity.

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55.

n. The state certifies that it will comply with applicable laws.

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Appropriations Act for these grants directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for two consecutive fiscal years. In such

case, the Department shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Dated: February 3, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–1357 Filed 2–9–06; 2:51 pm]

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§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16 [1]	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–056–00050–2)	62.00	Jan. 1, 2005
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004 through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

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