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7–11–05 Monday
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 19, 2005—Session Closed
9:00 a.m.-Noon
Tuesday, August 16, 2005
9:00 a.m.-Noon

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Contents

Federal Register
Vol. 70, No. 131
Monday, July 11, 2005

Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

13 CFR

Proposed Rules:

106.....39667

14 CFR

39 (5 documents).....39639, 39642, 39644, 39647, 39651

97.....39652

17 CFR

Proposed Rules:

36.....39672

37.....39672

38.....39672

39.....39672

40.....39672

20 CFR

Proposed Rules:

416.....39689

23 CFR

Proposed Rules:

630.....39692

26 CFR

1.....39653

Proposed Rules:

1 (2 documents).....39695

28 CFR

Proposed Rules:

16.....39696

33 CFR

100 (2 documents).....39654, 39656

Proposed Rules:

100.....39697

40 CFR

52.....39658

63.....39662

Proposed Rules:

60.....39870

85.....39870

89.....39870

94.....39870

1039.....39870

1065.....39870

1068.....39870

46 CFR

Proposed Rules:

Ch. I.....39699

50 CFR

679.....39664

Proposed Rules:

600.....39700

Rules and Regulations

Federal Register
Vol. 70, No. 131
Monday, July 11, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19795; Directorate Identifier 2004–NM–196–AD; Amendment 39–14181; AD 2005–14–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200 and –300 series airplanes. This AD requires replacing the existing halogen lamps in the cargo compartment light assemblies with new incandescent lamps, and installing warning and identification placards. This AD is prompted by a report of an aft cargo fire during flight. We are issuing this AD to prevent a fire in the cargo compartment.

DATES: This AD becomes effective August 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of August 15, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19795; the directorate identifier for this docket is 2004–NM–196–AD.

FOR FURTHER INFORMATION CONTACT: Clint Jones, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6471; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 777–200 and –300 series airplanes. That action, published in the **Federal Register** on December 3, 2004 (69 FR 70202), proposed to require replacing the existing halogen lamps in the cargo compartment light assemblies with new incandescent lamps, and installing warning and identification placards.

Comments

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

Support for the Proposal

Several commenters support the proposal. One commenter, an airplane operator, estimates that the proposed actions for its fleet would take approximately 6.25 man hours per airplane at a cost of $569. We agree that this cost estimate is in line with the estimate provided in the proposal.

Request To Allow Replacement According to a Specified Standard

One commenter, an airplane operator, agrees with the intent of the proposal, but requests that the proposal be revised to allow operators to use incandescent replacement lamps that meet a certain design specification, rather than those that have a particular part number.

We agree with the commenter; many incandescent lamps are manufactured to industry standards, and would adequately address the unsafe condition. The American National Standards Institute (ANSI) gives specifications for the lamps that include rated voltage, rated life, current or wattage, mean spherical candela, bulb diameter, and base design. All of these specifications are considered critical for lamps that are used in the affected airplanes. We have revised paragraph (f) of the final rule to allow operators the option to use lamps that meet the ANSI standard.

Request To Clarify Part Number

The same commenter requests that we revise the proposal to add known, manufacturer-internal part numbers for the light bulbs listed in the proposal. This suggested change is intended to promote awareness and compliance with the AD.

We agree with the commenter. The airplane manufacturer's service bulletin and the part assembly manufacturer's service bulletin each have a separate part number that refers to the same part, which could cause confusion. We have revised paragraph (g) of the final rule to include both part numbers.

Request To Address Light Bulbs Changed Before Compliance Date of AD

The same commenter requests that we change the proposal to address the modification of the light assembly that would be required should a halogen lamp fail and need replacement prior to the end of the compliance period of the AD. We infer that the commenter is pointing out that any halogen lamp could be replaced with another halogen lamp before operators must replace them all with new incandescent lamps in the entire cargo area.

We agree with the commenter. It is likely that the situation the commenter describes will happen. The change to paragraph (g) described in the above paragraph titled "Request to Clarify Part Number," and the addition of the words "As of 18 months after the effective date of this AD," to that same paragraph, will ensure that no halogen lamps are installed in the cargo ceiling light assemblies after the compliance period of the AD.

Request To Include Additional Lighting Assembly

One commenter, another airplane operator, requests that we include in the proposal a requirement to change the lamp in the airplane's bulk cargo door sill. The commenter points out that this lamp also could be an ignition source. The commenter also is concerned that two different lamp installations and

inventory stocks for the same compartment of the airplane could cause confusion and potential opportunity to mix the bulbs.

We partially agree with the commenter's request. We agree that there could be opportunity to mix lamps if the operator does not follow the placarded directions on the re-worked light assemblies. However, a number of factors will minimize this possibility. First, the lights are placarded, and maintenance personnel should look at the removed part (or lamp) and compare it to the replacement lamp. Second, the illustrated parts catalogue has been updated to show the new lamps and the corresponding installation locations. Third, the lamp intensities and hues are different. Finally, we disagree that the sill light is an ignition source because there is a required cargo net that acts as a barrier and protects the door and sill area; therefore, properly loaded cargo should not come into contact with the cargo door sill light because it is located between the cargo net and the bulk cargo door. We have not changed the final rule in this regard. However, we have revised paragraph (g) of the final rule to clarify that the door sill light is not affected by the requirements of that paragraph.

Suggestion To Use Light-Emitting Diode

Another commenter agrees with the proposal but suggests that high-intensity light-emitting diode (LED) lighting be used rather than incandescent lighting. The commenter points out that LED lighting can create a brighter light than that of incandescent lamps, but operate cooler and more efficiently than halogen or incandescent lamps.

We partially agree with the commenter. We agree with the commenter's assessment of LED technology; LED lighting has been found to be cooler than halogen and brighter than incandescent lamps. We disagree with any requirement to replace halogen lamps with LED lighting. Although the new installation with incandescent lamps does not provide as much light, the installation has been demonstrated and inspected onboard the airplane and has been found to be compliant with Federal Aviation Regulations. We will, however, consider specific proposed alternative methods of compliance for the requirements of this AD as specified in paragraph (h) of this AD. We have not changed the final rule in this regard.

Request To Shorten Compliance Time

Another commenter requests that we reduce the compliance time to less than the proposed 18 months. The commenter suggests the most expeditious replacement schedule possible—as quickly as lamp suppliers can provide the lamps, and the airplane operators can make the replacements. The commenter suggests that the supplier can produce the necessary number of lamps in a shorter time-frame than 18 months. The commenter maintains that operators can replace the lamps without waiting for scheduled maintenance, and that the work can be done during several overnight maintenance actions.

We partially agree with the commenter. We agree with adhering to the most expeditious replacement schedule that is reasonable. We strive to review all risk collectively across the U.S. fleet, and then to reduce that overall risk to acceptable levels. We disagree with a compliance time of less than 18 months for this issue, because an 18-month compliance time currently accomplishes a reduction to the risk of another cargo fire at an accelerated, expeditious schedule. We have not changed the final rule in this regard.

Request To Lengthen Compliance Time

Another commenter, the airplane manufacturer, requests that we change the compliance time from 18 months to 36 months. The commenter notes that 36 months is more appropriate and is conservative from a risk-management standpoint. The commenter further states that a 36-month compliance time would allow airplanes to accomplish the action on the 133 affected U.S.-registered airplanes during regular scheduled maintenance visits instead of requiring a potential unscheduled, and therefore costly, maintenance task. The commenter points out that, in accordance with Section 25.857 ("Cargo compartment classification") of the Federal Aviation Regulations (14 CFR 25.857(c)), the Model 777–200 and 777–300 cargo compartments have smoke detection systems and an approved built-in fire suppression system. The commenter states that these systems would limit damage only to the cargo that initially catches fire. The commenter also states that operators have been notified to maintain clearance between cargo baggage and the ceiling liner in the bulk compartment until the service bulletin is completed. The commenter believes that, with a fleet history of over 7 million flight hours and only one known cargo fire, the risk of an uncontrolled cargo fire is extremely improbable.

We do not agree with the commenter. When we established the compliance time of 18 months, we considered the urgency associated with the unsafe condition, the availability of required parts, and the practical aspects of replacing the lamps within a period or time that corresponds to the normal maintenance schedules of most affected operators. In addition, operators may request approval for an alternative method of compliance according to paragraph (h) of this AD. The request should include an assessment of the effect of the requested change on the unsafe condition addressed by this AD. We have not changed the final rule in this regard.

Request To Remove Manufacturer's Acknowledgement

The same commenter requests that we remove the sentence "the manufacturer has acknowledged this adjustment" from the section in the proposal titled "Differences Between the Proposed AD and the Service Bulletin" in the preamble of the proposal. The commenter points out that this statement implies that the manufacturer has agreed to the shortened compliance time, when it has not agreed with this request.

We acknowledge the commenter's request but the "Differences Between the Proposed AD and the Service Bulletin" section for the NPRM is not reproduced in the final rule. Therefore, there is no change to be made to the final rule. However clarification is necessary. The statement quoted above is not intended to imply agreement on behalf of the manufacturer. The statement is intended to clarify that we contacted the manufacturer and alerted the appropriate individuals that the compliance time in the proposal would differ from that in the service bulletin. The manufacturer responded with a formal letter acknowledging, and not necessarily agreeing with, the 18-month compliance time.

Request To Include Additional Placard

Another commenter requests that the proposal require that operators install a temporary placard stating that no cargo may be loaded against the existing halogen light assemblies. The commenter states that this placard would stay in place until the halogen lamps are replaced, and would be a quick and easy way to alert operators of the halogen lamp hazard.

We disagree with the request to include this additional placard. Operators have already been warned of this hazard through a Boeing Fleet Team Digest article, which was published in the first quarter of 2004. In addition, there are placards associated with the smoke detection system ports in the ceiling cargo bay that caution not to block the ports. Therefore, we have

determined that the intent of this comment is already satisfied. We have not changed the final rule in this regard.

Explanation of Additional Change to Proposal

We have added a reference to Honeywell International Service Bulletin 15–0712–33–0001, dated October 15, 2004, as an additional source of service information for replacing the lamps. This reference was inadvertently omitted from the proposal and is now included as Note 1 of the final rule.

Conclusion

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

Costs of Compliance

There are about 474 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Airplane model	Work hours	Average hourly labor rate	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
777–200 (Group 1)	5	$65	No cost to operators	$325	133	$43,225
777–300 (Group 2)	7	65	No cost to operators	*455	None currently	*0

*The figures in this table would apply if an affected Model 777–300 series airplane is imported and placed on the U.S. Register in the future.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–14–04 Boeing: Amendment 39–14181. Docket No. FAA–2004–19795; Directorate Identifier 2004–NM–196–AD.

Effective Date

(a) This AD becomes effective August 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004.

Unsafe Condition

(d) This AD was prompted by a report of an aft cargo fire during flight. We are issuing this AD to prevent a fire in the cargo compartment.

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.

Lamp Replacement

(f) Within 18 months after the effective date of this AD, replace all halogen lamps in the cargo compartment ceiling light assemblies with new incandescent lamps that have the part number (P/N) in paragraph (f)(1) of this AD or that meet the standard in paragraph (f)(2) of this AD; and install warning and identification placards. Except as provided by paragraph (f)(2) of this AD, do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004.

(1) General Electric (P/N) GE2233 lamp, as referenced in Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004.

(2) Any 28-volt incandescent lamp built to American National Standards Institute (ANSI) 2233 specifications, and whose manufacturer has requested and been assigned the ANSI 2233 designation by the American National Standards Institute.

Note 1: Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004, refers to Honeywell International Service Bulletin 15–0712–33–0001, dated October 15, 2004, as an additional source of service information for replacing the lamps.

Parts Installation

(g) As of 18 months after the effective date of this AD, no person may install a halogen bulb, P/N 9203 (Boeing), or P/N 55–2181–7 (Honeywell), in any airplane cargo ceiling light assembly (excluding the lamp in the airplane's bulk cargo door sill).

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on June 24, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13140 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20733; Directorate Identifier 2005–NM–004–AD; Amendment 39–14179; AD 2005–14–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD requires inspecting to determine the part number of the left and right engine fire handles; and replacing the engine fire handles with engine fire handles having different part numbers if necessary. This AD is prompted by cases of the internal circuit of the engine fire handle failing. We are issuing this AD to prevent failure of the internal circuit of the engine fire handle that could disable the fuel shut-off valves and the discharge of the fire extinguishing agent, which, in the event of a fire, could result in the inability to extinguish a fire.

DATES: This AD becomes effective August 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of August 15, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20733; the directorate identifier for this docket is 2005–NM–004–AD.

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That action, published in the **Federal Register** on March 31, 2005 (70 FR 16447), proposed to require inspecting to determine the part number of the left and right engine fire handles; and replacing the engine fire handles with engine fire handles having different part numbers if necessary.

Comments

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

Request To Allow Installation of Alternative Parts

The commenter asks that the language specified in the proposed AD be changed to allow installation of alternative parts. The commenter states that the proposed AD is objectionable because it specifies part numbers that are to be installed, to the exclusion of other possibly acceptable parts. The commenter notes that 14 CFR 21.303(a), Parts Manufacturing Approval (PMA), provides a legal mechanism for the installation of alternative parts; a rule that mandates only certain parts for installation contravenes existing law and may not be legally enforceable. The commenter adds that although no known PMA alternatives have been identified for the parts that are found defective per this proposed AD, it is still possible that parts now existing, or manufactured in the future, could be legally used in place of those specified in the proposed AD. The commenter states that allowing PMA alternatives can be accomplished by changing paragraph (f) of the proposed AD to add the phrase "or PMA alternatives" to the end of the sentence which identifies the part numbers for installation.

We do not agree. ADs are issued to provide a means of compliance for operators to ensure that the identified unsafe condition is properly addressed, and the service information referenced in this AD identifies the replacement parts necessary to obtain that compliance. It is impossible for us to foresee all the potential means to correct the unsafe condition, including the availability of replacement parts from sources other than the original manufacturer. This is especially true for yet-to-be designed replacement parts. It is our policy to allow the use of alternative parts, which may exist or may not yet be manufactured, in place of the replacement parts specified in the requirements of this AD only after a review of the design data for those parts to verify that the unsafe condition will not be reintroduced. This review is conducted once we receive a request for an alternative method of compliance. Any operator who would like to use an alternate type of engine fire handle may submit a request for approval of an alternative method of compliance, as specified in paragraph (i) of this AD. The request must include data substantiating that an acceptable level of safety would be maintained by use of the alternate type of engine fire handle. No change to the AD is needed in this regard.

Explanation of Change to Applicability

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

Conclusion

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

Costs of Compliance

This AD will affect about 616 airplanes of U.S. registry. The actions would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $80,080, or $130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–14–02 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14179. Docket No. FAA–2005–20733; Directorate Identifier 2005–NM–004–AD.

Effective Date

(a) This AD becomes effective August 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135 and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145–26–0012, Revision 01, dated January 6, 2005; and EMBRAER Service Bulletin 145LEG–26–0003, Revision 01, dated January 6, 2005.

Unsafe Condition

(d) This AD was prompted by cases of the internal circuit of the engine fire handle failing. We are issuing this AD to prevent failure of the internal circuit of the engine fire handle that could disable the fuel shut-off valves and the discharge of the fire extinguishing agent, which, in the event of a fire, could result in the inability to extinguish a fire.

Compliance

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

Inspection

(f) Within 1,000 flight hours or 180 days after the effective date of this AD, whichever is first: Inspect to determine the part number (P/N) of the left and right engine fire handles, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0012, Revision 01, dated January 6, 2005 (for Model EMB–135 and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, except for Model EMB–135BJ airplanes); or EMBRAER Service Bulletin 145LEG–26–0003, Revision 01, dated January 6, 2005 (for Model EMB–135BJ series airplanes); as applicable. Instead of inspecting the left and right engine fire handles, a review of airplane maintenance records is acceptable if the P/Ns of the left and right engine fire handles can be determined conclusively from that review. If left and right engine fire handles, P/Ns 1–7054–1 and 2–7054–1, respectively, are found installed on the airplane, then no further action is required by this paragraph. If any engine fire handle having P/N 1–7054–2 or 2–7054–2 is found installed on the airplane, before further flight, replace the engine fire handle with an engine fire handle having P/N 1–7054–1 or 2–7054–1, as applicable, in accordance with the service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install left or right engine fire handles, P/Ns 1–7054–2 and 2–7054–2, on any airplane.

Credit for Previous Service Bulletin

(h) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–26–0012, dated October 6, 2004; or EMBRAER Service Bulletin 145LEG–26–0003, dated October 6, 2004; as applicable; are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) Brazilian airworthiness directive 2004–10–01, effective October 30, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use EMBRAER Service Bulletin 145–26–0012, Revision 01, dated January 6, 2005; or EMBRAER Service Bulletin 145LEG–26–0003, Revision 01, dated January 6, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these

documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13431 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20243; Directorate Identifier 2004–NM–153–AD; Amendment 39–14185; AD 2005–14–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747–100, –200, –300, and 747SP series airplanes. That AD currently requires certain inspections to find missing or alloy-steel taperlock fasteners (bolts) in the diagonal brace underwing fittings, and corrective actions if necessary. For airplanes with missing or alloy-steel fasteners, that AD also mandates replacement of certain fasteners with new fasteners, which constitutes terminating action for certain inspections. This new AD expands the applicability to include additional airplane models and requires a new inspection to determine fastener material and to find missing or broken fasteners, and related investigative/corrective actions if necessary. This AD is prompted by reports indicating that cracked fasteners made of A286 material were found on airplanes that had only fasteners made of A286 material installed in the area common to the diagonal brace underwing fittings. We are issuing this AD to prevent loss of the underwing fitting load path due to missing or damaged alloy-steel or A286 taperlock fasteners, which could result in separation of the engine and strut from the airplane.

DATES: This AD becomes effective August 15, 2005.

The incorporation by reference of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004, is approved by the Director of the Federal Register as of August 15, 2005.

On August 1, 2001 (66 FR 34094, June 27, 2001), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20243; the directorate identifier for this docket is 2004–NM–153–AD.

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2001–13–06, amendment 39–12286 (66 FR 34094, June 27, 2001). The existing AD applies to certain Boeing Model 747–100, –200, –300, and 747SP series airplanes. The proposed AD was published in the **Federal Register** on February 1, 2005 (70 FR 5066), to continue to require the actions required by the existing AD. The proposed AD would also expand the applicability to include additional airplane models and would require a new inspection to determine fastener material and to find missing or broken fasteners, and related investigative/corrective actions if necessary.

Comments

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

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Increase Initial Inspection Threshold

One commenter requests that we revise paragraph (h)(1) of the proposed AD to increase the initial inspection threshold from 12 months to 18 months after the effective date of the AD for the inspection in that paragraph. The commenter states that this would allow the inspection to be performed during a regularly scheduled C-check.

We agree. Our intent was that the affected fasteners be inspected during a regularly scheduled maintenance visit in which time permits the fuel tank to be opened. We have revised paragraph (h)(1) of this AD to specify a compliance threshold of 18 months after the effective date of the AD.

Request To Clarify Subject Fasteners

One commenter requests that we revise paragraph (h) to clarify that the inspections required by that paragraph apply to the aft-most 10 fasteners in the diagonal brace underwing fitting, not "all fasteners in the diagonal brace underwing fitting," as stated in the proposed AD. We agree and have revised paragraph (h) of this AD accordingly.

Conclusion

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

Costs of Compliance

There are about 739 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed and magnetic inspection (required by AD 2001–13–06) ...	2	None	$130	60	$7,800
Detailed and magnetic inspections (new requirement)	3	None	195	140	27,300

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12286 (66 FR 34094, June 27, 2001) and by adding the following new airworthiness directive (AD):

2005–14–08 Boeing: Amendment 39–14185. Docket No. FAA–2005–20243; Directorate Identifier 2004–NM–153–AD.

Effective Date

(a) This AD becomes effective August 15, 2005.

Affected ADs

(b) This AD supersedes AD 2001–13–06, amendment 39–12286.

Applicability

(c) This AD applies to Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004.

Unsafe Condition

(d) This AD was prompted by reports indicating that cracked fasteners made of A286 material were found on airplanes that had only fasteners made of A286 material installed in the area common to the diagonal brace underwing fittings. We are issuing this AD to prevent loss of the underwing fitting load path due to missing or damaged alloy-steel or A286 taperlock fasteners, which could result in separation of the engine and strut from the airplane.

Compliance

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

Requirements of AD 2001–13–06

Repetitive Inspections

(f) For Boeing Model 747–100, 747–200, 747–300, and 747SP series airplanes equipped with titanium diagonal brace underwing fittings, as identified in Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000: Within 12 months after August 1, 2001 (the effective date of AD 2001–13–06, amendment 39–12286), do a one-time detailed inspection of the diagonal brace underwing fitting at the Number 1 and Number 4 engine pylons to find missing taperlock fasteners (bolts), and a magnetic inspection to find alloy-steel fasteners per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000; or Revision 1, dated April 29, 2004.

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

(1) If no alloy-steel fasteners are found and no fasteners are missing, no further action is required by this paragraph.

(2) If any alloy-steel fasteners are found or any fasteners are missing, before further flight, do an ultrasonic inspection of the alloy-steel fasteners to find damage per Part 2 of the Accomplishment Instructions of the service bulletin.

(i) If no damaged alloy-steel fasteners are found, and no fasteners are missing: Repeat the ultrasonic inspection thereafter at intervals not to exceed 18 months until accomplishment of the terminating action required by paragraph (g) of this AD.

(ii) If any damaged alloy-steel fasteners are found, or any fasteners are missing: Before further flight, do an ultrasonic inspection of all 10 aft fasteners (including non-alloy steel) per Part 2 of the Accomplishment Instructions of the service bulletin. Before further flight, replace damaged and missing fasteners with new fasteners per Part 3 of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (l) of this AD. Thereafter, repeat the inspection of the remaining alloy-steel fasteners at intervals not to exceed 18 months until accomplishment of the terminating action required by paragraph (g) or the optional terminating action specified in paragraph (m) of this AD.

Terminating Action

(g) For Boeing Model 747–100, 747–200, 747–300, and 747SP series airplanes equipped with titanium diagonal brace underwing fittings, as identified in Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000: Within 48 months after August 1, 2001, do the actions required by paragraphs (g)(1) and (g)(2), or (g)(3) of this AD, per Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000; or Revision 1, dated April 29, 2004. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of paragraph (f) of this AD.

(1) Perform an open-hole high frequency eddy current (HFEC) inspection to detect cracks, corrosion, or damage at the bolt hole locations of the aft 10 taperlock fasteners in the diagonal brace underwing fitting at the Number 1 and Number 4 engine pylons per Part 3 of the Accomplishment Instructions of the service bulletin. If any cracking is detected, before further flight, perform applicable corrective actions per the service bulletin, except as provided by paragraph (l) of this AD.

(2) Before further flight: Replace all 10 aft taperlock fasteners with new, improved fasteners per Part 3 of the Accomplishment Instructions of the service bulletin.

(3) Do an ultrasonic inspection to find damaged fasteners per Part 2 of the Accomplishment Instructions of the service bulletin. Before further flight, replace all damaged non-alloy steel and all alloy-steel fasteners with new fasteners per Part 3 of the Accomplishment Instructions of the service bulletin. Do an open-hole HFEC inspection before installation of the new fasteners; if any cracking, corrosion, or damage is found, before further flight, perform applicable corrective actions per the service bulletin, except as provided by paragraph (l) of this AD.

New Requirements of This AD

Inspection for Missing/Broken Fasteners and to Determine Material Type

(h) For the aft 10 taperlock fasteners in the diagonal brace underwing fitting at the Number 1 and Number 4 engine pylons: Perform the inspections in paragraphs (h)(1) and (h)(2) of this AD, as applicable.

(1) For airplanes not identified in paragraph (f) of this AD: Within 18 months after the effective date of this AD, perform a detailed inspection to ensure that all fasteners are installed and unbroken, and a magnetic inspection to detect alloy-steel fasteners, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004.

(2) For all airplanes: Before the initial inspection threshold specified in Section 1.E., Table 1, of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004; or within 18 months after the effective date of this AD; whichever is later; perform detailed and magnetic inspections, as applicable, to detect A286 fasteners in the diagonal brace underwing fitting at the Number 1 and Number 4 engine pylons, as specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004. For the purposes of this AD, an A286 fastener is any fastener to which the magnet is not attracted, and which cannot be conclusively determined to be BACB30NX (TI material) or BACB30US (Inconel material) fasteners.

Ultrasonic Inspection for Damage

(i) For all alloy-steel or A286 fasteners identified during the inspections in accordance with paragraph (h) of this AD: Before further flight, perform an ultrasonic inspection for damage (including, but not limited to, cracking or corrosion) of each alloy-steel and A286 fastener, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004. If any bolt is missing or found damaged during the inspection required by this paragraph: Before further flight, perform an ultrasonic inspection for damage of all 10 subject fasteners, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Doing the actions required by this paragraph within the compliance time specified in paragraph (f) of this AD eliminates the need to do paragraph (f) of this AD.

Undamaged Fastener: Repetitive Inspections or No Further Action

(j) For any fastener that is found to be installed and undamaged during the inspections required by paragraph (i) of this AD, do paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable.

(1) If no damage is found during the inspections required by paragraph (i) of this AD, and all 10 fasteners in the diagonal brace underwing fitting at the Number 1 and Number 4 engine pylons are either BACB30NX or BACB30US fasteners: No further action is required by this AD, though the restrictions of paragraph (n) of this AD, "Parts Installation," apply.

(2) For any undamaged alloy steel fastener: Repeat the ultrasonic inspection specified in paragraph (i) of this AD at intervals not to exceed 18 months, until the actions in paragraph (m) of this AD are done.

(3) For any undamaged A286 fastener: Repeat the ultrasonic inspection specified in paragraph (i) of this AD at intervals not to exceed 8,000 flight cycles, until the actions in paragraph (m) of this AD are done.

Repetitive Ultrasonic Inspections and Corrective Actions

(k) For any missing or damaged fastener found during the inspections required by paragraph (i) or (j) of this AD: Before further flight, install a new, improved fastener in any location where a fastener is missing, and replace any damaged fastener with a new, improved fastener, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004. Do an open-hole HFEC inspection for cracking, corrosion, or damage before installing the new fastener. If any cracking, corrosion, or damage is found: Before further flight, perform applicable corrective actions in accordance with the service bulletin, except as provided by paragraph (l) of this AD.

Repair

(l) If any damage (including but not limited to cracking or corrosion) of the bolt hole that exceeds the limits specified in Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004, is found during any inspection required by this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who the Manager, Seattle ACO, has authorized to make this finding. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(m) Replacement of all alloy steel and A286 fasteners with new, improved fasteners in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004 (including performing an open-hole eddy current inspection for cracking of the fastener holes and repairing, as applicable), constitutes terminating action for the repetitive inspection requirements of this AD.

Parts Installation

(n) For Boeing Model 747–100, 747–200, 747–300, and 747SP series airplanes equipped with titanium diagonal brace underwing fittings, as identified in Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000: As of August 1, 2001, no person may install, on any airplane, a fastener having part number (P/N) BACB30PE() * (); or any other fastener made of 4340, 8740, PH13–8 Mo, or H–11 steel; in the locations specified in this AD.

(o) Except as provided by paragraph (n) of this AD, as of the effective date of this AD no person may install, on any airplane, a fastener having P/N BACB30PE() * (); or any other fastener made of 4340, 8740, PH13–8 Mo, A286, or H–11 steel; in the locations specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously according to AD 2001–13–06, amendment 39–12286 (66

FR 34094, June 27, 2001), are approved as AMOCs for the inspection requirements of this AD only at fastener locations where the AMOC provided for installing either BACB30NX or BACB30US fasteners.

Material Incorporated by Reference

(q) You must use Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000; or Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approves the incorporation by reference of Boeing Alert Service Bulletin 747–57A2312, Revision 1, dated April 29, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 747–57A2312, dated June 15, 2000, as of August 1, 2001 (66 FR 34094, June 27, 2001).

(3) To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13432 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19679; Directorate Identifier 2003–NM–132–AD; Amendment 39–14184; AD 2005–14–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. This AD requires repetitive inspections of the carriage attach fittings on the foreflaps of each wing for cracking and other discrepancies, and corrective actions if necessary. For certain airplanes, this AD also concurrently requires various other actions related to the subject area. This AD also provides for an optional terminating action for the repetitive inspection requirements and for an optional replacement that defers the repetitive inspections. This AD is prompted by reports of damaged or failed outboard foreflaps with a cracked or failed carriage attach fitting of the foreflap sequencing carriage. We are issuing this AD to detect and correct fatigue cracking of the attach fittings of the foreflap carriage of the wings, which could result in partial or complete loss of the foreflap and consequent loss of controllability of the airplane.

DATES: This AD becomes effective August 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of August 15, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19679; the directorate identifier for this docket is 2003–NM–132–AD.

FOR FURTHER INFORMATION CONTACT: Daniel F. Kutz; Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. That action, published in the **Federal Register** on November 24, 2004 (69 FR 68274), proposed to require repetitive inspections of the carriage attach fittings on the foreflaps of each wing for cracking and other discrepancies, and corrective actions if necessary. For certain airplanes, that action also proposed to concurrently require various other actions related to the subject area. That action also proposed an optional terminating action for the repetitive inspection requirements and an optional replacement that defers the repetitive inspections.

Comments

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

Support for Proposed AD

One commenter, the airplane manufacturer, supports the proposed AD.

Request To Revise Applicability

One commenter requests that the applicability of the proposed AD refer to serial numbers (S/N) of the foreflap assembly rather than to the S/Ns of the affected airplanes. The commenter states that flight controls are often swapped from airplane to airplane to accommodate maintenance and overhaul requirements. The commenter believes that tracking the S/N of the foreflap assembly will ensure that all affected parts (including spares) are modified, reworked, or replaced.

We do not agree. The foreflap assembly is part of the type design for the affected Model 727 airplanes. Our general policy is that, when an unsafe condition has been identified, the AD is issued so that it is applicable to the type-certificated airplane, not to an item that is part of the type design. Making the AD applicable to the airplane model ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items, such as a foreflap assembly, that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator. We have made no change in this regard to the AD.

Request To Extend Compliance Time

One commenter requests that the compliance time specified in paragraph (h) of the proposed AD be revised from 3,500 flight cycles to 4,500 flight cycles. The commenter states that the modification instructions in paragraph G. of Part II of the Accomplishment

Instructions of Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972 (referred to in paragraph (k) of the proposed AD as the appropriate source of service information for accomplishing concurrent requirements) involve part replacement, and in order to maintain a C-check schedule, a retrofit program must be put in place. This retrofit program would be costly and time consuming.

We do not agree. The commenter provides no technical justification for extending the compliance time for the inspection required by paragraph (h) of the AD. In developing an appropriate compliance time, we considered the safety issues as well as the recommendations of the airplane manufacturer, and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In light of these items, we have determined that the compliance time of within 3,500 flight cycles after the effective date of this AD in paragraph (h) of this AD is appropriate. However, paragraph (r) of this AD provides affected operators the opportunity to apply for an adjustment of the compliance time if the operator also presents data that justify the adjustment.

Request To Revise Service Bulletin

One commenter requests that Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972, be revised to include figures illustrating all dimensions to ensure accuracy and consistency with existing airplane maintenance manual (AMM) procedures. The commenter notes that in paragraph A.1. of Part I of the Accomplishment Instructions of the service bulletin, Chapter 27–51–0 of the AMM is specified as the source of service information for the "X dimension." The commenter states that the AMM lists the dimension as "X2-X1," but not as "X dimension." The commenter further states that there is no Boeing master AMM, and each operator's AMM is a little different from the other operators' AMMs; therefore, consistency has a big part to play in carrying out the service bulletin instructions.

We do not agree. Chapter 27–51–0 of the AMM does illustrate "X dimension" in multiple locations (figures and tables). It also defines "X1 dimension" as "X dimension" for flaps in the up position and "X2 dimension" as "X dimension" for each flap position other than flaps up. We find no change is necessary to the AD in this regard.

The same commenter also requests that Figure 1 of Boeing Service Bulletin 727–27–133 show the airload support roller in relation to the foreflap track for clarity purposes. The commenter states that illustrating the airload support roller with the track will help operators to better visualize the area while accomplishing paragraph H. of Part I of the Accomplishment Instructions of the service bulletin.

We do not agree. Although additional details in Figure 1 would be helpful to operators, the service bulletin contains the necessary information for accomplishing the required actions. In addition, Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; which is also referenced in this AD as an appropriate source of service information, shows the location of the airload support rollers. Therefore, we have made no change to the AD in this regard.

Changes to Delegation Authority

Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative (AR) for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

In addition, we inadvertently omitted from paragraph (k)(1)(ii) of the proposed AD the following sentence: "For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD." This language was included elsewhere in the proposed AD for accomplishing certain conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an AR for the Boeing DOA Organization who has been authorized by the FAA to make those findings. Therefore, we have revised paragraph (k)(1)(ii) of the AD accordingly.

Conclusion

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

Costs of Compliance

There are about 1,292 airplanes of the affected design in the worldwide fleet. We estimate that 855 airplanes of U.S. registry will be affected by this AD. The average labor rate is $65 per work hour. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

For—	Action	Work hours	Parts cost	Cost
All airplanes	Inspections of the carriage attach fittings	4	None	$222,300, or $260 per airplane, per inspection cycle.
Certain airplanes	Installation of guide blocks	32	Free	$2,080 per airplane.
Certain airplanes	Inspection of foreflap airload roller travel	4	None	$260 per airplane.
Certain airplanes	Modification of the inboard jackscrews on the outboard flap.	4	Free	$260 per airplane.
Certain airplanes	Inspection of the entire track and of the track rib faces.	12	None	$780 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–14–07 Boeing: Amendment 39–14184. Docket No. FAA–2004–19679; Directorate Identifier 2003–NM–132–AD.

Effective Date

(a) This AD becomes effective August 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, as listed in Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of damaged or failed outboard foreflaps with a cracked or failed carriage attach fitting of the foreflap sequencing carriage. We are issuing this AD to detect and correct fatigue cracking of the attach fittings of the foreflap carriage of the wings, which could result in partial or complete loss of the foreflap and consequent loss of controllability of the airplane.

Compliance

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

Inspections

(f) Except as provided by paragraph (o) of this AD: Within 1,000 flight cycles after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight cycles, inspect as specified in paragraphs (f)(1) and (f)(2) of Table 1 of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002. Table 1 is as follows:

TABLE 1.—INSPECTION REQUIREMENTS

Requirements—	Description—
(1) Area to inspect	The two carriage attach fittings on the inboard and outboard foreflaps of each wing.
(2) Type of inspections	(i) A detailed inspection to detect cracks and surface deviations on all edges, surfaces, and lug attachment fastener holes. (ii) A high frequency eddy current (HFEC) inspection to detect cracks at the lug attachment fastener holes.

Crack or Surface Deviation Findings: Replacement

(g) If any crack is detected or if any surface deviation beyond the limits specified in the service bulletin is detected during any inspection required by paragraph (f) of this AD, before further flight, replace the carriage attach fitting with a new, improved fitting or a new fitting having the same part number as the existing fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002.

Measurement and Associated Corrective Action(s)

(h) Within 3,500 flight cycles after the effective date of this AD, inspect for interference between the carriage attach fitting and the carriage lug fitting, and do other related investigative actions by accomplishing all the actions specified in paragraph 3.C. and Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002. Do the actions in accordance with the service bulletin.

(i) If any discrepancy is found during any action required by paragraph (h) of this AD, before further flight, accomplish applicable corrective action(s) (*e.g.*, adding a shim or reworking the carriage attachment lug assembly) in accordance with paragraph 3.C. and Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002. Where the service bulletin specifies to contact the manufacturer if rework of the improved fitting is required: Before further flight, rework in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or in accordance with data meeting the type certification basis of the airplane approved by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the FAA to make such findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD.

Concurrent Requirements

(j) For Model 727 airplanes listed in Boeing 727 Service Bulletin 57–59, Revision 1, dated September 27, 1965: Before or at the same time with the requirements of paragraph (h) of this AD, install guide blocks and bushings in the midflap ribs in accordance with the Accomplishment Instructions of the service bulletin.

(k) For Model 727 airplanes listed in Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972: Before or at the same time with the requirements of paragraph (h) of this AD, do the actions specified in paragraphs (k)(1) and (k)(2) of this AD, as applicable.

(1) For Groups I and II airplanes identified in the service bulletin: Do a one-time inspection of the airload support roller for travel on the foreflap track in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(i) If the airload support roller travels within the limits specified in the service bulletin, modify the control drum of the inboard flap and inboard jackscrews of the outboard flap, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(ii) If the airload support roller travels beyond the limits specified in the service bulletin, repair in accordance with a method approved by the Manager, Seattle ACO, FAA; or in accordance with data meeting the type certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the FAA to make such findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD.

(2) For Group III airplanes identified in the service bulletin: Modify the inboard jackscrews of the outboard flap (*i.e.*, replacing the down stop at the inboard jackscrews of the outboard flap) in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(1) For Model 727 airplanes listed in Boeing 727 Service Bulletin 57–72, dated September 21, 1966: Before or at the same time with the requirements of paragraph (h) of this AD, do the actions specified in paragraphs (l)(1) through (l)(4) of this AD.

(1) Chamfer the upper and lower flanges at the aft end of the foreflap tracks in accordance with the Accomplishment Instructions of the service bulletin.

(2) Do a standard magnetic particle inspection of the entire foreflap tracks for cracks in accordance with the Accomplishment Instructions of the service bulletin. If any crack is detected, before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA; or in accordance with data meeting the type certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the FAA to make such findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD.

(3) Do a general visual inspection of the track rib faces at the front and rear spars to verify if the opening in the spars is flush with or clear of the plane of the rib faces, in accordance with the Accomplishment Instructions of the service bulletin. If the opening is not flush or clear with the plane, before further flight, rework the spar opening in accordance with the Accomplishment Instructions of the service bulletin.

(4) Do a general visual inspection of the head or shank of bolts by securing the foreflap links to the foreflap tracks to verify if they protrude beyond the edge of the track flange in accordance with the Accomplishment Instructions of the service bulletin. If the head or shank of the bolts protrude beyond the edge of the track flange, before further flight, rework in accordance with the Accomplishment Instructions of the service bulletin.

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

(m) For airplanes other than those identified in the service bulletins specified in paragraphs (j) through (l) of this AD: Before or at the same time with the requirements of paragraph (h) of this AD, do an inspection to verify if any of the parts listed in the "Spares Affected" paragraph of each service bulletin referenced in paragraphs (j) through (l) of this AD are installed on the airplane. If any part identified in that paragraph is found installed, before further flight, do the applicable corrective and investigative action(s) specified in paragraphs (j) through (l) of this AD.

Optional Terminating Actions

(n) Replacement of the two carriage attach fittings on the inboard and outboard foreflaps of each wing with new, improved fittings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; and accomplishment of the actions specified in paragraphs (j) through (m) of this AD, as applicable, before or concurrently with the replacement; constitutes terminating action for the requirements of this AD.

Optional Deferral of Inspection

(o) Replacement of the two carriage attach fittings on the inboard and outboard foreflaps of each wing with new fittings having the same part number as the existing fittings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; and accomplishment of the actions specified in paragraphs (j) through (m) of this AD, as applicable, before or concurrently with the replacement; defers the next inspection required by paragraph (f) of this AD for 10,000 flight cycles after the replacement. Thereafter, repeat the inspections required by paragraph (f) of this AD at intervals not to exceed 1,000 flight cycles.

Credit for Previously Accomplished Service Bulletins

(p) Installations accomplished before the effective date of this AD in accordance with Boeing 727 Service Bulletin 57–59, dated September 2, 1965, are acceptable for compliance with the requirements of paragraph (j) of this AD.

(q) Inspections and modifications accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 727–27–133, dated October 7, 1971, are acceptable for compliance with the requirements of paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(r)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an AR for the Boeing DOA Organization who has been authorized by the FAA to make such findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD.

Material Incorporated by Reference

(s) You must use the service bulletins identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972, contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1, 12, 14–18, 27	1	May 9, 1972.
2–11, 13, 19–26, 28	Original	October 7, 1971.

Boeing 727 Service Bulletin 57–59, Revision 1, dated September 27, 1965, contains the following list of effective pages:

Page number	Revision level date shown on page	Date shown on page
1, 4, 6	1	September 27, 1965.
2, 3, 5	Original	September 2, 1965.

The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Boeing Alert Service Bulletin 727–57A0135	3	June 27, 2002.
Boeing Service Bulletin 727–27–133	1	May 9, 1972.
Boeing 727 Service Bulletin 57–59	1	September 27, 1965.
Boeing 727 Service Bulletin 57–72	Original	September 21, 1966.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13434 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21463; Directorate Identifier 2005–CE–30–AD; Amendment 39–14144; AD 2005–12–51]

RIN 2120–AA64

Airworthiness Directives; Rockwell International (Aircraft Specification No. A–2–575 Previously Held by North American and Recently Purchased by Boeing) Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, SNJ–7, and T–6G Airplanes; and Autair Ltd. (Aircraft Specification No. AR–11 Previously Held by Noorduyn Aviation Ltd.) Model Harvard (Army AT–16) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2005–12–51, which was published in the **Federal Register** on June 21, 2005 (70 FR 35519), and applies to Rockwell International (Aircraft Specification No. A–2–575 previously held by North American and recently purchased by Boeing) Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, SNJ–7, and T–6G airplanes; and Autair Ltd. (Aircraft Specification No. AR–11 previously held by Noorduyn Aviation Ltd.) Model Harvard (Army AT–16) airplanes. We incorrectly referenced the docket number as FAA–2005–24163 throughout the document. The correct docket number is FAA–2005–21463. This action corrects the regulatory text.

DATES: The effective date of this AD remains June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aerospace Engineer, FAA, Los Angeles ACO, 3960 Paramount Blvd., Lakewood, CA 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210; e-mail: *fred.guerin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 14, 2005, FAA issued AD 2005–12–51, Amendment 39–14144 (70 FR 35519, June 21, 2005), which applies to Rockwell International (Aircraft Specification No. A–2–575 previously held by North American and recently purchased by Boeing) Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, SNJ–7, and T–6G airplanes; and Autair Ltd. (Aircraft Specification No. AR–11 previously held by Noorduyn Aviation Ltd.) Model Harvard (Army AT–16) airplanes.

We incorrectly referenced the docket number as FAA–2005–24163 throughout the document. The correct docket number is FAA–2005–21463. This action corrects the regulatory text.

This AD requires immediate and repetitive inspections of the inboard and outboard, upper and lower wing attach angles (except for the nose angles) of both wings for fatigue cracks; and, if any crack is found, replacement of the cracked angle with a new angle.

Need for the Correction

This correction is needed to ensure that any comments (any written relevant data, views, or arguments regarding this AD) made by the public are appropriately filed and to eliminate misunderstanding in the field.

Correction of Publication

■ Accordingly, the publication of June 21, 2005 (70 FR 35519), of Amendment 39–14144; AD 2005–12–51, which was the subject of FR Doc. 05–12151, is corrected as follows:

■ Starting on page 35519 through page 35523, replace all references to Docket No. FAA–2005–24163 with Docket No. FAA–2005–21463.

PART 39—[AMENDED]

§ 39.13 [Corrected]

■ On page 35521, in section 39.13 [Amended], in paragraph 2, replace Docket No. FAA–2005–24163 with Docket No. FAA–2005–21463.

■ On page 35523, in section 39.13 [Amended], in paragraph (h), replace Docket No. FAA–2005–24163 with Docket No. FAA–2005–21463.

The effective date remains June 23, 2005.

Issued in Kansas City, Missouri, on July 5, 2005.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13522 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30450; Amdt. No. 3126]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective July 11, 2005. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 11, 2005.

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

For Examination—

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

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

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on July 1, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 4 Aug 2005*

Springdale, AR, Springdale Muni, RNAV (GPS) RWY 18, Amdt 1
Springdale, AR, Springdale Muni, RNAV (GPS) RWY 36, Amdt 1
Ulysses, KS, Ulysses, RNAV (GPS) RWY 17, Amdt 1
Ulysses, KS, Ulysses, RNAV (GPS) RWY 35, Amdt 1
Falls City, NE, Brenner Field, RNAV (GPS) RWY 32, Amdt 1
Kearney, NE, Kearney Muni, RNAV (GPS) RWY 18, Orig
Kearney, NE, Kearney Muni, RNAV (GPS) RWY 36, Amdt 1
Norfolk, NE, Karl Stefan Memorial, RNAV (GPS) RWY 1, Amdt 1
Norfolk, NE, Karl Stefan Memorial, RNAV (GPS) RWY 19, Amdt 1
North Platte, NE, North Platte Rgnl Airport Lee Bird Field, RNAV (GPS) RWY 12, Orig
North Platte, NE, North Platte Rgnl Airport Lee Bird Field, RNAV (GPS) RWY 30, Amdt 1
Scottsbluff, NE, Western Neb. Rgnl/William B Heilig Field, RNAV (GPS) RWY 12, Orig
Scottsbluff, NE, Western Neb. Rgnl/William B Heilig Field, RNAV (GPS) RWY 30, Orig
Scottsbluff, NE, Western Neb. Rgnl/William B Heilig Field, NDB RWY 12, Amdt 8B
Scottsbluff, NE, Western Neb. Rgnl/William B Heilig Field, GPS RWY 30, Orig, CANCELLED
New York, NY, John F Kennedy Intl, RNAV (GPS) RWY 4L, Amdt 1
New York, NY, John F Kennedy Intl, RNAV (GPS) RWY 4R, Amdt 1
New York, NY, John F Kennedy Intl, RNAV (GPS) RWY 22L, Amdt 1
New York, NY, John F Kennedy Intl, RNAV (GPS) RWY 22R, Amdt 1
New York, NY, John F Kennedy Intl, RNAV (GPS) RWY 31R, Amdt 1
New York, NY, John F Kennedy Intl, RNAV (GPS) Z RWY 31L, Amdt 1
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17R, Amdt 2
Oklahoma City, OK, Will Rogers World, ILS OR LOC RWY 17R, Amdt 10
Providence, RI, Theodore Francis Green State, ILS RWY 34, Amdt 10A
Angleton/Lake Jackson, TX, Brazoria County, RNAV (GPS) RWY 17, Amdt 2
Angleton/Lake Jackson, TX, Brazoria County, RNAV (GPS) RWY 35, Amdt 2
Arlington, TX, Arlington Muni, RNAV (GPS) RWY 34, Orig
Arlington, TX, Arlington Muni, VOR/DME RWY 34, Amdt 1
Arlington, TX, Arlington Muni, GPS RWY 34, Amdt 1A, CANCELLED
Arlington, TX, Arlington Muni, VOR/DME RNAV RWY 34, Orig, CANCELLED
Brownwood, TX, Brownwood Regional, RNAV (GPS) RWY 17, Amdt 1
Brownwood, TX, Brownwood Regional, RNAV (GPS) RWY 35, Amdt 1
Houston, TX, Sugar Land Rgnl, RNAV (GPS) RWY 17, Amdt 1
Houston, TX, Sugar Land Rgnl, RNAV (GPS) RWY 35, Amdt 1
Midland, TX, Midland Intl, RNAV (GPS) RWY 28, Amdt 1
Tyler, TX, Tyler Pounds Regional, RNAV (GPS) RWY 4, Amdt 1
Tyler, TX, Tyler Pounds Regional, RNAV (GPS) RWY 22, Amdt 1

** * * Effective 1 Sep 2005*

Coldfoot, AK, Coldfoot, RNAV (GPS)-A, Orig
Coldfoot, AK, Coldfoot, RNAV (GPS) RWY 1, Orig
Coldfoot, AK, Coldfoot, Takeoff Minimums and Textual Departure Procedures, Orig
Shishmaref, AK, Shishmaref, RNAV (GPS) RWY 5, Orig
Shishmaref, AK, Shishmaref, RNAV (GPS) RWY 23, Orig
Shishmaref, AK, Shishmaref, NDB RWY 5, Amdt 1
Shishmaref, AK, Shishmaref, NDB RWY 23, Amdt 1
Atlanta, GA, Cobb County—Mc Collum Field, VOR/DME RWY 9, Amdt 1A
Meade, KS, Meade Muni, NDB RWY 17, Orig, CANCELLED
Middletown, NY, Randall, RNAV (GPS) RWY 8, Orig
Middletown, NY, Randall, RNAV (GPS) RWY 26, Orig
Norman, OK, University of Oklahoma Westheimer, NDB RWY 3, Orig
Norman, OK, University of Oklahoma Westheimer, NDB RWY 35, Orig
Norman, OK, University of Oklahoma Westheimer, NDB RWY 3, Amdt 5E, CANCELLED
Oklahoma City, OK, Will Rogers World, ILS OR LOC RWY 17L, Amdt 1

** * * Effective 27 Oct 2005*

Yuma, AZ, Yuma MCAS-Yuma Intl, VOR RWY 17, Amdt 5A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, VOR/DME OR TACAN–1 RWY 17, Amdt 1B, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, VOR/DME RNAV RWY 21R, Amdt 4A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, ILS RWY 21R, Amdt 5A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 17, Orig-B, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 21R, Orig-A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, Takeoff Minimums and Textual DP, Amdt 2

The FAA published an Amendment in Docket No. 30449, Amdt No. 3125 to Part 97 of the Federal Aviation Regulations (Vol 70, FR No.120, page 36336; dated June 23, 2005) under section 97.33 effective 1 Sep 2005, which is hereby rescinded:

Joplin, MO, Joplin Regional, NDB RWY 13, Amdt 25

The FAA published several Amendments in Docket No. 30449, Amdt No. 3125 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 120, page 36336; dated June 23, 2005) under sections 97.23; 97.29 and 97.33 effective 1 Sep 2005 which are hereby corrected to be effective for 27 Oct 2005:

Yuma, AZ, Yuma MCAS-Yuma Intl, VOR RWY 17, Amdt 5A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, VOR/DME OR TACAN–1 RWY 17, Amdt 1B, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, VOR/DME RNAV RWY 21R, Amdt 4A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, ILS RWY 21R, Amdt 5A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 17, Orig-B, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 21R, Orig-A, CANCELLED
Yuma, AZ, Yuma MCAS-Yuma Intl, Takeoff Minimums and Textual DP, Amdt 2

[FR Doc. 05–13513 Filed 7–8–05; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9207]

RIN 1545–AX93

Assumption of Partner Liabilities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects final regulations (TD 9207) that were published in the **Federal Register** on Thursday, May 26, 2005 (70 FR 30334).

The final regulation relates to the definition of liabilities under section 752 of the Internal Revenue Code.

DATES: This correction is effective on May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Laura Fields (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9207) that are the subject of this correction are under sections 358, 704, 705, 737 and 752 of the Internal Revenue Code.

Need for Correction

As published, TD 9207 contains an error that may prove to be misleading and is in need of clarification.

List of Subject in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ In § 1.752–7(g)(5), paragraph (iii) of the *Example*, the table is revised as follows:

§ 1.752–7 Partnership assumption of partner's § 1.752–7 liability on or after June 24, 2003.

* * * * *

(g) * * *

(5) Examples (i) * * *

(iii) * * *

B'S BASIS IN PROPERTY 1 AFTER SATISFACTION OF LIABILITY

[In millions]

1. Basis in Property 1 after distribution	$3
2. Plus lesser of remaining built-in loss. ($2) or amount paid to satisfy liability ($1)	1
3. Basis in Property 1 after satisfaction of liability	$4

* * * * *

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division Associate Chief Counsel (Procedure and Administration).

[FR Doc. 05–13585 Filed 7–8–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–074]

RIN 1625–AA08

Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Thunder on the Narrows" boat races, a marine event to be held August 6 and August 7, 2005, on the waters of Prospect Bay, near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: This rule is effective from 10:30 a.m. on August 6, 2005, through 6:30 p.m. on August 8, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–074 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Sector Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public interest. The event will begin on August 6, 2005. Because of the danger posed by high-speed powerboats racing in a closed circuit, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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

Background and Purpose

On August 6 and August 7, 2005, the Kent Narrows Racing Association will sponsor the "Thunder on the Narrows" powerboat races, on Prospect Bay, near Kent Island Narrows, Maryland. The event will consist of approximately 75 hydroplanes and jersey speed skiffs racing in heats counter-clockwise around an oval racecourse. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of Prospect Bay near Kent Island Narrows, Maryland. The temporary special local regulations will be enforced from 10:30 a.m. to 6:30 p.m. on August 6, and August 7, 2005. If the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day. The effect of the temporary special local regulations will be to restrict general navigation in the regulated area during the races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

the Department of Homeland Security (DHS).

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

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

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period. The Patrol Commander will allow non-participating vessels to transit the event area between races. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of

a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add a temporary § 100.35-T05–074 to read as follows:

§ 100.35–T05–074 Prospect Bay, Kent Island Narrows, MD.

(a) *Regulated area.* The regulated area is established for the waters of Prospect Bay, adjacent to Kent Island Narrows, Maryland, enclosed by a line drawn between the following points: latitude 38°57′52″ N, longitude 076°14′48″ W, thence southwesterly to latitude 38°58′02″ N, longitude 076°15′05″ W, thence southeasterly to latitude 38°57′38″ N, longitude 076°15′29″ W, thence northeasterly to latitude 38°57′28″ N, longitude 076°15′23″ W, thence to point of origin. All coordinates reference Datum NAD 1983.

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

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

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

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

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

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. to 6:30 p.m. on August 6 and August 7, 2005. If the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day.

Dated: June 26, 2005.

Sally Brice-O'Hara,

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

[FR Doc. 05–13577 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–066]

RIN 1625–AA08

Special Local Regulations for Marine Events; Pamlico River, Washington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the "SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix", a marine event to be held August 5 and August 7, 2005, on the waters of the Pamlico River, near Washington, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Pamlico River during the event.

DATES: This rule is effective from 6:30 a.m. on August 5, 2005 through 5 p.m. on August 8, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–066 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b) (B) the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest. The event will begin on August 5, 2005. Because of the danger posed by high-speed powerboats racing in a closed circuit, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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

Background and Purpose

On August 5 and August 7, 2005, Super Boat International Productions will sponsor the "SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix", on the Pamlico River, near Washington, North Carolina. The event will consist of approximately 40 high-speed powerboats racing in heats along a 5-mile oval course on August 5 and 7, 2005. Preliminary speed trials along a straight one-kilometer course will be conducted on August 5, 2005. Approximately 20 boats will participate in the speed trials. Approximately 100 spectator vessels will gather nearby to view the speed trials and the race. If either the speed trials or races are postponed due to weather, they will be held the next day. During the speed trials and the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Pamlico River near Washington, North Carolina. The temporary special local regulations will be enforced from 6:30 a.m. to 12:30 p.m. on August 5, 2005, and from 11:30 a.m. to 5 p.m. on August 7, 2005. If either the

speed trials or races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day. The effect of the temporary special local regulations will be to restrict general navigation in the regulated area during the speed trials and races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

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

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

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period. The Patrol Commander will allow non-participating vessels to transit the event area between races. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add a temporary § 100.35–T05–066 to read as follows:

§ 100.35–T05–066 Pamlico River, Washington, NC.

(a) *Regulated area.* The regulated area is established for the waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ North, longitude 076°59′23″ West, to Broad Creek Point at latitude 35°29′04″ North, longitude 076°58′44″ West, and bounded on the north by the Norfolk Southern Railroad Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Fort Macon. Designation of Patrol Commander will be made by Commander, Coast Guard Sector North Carolina effective July 29, 2005.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group Fort Macon with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Assignment and approval of Official Patrol will be made by Commander, Coast Guard Sector North Carolina effective July 29, 2005.

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

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

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

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 6:30 a.m. to 12:30 p.m. on August 5, 2005, and from 11:30 a.m. to 5 p.m. on August 7, 2005. If either the speed trials or the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day.

Dated: June 27, 2005.

Sally Brice-O'Hara,

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

[FR Doc. 05–13582 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket # ID–03–003; FRL–7936–1]

Approval and Promulgation of Air Quality Implementation Plan; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions related to open burning and crop residue disposal requirements in Idaho's State Implementation Plan (SIP). The Idaho Department of Environmental Quality (IDEQ) submitted these revisions to EPA for inclusion in the Idaho SIP on May 22, 2003. These revisions were submitted for the purposes of clarifying existing regulations and complying with section 110 and part D of the Clean Air Act.

DATES: This action is effective on August 10, 2005.

ADDRESSES: Copies of the State's SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553–6706.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information

1. What Revisions to the Idaho SIP Are We Approving?

We are approving revisions to the portion of Idaho's State Implementation Plan relating to open burning found at IDAPA 58.01.01.600 through 617. These revisions were submitted to EPA by the Director of the Idaho Department of Environmental Quality on May 22, 2003. EPA proposed to approve these revisions on June 7, 2004. 69 FR 31778. These revisions (1) add a section in Idaho's open burning regulations to clarify that crop residue disposal is an allowable category of open burning, (2) add a section in Idaho's regulations to clarify that IDEQ has the authority to require immediate abatement of open

burning in cases of emergency requiring immediate action to protect human health or safety, and (3) remove section 58.01.01.604—Alternatives to Open Burning, from Idaho's rules. The revisions also include several editorial changes to IDAPA 58.01.01.600 through 617.

2. What Comments Did We Receive on Our Proposal To Approve These Revisions?

We received one comment letter on the June 7, 2004 proposal. This comment letter was from Safe Air for Everyone (SAFE) and was sent on behalf of that organization, the American Lung Association of Idaho/Nevada, and the Idaho Conservation League. In general, the letter opposed the proposed SIP revision. The comments and our response are summarized as follows:

Comment: The commenter indicates there is evidence of severe health impacts from grass residue burning and provides documentation in support of that claim. The information includes copies of an extensive declaration and transcripts from the preliminary injunction hearing for *Safe Air for Everyone* v. *Wayne Meyer, et al.*, that took place between July 10–12, 2002.

Response: EPA is aware of and continues to be concerned about the health and welfare impacts associated with crop residue burning in Idaho and is working with the State Department of Agriculture and the Idaho Department of Environmental Quality to improve Idaho's crop residue burning and smoke management program. Approval of the State's revisions to IDAPA 58.01.01.600 through 617 does not reflect a change in EPA's concern. Rather, EPA believes that the revisions are approvable because they clarify the existing provisions under Idaho law that allow the State to regulate this activity.

Comment: The commenter contends that the existing SIP prohibits the open burning of crop residue and that the State's claim that the revision is simply a clarification of the existing SIP is flawed. The commenter believes that approval of IDAPA 58.01.01.617 would be a drastic relaxation and a modification of a control requirement in effect before November 15, 1990, and that the revision is therefore prohibited under section 193 of the Clean Air Act because the State did not comply with the requirements of that provision. The commenter also argues that the argument that this is not a SIP relaxation would lead to adverse impacts such as allowing crop residue burning during air pollution episodes and would even allow pathological or hazardous wastes to be burned.

Response: The specific revision at IDAPA 58.01.01.01.617 being approved in this action provides: "The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with the Smoke Management and Crop Residue Disposal Act, Chapter 48, Title 22, Idaho Code, and the rules promulgated pursuant thereto, IDAPA 02.06.16, 'Crop Residue Disposal Rules.'" EPA does not believe that Idaho's existing SIP when viewed in its entirety prohibits the burning of crop residue. As discussed below, the addition of IDAPA 58.01.01.617 is not a change or modification of a control requirement in effect before November 15, 1990.

As explained in the proposal, the State has consistently maintained that burning crop residue was never meant to be prohibited by the open burning rules. Provisions allowing the burning of crop residue were initially approved into the Idaho SIP on July 28, 1982. 47 FR 32534. (Section 1–1153.08 of these rules specifically identifies agricultural burning as a category of allowable burning.) As discussed more fully below, Idaho subsequently passed 1985 legislation recognizing burning of agricultural fields and, at the same time, altering the State's approach to field burning regulation. Thereafter, the Idaho Department of Health and Welfare submitted rules reflecting the approach of the 1985 legislation, and EPA approved them on July 23, 1993. 58 FR 39445. (See also docket for summary of state regulatory and EPA approval timeline regarding agricultural burning.) EPA recognizes that the rule language approved on July 23, 1993 reflecting the 1985 approach, does not, on its face, appear to identify crop residue as a category of allowed burning. However, an examination of the State's overall approach to field burning demonstrates that the State has consistently allowed the practice and never intended to prohibit it. It would therefore be unreasonable to conclude that the State intended to ban the burning of crop residue in any of its SIP submissions.

In reaching this conclusion EPA considered such things as the legislative history of Idaho's provisions related to agricultural burning and smoke management (discussed below); the inclusion of field burning in the emissions inventories submitted for the State including the Statewide emission inventory for 1980; Memorandums of Understanding (MOU) to which Idaho is a party describing agricultural burning procedures; the 1994 Kootenai County Interim Air Quality Plan discussing impacts from field burning; correspondence; annual field burning reports; smoke management planning efforts and reports, and PM–10 SIP submittals (*e.g.*, "PM–10 Air Quality Improvement Plan for Sandpoint" (August, 1996) and "Northern Ada County PM–10 SIP Maintenance Plan and Redesignation Request" (September 25, 2002).)

Idaho's legislative history, in particular, demonstrates that the State has consistently allowed the practice of crop residue burning. The State's 1985 Smoke Management Act specifically found that current knowledge supports the practice of burning grass seed fields. "The legislature finds that current knowledge and technology support the practice of burning grass seed fields to control disease, weeds and pests and the practice of burning cereal crop residues where soil has inadequate decomposition capacity. It is the intent of the legislature to promote those agricultural activities currently relying on field burning and minimize any potential effects on air quality. It is further the intent of the legislature that the department shall not promulgate rules and regulations relating to a smoke management plan, but rather that the department cooperate with the agricultural community in establishing a voluntary smoke management program." Idaho Code 39–2301 (1985). Although this legislation was not specifically submitted to EPA as a SIP revision, it was included in a regulatory log as part of the rules submittal package approved on July 23, 1993 and was referenced in other SIP submittals. The 1996 PM–10 Air Quality Improvement Plan for Sandpoint, for instance, refers to the 1985 Smoke Management Act by explaining that "agricultural burning in Kootenai and Benewah Counties is specifically addressed by Idaho Code 39–2301 which establishes a voluntary smoke management program to minimize the effects on air quality. The State law establishes a smoke management advisory board, sets a fee system and establishes the basic framework for a voluntary field burning program * * * ." This reference to agricultural burning in the Sandpoint SIP submittal underscores the State's consistent view that even after approval of Idaho's open burning revisions in 1993, crop residue burning was not prohibited under the open burning provisions. The Sandpoint SIP was approved by EPA on June 26, 2002. 67 FR 43006.

More recently, the Idaho legislature again found that "the current knowledge and technology support the practice of burning crop residue to control disease, weeds, pests and to enhance crop

rotations." Idaho Code Chapter 48 Smoke Management and Crop Residue Disposal, 22–4801 (1999). The Act specifically provides that "The open burning of crop residue grown in agricultural fields shall be an allowable form of open burning when the provisions of this chapter and any rules promulgated pursuant thereto and the environmental protection and health act and any rules promulgated thereto are met and when no other alternatives to burning are available * * *" Idaho Code section 22–4803(1) (1999). The same language remains in the 2003 Smoke Management and Crop Residue Disposal Act. Idaho Code section 22–4801 (2003). Idaho's Crop Residue Disposal Rules are located at IDAPA 02.06.16. Thus, EPA believes that the State has consistently allowed the practice and never intended to prohibit it in its SIP. EPA has determined that the revision to include 58.01.01.617, is therefore consistent with the State's historical approach.[1]

Review of EPA's past involvement in the issue also indicates that EPA understood agricultural burning to be allowed in Idaho and that the SIP does not prohibit it. EPA's acknowledgment that field burning is not prohibited has been documented in numerous ways over the years including, for example: EPA's response to PM10 SIP submittals for specific areas in Idaho (referenced above); EPA's February 2005 testimony before the Idaho State legislature; correspondence such as the February 18, 2004 letter from EPA to ISDA and EPA's other written annual assessments of Idaho's Agricultural Field Burning Program; EPA's participation in burn call decisions; EPA's participation in smoke management activities, such as those associated with the ISDA Crop Residue Disposal Advisory Committee; and Memorandums of Agreement or Memorandums of Understanding, such as the Memorandum of Agreement with the Nez Perce Tribe, IDEQ, ISDA, and EPA relating to Agricultural Smoke Management in the Clearwater Airshed, signed by EPA on October 18, 2002.

[1] The commenter references a 1996 letter from the Idaho Attorney General's Office that indicated that field burning qualifies under the regulations as "prescribed burning" and thus is exempt from the prohibition on open burning. On its face this 1996 letter states that it does not constitute an Official Attorney General Opinion. EPA agrees with the commenter that the crop residue is not "wildlands fuel" and therefore disagrees with the analysis in the 1996 letter. A more recent 2004 letter from the Idaho Attorney General's Office indicated that while the prescribed burning category does not explicitly include crop residue disposal burning, the new section 617 was added to clarify that field burning is allowed and that the addition clarifies rather than relaxes the SIP. EPA agrees with the analysis in this letter.

In sum, EPA believes that approving the proposed SIP revision does not change or alter the existing SIP in Idaho which does not prohibit burning of crop residue. Rather this revision merely recognizes and clarifies that the burning of crop residue is not prohibited under the SIP so long as the burning is conducted in accordance with the Crop Residue Disposal Act and its regulations. It is EPA's position that the addition of IDAPA 58.01.01.617 is not a change or modification of a control requirement in effect before November 15, 1990. Therefore, the requirements of section 193 of the Act are satisfied.

Finally, commenters' concern regarding adverse impacts resulting from crop residue burning during air pollution episodes is unfounded because the SIP would prevent burning in that instance. Additionally, commenters' concern regarding adverse impacts from burning pathological or hazardous wastes is unfounded because the SIP would prevent burning crop residue for that purpose.

Comment: The SIP provision allowing for emergency action to protect public health and safety is illusory and the State does not have the ability or resources to enforce it.

Response: The provision we are approving today, IDAPA 58.01.01.603.03, provides "In accordance with Title 39, Chapter I, Idaho Code, the Department has the authority to require immediate abatement of any open burning in cases of emergency requiring immediate action to protect human health or safety." This provision simply makes clear that in accordance with Title 30, Chapter 1, Idaho Code the Department has the authority to require immediate abatement of open burning in cases requiring immediate action. Specifically, the State emergency authority at Idaho Code section 39–113 provides for the issuance of an order if the director finds that a generalized condition of air pollution exists and that it creates an imminent and substantial endangerment to the public health or welfare constituting an emergency requiring immediate action to protect human health or safety. This emergency authority provision at Idaho Code section 39–113 is part of the SIP and the provision at IDAPA 58.01.01.603.03 approved in this action strengthens the existing SIP authority.

Comment: The commenter maintains that there is no demonstration under CAA section 110(l) that the proposed revision would not interfere with the attainment and maintenance of the NAAQS, and contends the revision would interfere with attainment and maintenance.

Response: The proposed SIP revision is merely a clarification of the existing SIP and does not change or otherwise relax an existing control measure and therefore will not interfere with any applicable requirements concerning attainment and reasonable further progress or other applicable requirement of the Act. EPA believes that the requirement of section 110(l) is satisfied.

Comment: The proposed SIP revision failed to provide for consultation under CAA section 110(a)(2)(M) with local political subdivisions like Bonner County.

Response: Bonner County and other local political subdivisions were provided the opportunity to comment on the proposed SIP revision through the announcement of a public hearing in the State's Idaho Administrative Bulletin. IDEQ held subsequently a public hearing on September 11, 2002.

Comment: The proposal to allow crop residue burning is inconsistent with air toxic requirements.

Response: Section 112 of the Clean Air Act addresses air toxic requirements. Agricultural facilities such as those that engage in crop residue burning are not one of the listed categories of major or area sources of hazardous air pollutant emissions regulated under section 112 of the Clean Air Act. As a result, there are no EPA emission standards under section 112 regulating this activity. Therefore, it is currently impossible for crop residue burning to interfere with an applicable requirement under section 112. We encourage the commenter to work with the State to better address any air toxics associated with crop residue burning.

Comment: The removal of the alternatives requirement in section 58.01.01.604 is "unseemly" and transforms the decision into one in which all that matters is the grower's profits.

Response: EPA agrees that using alternatives to open burning should be encouraged. To that end, EPA continues to support the research and development of alternatives to burning. However, the alternatives provision in IDAPA section 58.01.01.604 is discretionary and the State need not exercise it. Moreover, the State has not, to date, chosen to exercise it. Therefore EPA concludes that removal of this provision does not constitute a relaxation because it is not comparable to the removal of a control measure from a SIP. EPA notes that Idaho has another mechanism to evaluate the use of crop residue burning. Under the 2003 Smoke

Management and Crop Residue Disposal Act, open burning of crop residue is allowed only after the Director of Agriculture determines there are no economically viable alternatives to burning. Idaho Code section 22–4803. Thus, removing the alternatives requirement in IDAPA Section 58.01.01.604 does not change the need for the Director to make an affirmative, defensible decision that there are no economically viable alternatives.

Comment: There is no showing that the revision will not adversely effect reasonable progress towards visibility improvement in Class I areas or that, due to effects from crop residue burning in Canada, the SIP is consistent with United States' obligations under international laws and treaties.

Response: As explained above, the proposed SIP revision does not change or otherwise relax the existing crop residue disposal program or the existing practice in the State of Idaho. Because the program remains unchanged, approval of the SIP revision will not adversely affect reasonable progress towards visibility improvement in Class I areas or conflict with the United States' obligations under international laws and treaties.

Comment: The commenter requests that EPA hold a public hearing on the proposed revision, preferably in Northern Idaho.

Response: The comment received was thorough, fully documented and clearly articulated the concerns of the commenters. EPA has determined that a public hearing is not necessary.

II. Summary of Final Action

EPA is approving all of the revisions to the Rules for the Control of Air Pollution in Idaho, section 58.01.01.600 through section 58.01.01.617, as submitted by IDEQ on May 22, 2003.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 29, 2005.

Daniel D. Opalski,

Acting Regional Administrator, Region 10.

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

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. In § 52.670(c), the table in paragraph (c) is amended by revising the entries for 600 through 603, removing the entry for 604, revising the entries for 606 through 610, 612, 613, 615, 616 and adding the entry for 617 after existing entry 616 to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

IDAHO ADMINISTRATIVE PROCEDURES ACT (IDAPA) CHAPTER 58, RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, PREVIOUSLY CODIFIED AT IDAPA CHAPTER 39 (APPENDIX A.3)

58.01.01—Rules for the Control of Air Pollution in Idaho

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	* *	*	* *	*
600	Rules for Control of Open Burning	3/21/03	07/11/05 [Insert page number where the document begins].	
601	Fire Permits, Hazardous Materials and Liability	3/21/03	07/11/05 [Insert page number where the document begins].	
602	Nonpreemption of Other Jurisdictions	3/21/03	07/11/05 [Insert page number where the document begins].	
603	General Restrictions	3/21/03 5/1/94	07/11/05 [Insert page number where the document begins].	
606	Categories of Allowable Burning	3/21/03	07/11/05 [Insert page number where the document begins].	
607	Recreational and Warming Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
608	Weed Control Fires	5/1/94	07/11/05 [Insert page number where the document begins].	
609	Training Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
610	Industrial Flares	3/21/03	07/11/05 [Insert page number where the document begins].	
*	* *	*	* *	*
612	Landfill Disposal Site Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
613	Orchard Fires	3/21/03 5/1/94	07/11/05 [Insert page number where the document begins].	
*	* *	*	* *	*
615	Dangerous Material Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
616	Infectious Waste Burning	3/21/03	07/11/05 [Insert page number where the document begins].	
617	Crop Residue Disposal	3/21/03	07/11/05 [Insert page number where the document begins].	

* * * * *

[FR Doc. 05–13557 Filed 7–8–05; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0038, FRL–7935–4]

RIN 2060–AK52

National Emission Standards for Hazardous Air Pollutants: Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: We are amending table 1 to subpart B of part 63 to reflect the revised deadlines in a recently amended consent decree. The final rule amendment (and amended consent decree) relates to boilers and hydrochloric acid production furnaces that burn hazardous waste. We are making the amendment by final rule, without prior proposal, because we view the amendment as a technical correction to an existing regulation.

DATES: *Effective Dates:* July 11, 2005.

ADDRESSES: *Docket:* The docket for the final rule amendment is Docket ID No. OAR–2002–0038. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (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 HQ EPA Docket Center, Docket ID No. OAR–2002–0038, 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. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504–05), Research Triangle Park, North Carolina 27711; telephone number (919) 541–5262; fax number (919) 541–5600; e-mail address: *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for public comment because the change is simply a conforming change to be

consistent with a judicial consent decree date change. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Regulated Entities. Categories and entities potentially regulated by this action include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	NAICS [1]	Examples of regulated entities
Industrial/commercial /institutional boilers and process heaters, and hydrochloric acid production furnaces that combust hazardous waste.	327992	Ground or treated mineral and earth manufacturing.
	325	Chemical manufacturers.
	324	Petroleum refiners.
	331	Primary aluminum.
	333	Photographic equipment and supplies.
	488, 561, 562	Sanitary services, N.E.C.[2]
	421	Scrap and waste materials.
	422	Chemical and allied products, N.E.C.[2]
	512, 541, 561, 812	Business services, N.E.C.[2]
	512, 514, 541, 711	Services, N.E.C.[2]
	924	Air, water, and solid waste management.

[1] North American Industry Classification System.
[2] Not elsewhere classified.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. 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, electronic copies of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page at *http://www.epa.gov/ttn/caaa*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendment is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by September 9, 2005. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule amendment may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

I. New Schedule for Part 2 Permit Applications

Section 112(j) of the CAA provides a mechanism for subjecting major sources to emission standards reflecting performance of maximum available control technology (MACT) in the event that EPA fails to issue a MACT standard within the deadlines established in CAA section 112(e). In essence, if EPA fails to issue a timely MACT standard, section 112(j) requires major sources to submit permit applications to the relevant permitting authority. The permitting authority must then establish emission limitations for the source representing the authority's best estimate of what the MACT standard for the source would have been.

On May 30, 2003 (68 FR 32586), EPA issued final rules establishing dates for submitting CAA section 112(j) Part 2 permit applications, and provisions relating to the substance of those applications should they become due. Today's action deals solely with the issue of applicable dates for submitting applications.

Section 112(j) Part 2 permit application submittal dates are codified in subpart B of 40 CFR part 63 by source category. The dates are 60 days after the scheduled MACT rule completion dates for the respective source category established by the consent decree entered in *Sierra Club* v. *Johnson*, no. 1:01CV01537 (D.C.D.C.). In adopting these dates, and in particular by which the dates are tied to consent decree deadlines, we considered the possibility of what would happen if the consent decree deadlines were modified. We stated that if the deadline for promulgation of any MACT standards which appear in the consent decree is extended by the District Court in accordance with the provisions of that decree, we will consider at that time whether any corresponding adjustment in the schedule for section 112(j) Part 2 applications set forth in 40 CFR part 63, subpart B, is necessary and appropriate. We added that if we conclude that a change in the schedule for section 112(j) Part 2 applications is warranted, we will consider the use of expedited procedures. (*See* 68 FR 32594–32595.)

That possibility has now occurred. On March 30, 2005, EPA filed an unopposed motion to modify the consent decree dates for completing MACT standards for two source categories, boilers that burn hazardous waste and hydrochloric acid production furnaces that burn hazardous waste. The court entered its order modifying the decree on April 1, 2005. EPA is now required to complete the MACT standards for these source categories by September 14, 2005, a 90-day extension of the original date.

The current deadline for submitting CAA section 112(j) Part 2 permit applications is August 13, 2005 (60 days from the original rule completion date in the consent decree). We are amending the section 112(j) Part 2 permit application date so that it now follows the revised consent decree date by 60 days. Consequently, the new date in table 1 to subpart B of part 63 is November 14, 2005. The EPA fully expects to meet the revised consent decree deadline (and so informed the court in our extension motion), so we do not anticipate these permit applications having to be submitted.

We are issuing today's amendment as a final rule without prior proposal. We view this as a technical correction to the original rule, since permit applications are tied to consent decree dates (an issue discussed and fully commented upon in the initial rulemaking). Today's rule thus simply conforms the permit application date to the date in the revised consent decree. Under these circumstances, we believe that opportunity for comment is unnecessary, within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reason, we believe there is good cause within the meaning of 5 U.S.C. 553(d)(3) to make this amendment effective immediately.

II. 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 review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

This technical correction 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 also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629. February 16, 1994). In issuing the final rule amendment, EPA has taken necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of the final rule amendment in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This 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 EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 30, 2003 **Federal Register** action.

The Congressional Review Act (CRA), (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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 11, 2005. The EPA will submit a report containing this action 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 rule in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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: July 5, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ 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 B—[Amended]

■ 2. Table 1 to subpart B of part 63 is amended by revising the entry dated "8/13/05" to read as follows:

TABLE 1 TO SUBPART B OF PART 63—SECTION 112(J) PART 2 APPLICATION DUE DATES

Due date	MACT standard
* * * * *	
11/14/05 ..	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters.[5] Hydrochloric Acid Production.[6]
* * * * *	

[FR Doc. 05–13555 Filed 7–8–05; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050325082–5165–02; I.D. 031705E]

RIN 0648–AS90

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 10 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which modifies the gear endorsements under the License Limitation Program (LLP) for the scallop fishery. This action is necessary to allow increased participation by LLP license holders in the scallop fisheries off Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Effective on August 10, 2005.

ADDRESSES: Copies of Amendment 10 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, and on the Alaska Region, NMFS, website at *http://www.fakr.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: Notice of availability for Amendment 10 was

published on March 24, 2005 (70 FR 15063), with comments on the FMP amendment invited through May 23, 2005. NMFS published a proposed rule to implement Amendment 10 on April 13, 2005 (70 FR 19409) which solicited public comments through May 31, 2005. Please refer to the notice of availability and the proposed rule for additional information on Amendment 10. The Secretary of Commerce approved Amendment 10 to the FMP on June 22, 2005.

Under the LLP, two licenses based on the legal landings of scallops harvested only from Cook Inlet during the qualifying period had a gear restriction endorsement that limited allowable gear to a single 6–foot (1.8 m) dredge when fishing for scallops in any area. The seven remaining licenses, based on the legal landings of scallops harvested from areas outside Cook Inlet during the qualifying period, have no gear restriction endorsement but are limited to two 15–foot (4.5 m) dredges under existing state regulations. The purpose of the gear restriction endorsement was to prevent expansion in overall fishing capacity by not allowing relatively small operations in Cook Inlet to increase their fishing capacity.

Amendment 10 and this action change the dredge restriction endorsement from a single 6–foot (1.8 m) dredge to two dredges with a combined width of no more than 20 feet (6.1 m). This change would allow two LLP license holders, who have been restricted to the smaller dredge size, to fish in Federal waters outside Cook Inlet with larger dredges. The North Pacific Fishery Management Council (Council) concluded, because of changes to the fleet after the LLP was implemented, that these two vessels could increase their fishing capacity by using larger dredges without increasing fishing effort to the extent that it would interfere with the total fleet's ability to operate at a sustainable and economically viable level.

Response to Comments

NMFS received 3 letters of public comment on Amendment 10 (March 24, 2005, 70 FR 15063) and the proposed rule (April 13, 2005; 70 FR 19409). These comments are summarized and responded to below. NMFS made no changes to the final rule in response to public comments.

Comment 1: This rule is environmentally reckless because it causes overfishing and scallop dredges damage the environment.

Response: The rule will not cause overfishing of scallops and does not change the amount of scallops the fleet is allowed to catch. Amendment 7 to the scallop FMP established criteria for determining when the scallop fishery is overfished and when overfishing is occurring. Managers prevent overfishing by setting the annual guideline harvest ranges below the overfishing threshold. Additionally, current scallop abundance levels are above the threshold levels for determining whether scallops are overfished.

The impact of scallop dredges on essential fish habitat in the waters off Alaska has been determined to be minimal and temporary, based on the analysis in the Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska (available on the Alaska Region, NMFS, website at *http://www.fakr.noaa.gov/habitat/seis/efheis.htm*). The analysis considered the total area impacted by scallop dredges and the extent to which scallop dredges impact different habitat types. The habitat impacts of the scallop fishery will not change due to this regulatory change because the rule does not increase the amount of scallops harvested, increase harvest intensity, or change the location or timing of the fishery. Therefore, the proposed action will have no effect on essential fish habitat.

Comment 2: Economic hardships of participants in the scallop fishery should not outweigh the environmental interests of the American public.

Response: In recommending Amendment 10, the Council determined, because of changes to the fleet after the LLP was implemented, the two vessels could increase their capacity by using larger dredges without increasing fishing effort to the extent that it would interfere with the total fleet's ability to operate at a sustainable and economically viable level. The Secretary of Commerce agrees with this determination. This determination was based, in part, on an analysis of potential environmental and economic impacts of this action which is presented in the EA/RIR/FRFA (see **ADDRESSES**). As discussed in the EA/RIR/IRFA and the response to Comment 1 (above), this rule will not impact the environment. Thus, this action, which alleviates the economic hardships imposed by the LLP gear restrictions on two LLP holders, is not contrary to the environmental interests of the American public.

Comment 3: This regulation seemingly contravenes the dual Magnuson-Stevens Act goals of utilization and conservation. Provide a clear statement as to how this regulation serves both to conserve the fishery (which is held to be more important than its utilization) and how it complies with National Standard 5 of the Magnuson-Stevens Act.

Response: National Standard 5 states that conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose. National Standard 5 guidelines recognize management measures minimizing the use of economic inputs to harvest the resource increase efficiency. In turn, increased efficiency itself is considered a conservation objective, when "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

This rule partially relieves a gear restriction imposed by the LLP and corrects an inequity imposed by the gear restriction on two LLP holders. The rule is designed to improve the fishing efficiency and economic viability of two LLP license holders by allowing them to use larger dredges than they would be allowed to use without this rule. Hence, the potential overall efficiency of the fishery is marginally increased by allowing two LLP license holders to harvest scallops using larger, more efficient dredges without substantially decreasing the efficiency of all other LLP license holders. This action will not diminish either the ability to biologically conserve the scallop resource or the ability of the scallop fishery to achieve optimum yield. Rather, it may enhance achievement of biological and social objectives of the FMP by providing for more equitable sharing of compliance costs and provide greater ability to consider and adopt further conservation measures that might otherwise have been economically unfeasible for the fishery as a whole. Therefore, economic allocation is not the sole purpose or potential outcome of this action while economic efficiency of the fishery overall is marginally enhanced by this action.

Classification

NMFS has determined that this final rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS took into account the data, views, and comments received during the comment period.

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

The Council prepared an EA/RIR/FRFA for Amendment 10 (see **ADDRESSES**), which describes the

management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. It estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act. The FRFA describes the economic impacts this final rule would have on small entities. A summary of the FRFA follows.

NMFS received no comments on the IRFA and no changes were made to the final rule from the proposed rule.

This rule directly regulates two small entities (i.e., each having annual gross receipts of less than $3.5 million). The two small entities are two LLP license holders that have been restricted to using a single 6–foot (1.8 m) dredge by the gear endorsement on their LLP.

This rule changes the single 6–foot (1.8 m) dredge restriction endorsement in the LLP to a restriction endorsement of two dredges with a combined width of no more than 20 feet (6.1 m). The purpose of Amendment 10 is to relieve a gear restriction adopted under the LLP that placed a disproportionately heavy burden of complying with fisheries conservation measures (such as observer coverage) on a few participants in the fishery, while maintaining the existing overall stability within the scallop fishery. This change will allow the two affected LLP license holders the opportunity to fish in Federal waters, outside Cook Inlet, with larger gear. The Council concluded that, because of changes to the fleet after the LLP was implemented, these two vessels could increase their fishing capacity by using larger dredges without increasing overall fishing effort to the extent that it would interfere with the total fleet's ability to operate at a sustainable and economically viable level. This rule provides the two affected LLP license holders with an opportunity to capture a larger share of the total catch than they would be able to catch otherwise, thus allowing them to offset observer costs and enhance their income. Because the LLP imposes a maximum vessel length restriction on the vessels used by the affected LLP license holders, neither operation has the potential to significantly impact the catch shares of the other operations in the fishery, so economic instability in the scallop fishing industry is not a serious concern. One outcome of implementing the rule is a relatively modest redistribution of earnings and a redeployment of effort from the fleet to the two affected LLP license holders. More importantly, Amendment 10 increases the potential overall efficiency of the fishery by allowing two LLP license holders to harvest scallops using larger, more efficient dredges.

The Council considered the following alternatives to minimize economic impacts of the LLP on small entities.

Alternative 1: This alternative would retain status quo and maintain the 6–foot (1.8 m) dredge restriction endorsement on two LLP licenses.

Alternative 2: This alternative would modify the 6–foot (1.8 m) dredge restriction endorsement to allow LLP licenses with this endorsement to be used in Federal waters outside Cook Inlet with two dredges with a combined width of no more that 16 feet (4.9 m).

Alternative 3: This alternative, the preferred alternative, would modify the 6–foot (1.8 m) dredge restriction endorsement to allow LLP licenses with this endorsement to be used in Federal waters outside Cook Inlet with two dredges with a combined width of no more than 20 feet (6.1 m).

Alternative 4: This alternative would eliminate the 6–foot (1.8 m) dredge restriction endorsement on the two LLP licenses.

The preferred alternative (Alternative 3) most effectively achieves the objectives of the action, while minimizing the potential adverse effects on small entities. That is, none of the other available alternatives place a smaller burden on directly regulated small entities, while fully achieving the Council's and FMP's objectives for this action.

No known Federal rules duplicate, overlap, or conflict with the rule.

This rule would impose no recordkeeping and reporting requirements on affected vessels.

Small Entity Compliance Guide

NMFS will send new LLP licenses with the new gear restriction endorsement to the two LLP license holders directly regulated by the rule as soon as possible after the effective date of the rule. No additional compliance requirements are associated with this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 5, 2005.

Rebecca Lent,

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

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. In § 679.4, paragraph (g)(3)(ii) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(g) * * *

(3) * * *

(ii) The gear specified on a scallop license will be restricted to two dredges with a combined width of no more than 20 feet (6.1 m) in all areas if the eligible applicant was a moratorium permit holder with a Scallop Registration Area H (Cook Inlet) endorsement and did not make a legal landing of scallops caught outside Area H during the qualification period specified in paragraph (g)(2)(iii) of this section.

* * * * *

[FR Doc. 05–13588 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 131
Monday, July 11, 2005

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 106

RIN 3245–AF37

Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities, and Gifts

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Reauthorization and Manufacturing Assistance Act of 2004 requires the U.S. Small Business Administration (SBA or Agency) to promulgate regulations to carry out the Agency's statutory authority to provide assistance for the benefit of small business through activities sponsored with outside entities (for-profit and not-for-profit entities and Federal, state and local government officials or entities) as well as activities solely sponsored by SBA. This proposed rule implements that authority and sets forth minimum requirements for these activities as well as the Agency's solicitation and acceptance of gifts.

DATES: The Agency must receive comments on or before September 9, 2005.

ADDRESSES: You may submit comments, identified by agency name and RIN 3245–AF37, by any of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. E-mail: *robert.gangwere2@sba.gov*. Include RIN 3245–AF37 in the subject line of the message. Fax: (202) 205–6846. Mail or Hand Delivery/Courier: Robert Gangwere, Deputy General Counsel, U.S. Small Business Administration, 409 Third Street, SW., Suite 7200, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert Gangwere, Deputy General Counsel, (202) 205–6642.

SUPPLEMENTARY INFORMATION:

A. Background

As part of its mission to assist small business entrepreneurs, SBA has long provided training and carried out marketing and outreach through SBA-sponsored activities as well as activities conducted in cooperation with:

> Voluntary, business, professional, educational, and other nonprofit organizations, associations and institutions and with other Federal and State agencies
> * * *

Sec. 207(e), Pub. L. 83–163, 67 Stat. 278 (1953). The Agency's statutory authority was later expanded to include for-profit organizations, referred to as cosponsors, thus giving SBA cosponsorship authority. Sec. 59, Pub. L. 98–362, 98 Stat. 431 (1984), amended by Sec. 504 (a), Pub. L. 106–554, 114 Stat. 2763 (2000) (SBA's cosponsorship authority sunsetted in fiscal year 2004). In addition, under section 8(b)(1)(A) of the Small Business Act (Act), SBA has had authority to engage in SBA-sponsored activities (referred to herein as Non-Fee Based SBA-Sponsored Activities) to "provide technical, managerial and informational aids to small business concerns." 15 U.S.C. 637(b).

The Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act) was signed into law on December 8, 2004. Pub. L. 108–447, Division K, 118 Stat. 2809–644 (2004). The statute reauthorized and expanded SBA's cosponsorship authority, provided SBA with authority to conduct and charge fees for certain SBA-sponsored activities (Fee Based SBA-Sponsored Activities), and expanded SBA's authority to use certain gift funds for marketing and outreach activities. The statute also made significant changes to the approval process for outreach activities and gift acceptance. In addition, the Reauthorization Act requires the Agency to issue regulations to carry out Cosponsored and Fee Based SBA-Sponsored Activities.

With the renewal of its cosponsorship authority and the added authority for Fee Based SBA-Sponsored Activities, the Agency now has three major vehicles by which it may provide information, training, and/or conduct marketing and outreach for the benefit of or to small businesses: Cosponsored Activities, Fee Based SBA-Sponsored Activities, and Non-Fee Based SBA-Sponsored Activities.

To facilitate these activities and to implement the recent statutory changes, SBA proposes this rule adding part 106 to title 13 of the Code of Federal Regulations. The proposed regulations define each of these vehicles, identify the statutory authority underlying them, and set forth the minimum requirements applicable to each. In addition, the proposed regulations set forth minimum requirements and the conflict of interest authority for solicitation and acceptance of gifts under certain Agency gift authorities.

B. Section-by-Section Analysis

SBA proposes to implement the amended statutory requirements by adding part 106 to SBA's regulations. Part 106 is divided into five subparts: A, B, C, D and E. Subpart A sets forth the scope of the proposed regulations and provides definitions. The regulatory subparts B, C and D distinguish the three types of activity vehicles and clarify the specific minimum requirements for each vehicle. Subpart B specifically addresses Cosponsored Activities. Subparts C and D, in turn, relate to SBA-Sponsored Activities. To distinguish between the two authorities, SBA is calling one a Fee Based SBA-Sponsored Activity and the other a Non-Fee Based SBA-Sponsored Activity. Subpart C deals with SBA's new statutory authority that allows the Agency to provide assistance for the benefit of small business through Fee Based SBA-Sponsored Activities. Subpart D addresses the Agency's retained authority under section 8(b)(1)(A) of the Act to provide technical and managerial assistance directly to small business concerns through SBA-Sponsored Activities for which the Agency has no authority to charge participant fees. Subpart E relates to the Agency's gift acceptance authorities and sets forth minimum requirements and procedures applicable to SBA.

1. Subpart A: Scope and Definitions

Subpart A contains Sections 106.100 and 101. Section 106.100 states the scope of the proposed regulations. Section 106.101 provides definitions. For clarity, the Agency has defined and distinguished the three major outreach vehicles: Cosponsored Activities, Fee Based SBA-Sponsored Activities and Non-Fee Based SBA-Sponsored

Activities. The terms "Cosponsor," "Cosponsored Activity," and "Cosponsorship Agreement" are familiar terms that have been used by the Agency under its prior cosponsorship authority. The terms have been redefined to the extent required by the expanded authority of the Reauthorization Act. The terms "Fee Based SBA-Sponsored Activity" and "Non-Fee Based SBA-Sponsored Activity" are new terms used to distinguish between the two vehicles available for SBA-Sponsored activities. Written documentation of Fee Based and Non-Fee Based SBA-Sponsored Activities are defined as Fee Based and Non-Fee Based SBA-Sponsored Activity Records. The term "Eligible Entity" is defined in the Reauthorization Act. The definitions of the remaining terms (*i.e.*, Donor, Gift, Responsible Program Official, Participant Fee) are consistent with current Agency policy.

2. Subpart B: Cosponsored Activities

Subpart B proposes five sections relating to SBA's cosponsorship authority. Section 106.200 mirrors the requirements of the Reauthorization Act, which expanded the purpose of Cosponsored Activities from providing training directly to small businesses to providing assistance for the benefit of small business. The Reauthorization Act also requires consultation with the Agency's General Counsel before a Cosponsored Activity is approved. Section 106.200 reiterates the Reauthorization Act and provides that the SBA Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Cosponsored Activities.

Section 106.201 outlines who is eligible to be a Cosponsor. As set forth in the Reauthorization Act, only Eligible Entities may be Cosponsors. The Agency adds a further restriction that SBA may not enter into a Cosponsorship Agreement with an otherwise Eligible Entity if the Administrator, after consultation with the General Counsel, determines that such an agreement would create a conflict of interest. This restriction is consistent with current SBA policy.

Section 106.202 sets forth the minimum requirements applicable to all Cosponsored Activities. Paragraph (a) requires a written Cosponsorship Agreement. The Agency's prior statutory authority mandated a written Cosponsorship Agreement for Cosponsored Activities with for-profit entities. In the proposed regulations the Agency maintains the requirement for a written Cosponsorship Agreement, but for uniformity and better record keeping, broadens the requirement to all Cosponsored Activities, whether or not a for-profit entity is involved.

Paragraph (b) incorporates the statutory requirement in the Reauthorization Act that requires that appropriate recognition be given to SBA and each Cosponsor. As stated in the legislative history to the Reauthorization Act, Congress required that:

> [T]he Administration * * * recognize the co-sponsors of such events but only to the extent of their contributions. No endorsements of the co-sponsors products or services are permitted.
>
> Joint Explanatory Statement, "Congressional Record," H10198 (November 20, 2004).

Paragraph (c) embodies current SBA policy (which was also statutorily mandated, in part, under the Agency's prior cosponsorship authority) by requiring advance approval by SBA for all printed or electronically generated material used to publicize or conduct the cosponsored activities, including the use of a disclaimer. Paragraph (d) also incorporates current SBA policy, which prohibits Cosponsors from making a profit on any Cosponsored Activity.

Paragraph (e) is based upon the Reauthorization Act, which allows the Agency to charge participants a minimal fee to cover the cost of the Cosponsored Activity. The regulation also allows Cosponsors to charge Participant Fees. This is consistent with prior cosponsorship authority and current Agency policy and practice. The second part of paragraph (e) requiring that Participant Fees must be liquidated prior to other sources of funding is also based on current Agency policy.

Paragraph (f) continues the Agency's current practice, required under the prior cosponsorship authority, which states that SBA may not provide a Cosponsor with preexisting lists of small business concerns, otherwise protected by law or policy from disclosure. Paragraph (g) requires written approval of the Cosponsorship Agreement. This paragraph implements in part the limited delegation of authority in the Reauthorization Act and the requirement to consult with the General Counsel.

Section 106.203 provides minimum guidelines as to what provisions must be set forth in a Cosponsorship Agreement. Paragraphs (a)(d) require a written agreement with a narrative description of the activity, a list of the parties' duties and responsibilities, and a proposed budget setting forth the contributions of each Cosponsor, the sources of funding and an estimate of anticipated expenses. Paragraphs (e) and (f) require that each Cosponsor agree in writing that they will not make a profit, that any Participant Fees charged may not exceed anticipated direct costs and that Participant Fees will be liquidated prior to other sources of funding. These provisions embody current Agency policy.

Finally, Section 106.204, implementing the requirements of the Reauthorization Act, establishes that the Administrator has the authority to approve a Cosponsorship Agreement and that such authority may only be re-delegated to the Deputy Administrator, associate administrators and assistant administrators. In the legislative history to the Reauthorization Act, Congress made clear that:

> No personnel located in district or regional offices are permitted to approve cosponsorships. Congress adopted this restriction to ensure close cooperation with the General Counsel of the Administration.
>
> Joint Explanatory Statement, "Congressional Record," H10199 (November 20, 2004).

3. Subpart C: Fee Based SBA-Sponsored Activity

Subpart C addresses SBA's new authority under the Reauthorization Act which allows the Agency to provide assistance for the benefit of small business through SBA-Sponsored Activities whereby the Agency may charge a Participant Fee during activities planned and conducted solely by SBA. 15 U.S.C. 633(h). Section 106.300 reiterates the Reauthorization Act and provides that the Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Fee Based SBA-Sponsored Activities.

Section 106.301 sets forth minimum requirements for Fee Based SBA-Sponsored Activities. For uniformity, these requirements, where possible, mirror the requirements for Cosponsored Activities. Section 106.301 (a) requires a written record of the activity; (b) restricts Participant Fees to anticipated direct costs of the activity; (c) subjects collection of money to U.S. Treasury rules and (d) requires advance written approval.

Section 106.302 sets forth the provisions that are required in a Fee Based Record. Again, many of these are borrowed from current Agency policies and requirements for Cosponsored Activities. SBA proposes paragraph (a) requiring a written narrative description of the activity. SBA proposes paragraph

(b) to document the commitment of the Agency official responsible for the activity to abide by all applicable laws and policies. SBA also requires that all sources and uses of funds be documented in a budget pursuant to paragraph (c), including a provision requiring that no profit be anticipated from the activity and that any Participant Fees charged will not exceed the minimal amount needed to cover the anticipated direct costs. Paragraph (d) addresses the application of any Gifts made in support of the activity and follows current Agency policies.

Finally, Section 106.303, implementing the requirements of the Reauthorization Act, establishes that the Administrator has the authority to approve and sign a Fee Based Record after consultation with the General Counsel (or designee) and that such authority may only be re-delegated to the Deputy Administrator, associate administrators and assistant administrators. This requirement is the same for Cosponsorship Agreements.

4. Subpart D: Non-Fee Based SBA-Sponsored Activity

Unlike subpart C, subpart D does not represent new authority, rather it has been renamed for clarity. Section 106.400 states the authority for SBA to conduct Non-Fee Based SBA-Sponsored Activities.

Section 106.401 sets forth the minimum requirements for Non-Fee Based SBA-Sponsored Activities. Consistent with the requirements for Cosponsored and Fee Based SBA-Sponsored Activities, the regulations require a written record. In addition, in accordance with applicable law, paragraph (b) states that Gifts of cash are subject to SBA policies and U.S. Treasury rules and guidelines. Paragraph (c) requires written approval.

Section 106.402 sets forth the provisions that must be in a Non-Fee Based Record. Again, these track the requirements for Cosponsorship Agreements and Fee Based Records, except a budget is not required. SBA proposes paragraph (a) to require a written narrative description of the activity. SBA proposes paragraph (b) to document the commitment of the Agency official responsible for the activity to abide by all applicable laws and policies. Paragraphs (c) and (d) address the application of any Gifts made in support of the activity.

Finally, Section 106.403 establishes who has authority to approve a Non-Fee Based SBA-Sponsored Activity. Unlike the authority to approve Cosponsored and Fee Based SBA-Sponsored Activities, which authority is dictated by the Reauthorization Act, Agency policy places authority to approve Non-Fee Based SBA-Sponsored Activity with the Responsible Program Official who may be an official in a district or regional office.

5. Subpart E: Gifts

Subpart E has four sections which relate to the Agency's Gift acceptance authorities. Section 106.500 identifies the Agency's multiple Gift acceptance authorities. Section 106.501 sets forth minimum requirements applicable to SBA's solicitation and acceptance of Gifts. SBA proposes Section 106.501 in order to provide a uniform Gift solicitation and acceptance policy for all Gifts regardless of which authority is being used. These minimum requirements include: (a) Use of the Gift in the manner consistent with Donor intent; (b) written documentation of each Gift solicited and/or accepted; (c) a conflict of interest determination; and (d) use of the Agency's designated trust account for all cash Gifts. These provisions simply restate current Agency policies.

Section 106.502 outlines who is authorized to perform a Gift conflict of interest determination. For Gifts accepted under sections 4(g), 8(b)(1)(G), and 7(k)(2) of the Act, the conflict of interest determination must be done by the General Counsel (or designee). 15 U.S.C. 633(g). Current Agency policy requires that this conflict of interest determination be made by appropriately designated counsel in the Office of General Counsel in Headquarters. The conflict of interest determination for Gifts of services or facilities accepted under section 5(b)(9) of the Act may be made by designated disaster counsel.

Finally, Section 106.503 identifies the types of Gifts the Agency may not solicit or accept. This provision was incorporated to provide all SBA employees with a consistent understanding of existing law and Agency policy.

C. Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This regulation 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. Therefore, for the purposes of Executive Order 13132, SBA determines that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

SBA has determined that this proposed rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. In this case, the proposed regulations address the administrative requirements for Agency management of SBA outreach programs. In other words, this proposed rule will not result in the direct regulation of small entities, so no further analysis is required by the RFA. Therefore, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of RFA.

List of Subjects in 13 CFR Part 106

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interests, Small businesses, Intergovernmental relations.

For the reasons stated in the preamble, SBA proposes to add 13 CFR part 106, as follows:

PART 106—COSPONSORSHIPS, FEE AND NON-FEE BASED SBA-SPONSORED ACTIVITIES AND GIFTS

Subpart A—Scope and Definitions

Sec.

Subpart B—Cosponsored Activity

Authority: 15 U.S.C. 633 (g) and (h); 15 U.S.C. 637(b)(1)(A); 15 U.S.C. 637(b)(G).

Subpart A—Introduction and Definitions

§ 106.100 Scope.

The regulations in this part apply to SBA-provided assistance for the benefit of small business through Fee Based SBA-Sponsored Activities or through Cosponsored Activities with Eligible Entities authorized under section 4(h) of the Small Business Act, and to SBA assistance provided directly to small business concerns through Non-Fee Based SBA-Sponsored Activities authorized under section 8(b)(1)(A) of the Small Business Act. The regulations in this part also apply to SBA's solicitation and acceptance of Gifts under certain sections (sections 4(g), 8(b)(1)(G), 5(b)(9) and 7(k)(2)) of the Small Business Act (15 U.S.C. 631 *et seq.*), including Gifts of cash, property, services and subsistence. Under section 4(g) of the Small Business Act, Gifts may be solicited and accepted for marketing and outreach purposes including the cost of promotional items and wearing apparel.

§ 106.101 Definitions.

The following definitions apply to this part. Defined terms are capitalized wherever they appear.

(a) *Cosponsor* means an entity or individual designated in section 106.201 that has signed a written Cosponsorship Agreement with SBA and who actively and substantially participates in planning and conducting an agreed upon Cosponsored Activity.

(b) *Cosponsored Activity* means an activity, event, project or initiative, designed to provide assistance for the benefit of small business as authorized by section 4(h) of the Small Business Act, which has been set forth in an approved written Cosponsorship Agreement. The Cosponsored Activity must be planned and conducted by SBA and one or more Cosponsors. Assistance for purposes of Cosponsored Activity does not include grant or any other form of financial assistance. A Participant Fee may be charged by SBA or another Cosponsor at any Cosponsored Activity.

(c) *Cosponsorship Agreement* means an approved written document (as outlined in sections 106.203–04) which has been duly executed by SBA and one or more Cosponsors. The Cosponsorship Agreement shall contain the parties' respective rights, duties and responsibilities regarding implementation of the Cosponsored Activity.

(d) *Donor* means an individual or entity that provides a Gift, bequest or devise (in cash or in-kind) to SBA.

(e) An *Eligible Entity* is a potential Cosponsor. An Eligible Entity must be a for-profit or not-for-profit entity, or a Federal, State or local government official or entity.

(f) *Fee Based SBA-Sponsored Activity Record* (Fee Based Record) means a written document, as outlined in § 106.302, describing a Fee Based SBA-Sponsored Activity and approved in writing pursuant to § 106.303.

(g) *Fee Based SBA-Sponsored Activity* means an activity, event, project or initiative designed to provide assistance for the benefit of small business, as authorized by section 4(h) of the Small Business Act, at which SBA may charge a Participant Fee. Assistance for purposes of Fee Based SBA-Sponsored Activity does not include grant or any other form of financial assistance. A Fee Based SBA-Sponsored Activity must be planned, conducted, controlled and sponsored solely by SBA.

(h) *Gift* (including a bequest or a device) is the voluntary transfer to SBA of something of value without the Donor receiving legal consideration.

(i) *Non-Fee Based SBA-Sponsored Activity Record* (Non-Fee Based Record) means a written document describing a Non-Fee Based SBA-Sponsored Activity which has been approved pursuant to § 106.403.

(j) *Non-Fee Based SBA-Sponsored Activity* means an activity, event, project or initiative designed to provide assistance directly to small business concerns as authorized by section 8(b)(1)(A) of the Small Business Act. Assistance for purposes of a Non-Fee Based SBA-Sponsored Activity does not include grant or any other form of financial assistance. A Non-Fee Based SBA-Sponsored Activity must be planned, conducted, controlled and sponsored solely by SBA. No fees including Participant Fees may be charged for a Non-Fee Based SBA-Sponsored Activity.

(k) *Participant Fee* means a minimal fee assessed against a person or entity that participates in a Cosponsored Activity or Fee Based SBA-Sponsored Activity and is used to cover the direct costs of such activity.

(l) *Responsible Program Official* is an SBA senior management official from the originating office who is accountable for the solicitation and/or acceptance of a Gift to the SBA; a Cosponsored Activity; a Fee Based SBA-Sponsored Activity; or a Non-Fee Based SBA-Sponsored Activity. If the originating office is a district or branch office, the Responsible Program Official is the district director or their deputy. In headquarters, the Responsible Program Official is the management board member or their deputy with responsibility for the relevant program area.

Subpart B—Cosponsored Activity

§ 106.200 Cosponsored Activity.

The Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Cosponsored Activities pursuant to section 4(h) of the Small Business Act.

§ 106.201 Who may be a Cosponsor?

(a) Except as specified in paragraph (b) of this section, SBA may enter into a Cosponsorship Agreement with an Eligible Entity as defined in § 106.101(e).

(b) SBA may not enter into a Cosponsorship Agreement with an Eligible Entity if the Administrator (or designee), after consultation with the General Counsel (or designee), determines that such agreement would create a conflict of interest.

§ 106.202 What are the minimum requirements applicable to Cosponsored Activities?

While SBA may subject a Cosponsored Activity to additional requirements through internal policy, procedure and the Cosponsorship Agreement, the following requirements apply to all Cosponsored Activities:

(a) Cosponsored Activities must be set forth in a written Cosponsorship Agreement signed by the Administrator (or designee) and each Cosponsor;

(b) Appropriate recognition must be given to SBA and each Cosponsor but shall not constitute or imply an endorsement by SBA of any Cosponsor or any Cosponsor's products or services;

(c) Any printed or electronically generated material used to publicize or conduct the Cosponsored Activity, including any material which has been developed, prepared or acquired by a Cosponsor, must be approved in advance by the Responsible Program Official and must include a prominent disclaimer stating that the Cosponsored Activity does not constitute or imply an endorsement by SBA of any Cosponsor or the Cosponsor's products or services;

(d) No Cosponsor shall make a profit on any Cosponsored Activity. SBA grantees who earn program income on Cosponsored Activities must use that program income for the Cosponsored Activity;

(e) Participant Fee(s) charged for a Cosponsored Activity may not exceed the minimal amount needed to cover the anticipated direct costs of the Cosponsored Activity and must be liquidated prior to other sources of funding for the Cosponsored Activity. If SBA charges a Participant Fee, the collection of the Participant Fees is subject to internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines;

(f) SBA may not provide a Cosponsor with lists of names and addresses of small business concerns compiled by SBA which are otherwise protected by law or policy from disclosure; and

(g) Written approval must be obtained as outlined in § 106.204 of this subpart.

§ 106.203 What provisions must be set forth in a Cosponsorship Agreement?

While SBA may require additional provisions in the Cosponsorship Agreement through internal policy and procedure, the following provisions must be in all Cosponsorship Agreements:

(a) A written statement agreed to by each Cosponsor that they will abide by all of the provisions of the Cosponsorship Agreement, the requirements of this subpart as well the applicable definitions in § 106.100;

(b) A narrative description of the Cosponsored Activity;

(c) A listing of SBA's and each Cosponsor's rights, duties and responsibilities with regard to the Cosponsored Activity;

(d) A proposed budget demonstrating:

(1) The type and source of financial contribution(s) (including but not limited to cash, in-kind, Gifts, and Participant Fees) that the SBA and each Cosponsor will make to the Cosponsored Activity; and

(2) A reasonable estimation of all anticipated expenses;

(e) A written statement that each Cosponsor agrees that they will not make a profit on the Cosponsored Activity; and

(f) A written statement that Participant Fees, if charged, will not exceed the minimal amount needed to cover the anticipated direct costs of the Cosponsored Activity as outlined in the budget and will be liquidated prior to other sources of funding for the Cosponsored Activity.

§ 106.204 Who has the authority to approve and sign a Cosponsorship Agreement?

The Administrator, or upon his/her written delegation, the Deputy Administrator, an associate or assistant administrator, after consultation with the General Counsel (or designee), has the authority to approve each Cosponsored Activity and sign each Cosponsorship Agreement. This authority cannot be re-delegated.

Subpart C—Fee Based SBA-Sponsored Activity

§ 106.300 Fee Based SBA-Sponsored Activity.

The Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Fee-Based SBA-Sponsored Activities pursuant to section 4(h) of the Small Business Act.

§ 106.301 What are the minimum requirements applicable to Fee Based SBA-Sponsored Activities?

While SBA may subject a Fee Based SBA-Sponsored Activity to additional requirements through internal policy and procedure, the following requirements apply to all Fee Based SBA-Sponsored Activities:

(a) A Fee Based Record must be prepared by the Responsible Program Official in advance of the activity;

(b) Any Participant Fees charged will not exceed the minimal amount needed to cover the anticipated direct costs of the activity;

(c) Gifts of cash accepted and the collection of Participant Fees for Fee Based SBA-Sponsored Activities are subject to the applicable requirements in this part, internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines; and

(d) Written approval must be obtained as outlined in § 106.303 of this subpart.

§ 106.302 What provisions must be set forth in a Fee Based Record?

A Fee Based Record must contain the following:

(a) A narrative description of the Fee Based SBA-Sponsored Activity;

(b) A certification by the Responsible Program Official that he or she will abide by the requirements contained in this part, as well as all other applicable statutes, regulations, policies and procedures for Fee Based SBA-Sponsored Activities;

(c) A proposed budget demonstrating:

(1) All sources of funding, including annual appropriations, Participant Fees and Gifts, to be used in support of the Fee Based SBA-Sponsored Activity;

(2) A reasonable estimation of all anticipated expenses, which indicates that no profit is anticipated from the Fee Based SBA-Sponsored Activity; and

(3) A provision stating that Participant Fees, if charged, will not exceed the minimal amount needed to cover the anticipated direct costs of the Fee Based SBA-Sponsored Activity as outlined in the budget;

(d) With regard to any donations made in support of the Fee Based SBA-Sponsored Activity, the Fee Based Record will reflect the following:

(1) SBA will not unnecessarily promote a Donor, or the Donor's products or services;

(2) Each Donor may receive appropriate recognition for its Gift; and

(3) Any printed or electronically generated material recognizing a Donor will include a prominent disclaimer stating that the acceptance of the Gift does not constitute or imply an endorsement by SBA of the Donor or the Donor's products or services.

§ 106.303 Who has the authority to approve and sign a Fee Based Record?

The Administrator, or upon his/her written delegation, the Deputy Administrator, an associate or assistant administrator, after consultation with the General Counsel (or designee), has the authority to approve and sign each Fee Based Record. This authority may not be re-delegated.

Subpart D—Non-Fee Based SBA-Sponsored Activity

§ 106.400 Non-Fee Based SBA-Sponsored Activity.

The Administrator (or designee) may provide assistance directly to small business concerns through Non-Fee Based SBA-Sponsored Activities under section 8(b)(1)(A) of the Small Business Act.

§ 106.401 What are the minimum requirements applicable to a Non-Fee Based SBA-Sponsored Activities?

While SBA may subject Non-Fee Based SBA-Sponsored Activities to additional requirements through internal policy and procedure, the following requirements apply to all Non-Fee Based SBA-Sponsored Activity:

(a) A Non-Fee Based Record must be prepared and approved by the Responsible Program Official in advance of the activity;

(b) Gifts of cash accepted for Non-Fee Based SBA-Sponsored Activities are subject to § 106.500, internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines; and

(c) Written approval must be obtained as outlined in § 106.403.

§ 106.402 What provisions must be set forth in a Non-Fee Based Record?

A Non-Fee Based Record must contain the following:

(a) A narrative description of the Non-Fee Based SBA-Sponsored Activity;

(b) A certification by the Responsible Program Official that he or she will abide by the requirements contained in this part, as well as all other applicable statutes, regulations, policies and procedures for Non-Fee Based SBA-Sponsored Activities;

(c) If applicable, a list of Donors supporting the activity; and

(d) With regard to any donations made in support of a Non-Fee Based SBA-Sponsored Activity, the Non-Fee Based Record will reflect the following:

(1) SBA will not unnecessarily promote a Donor, or the Donor's products or services;

(2) Each Donor may receive appropriate recognition for its Gift; and

(3) Any printed or electronically generated material recognizing a Donor will include a prominent disclaimer stating that the acceptance of the Gift does not constitute or imply an endorsement by SBA of the Donor, or the Donor's products or services.

§ 106.403 Who has the authority to approve and sign a Non-Fee Based Record?

The appropriate Responsible Program Official, after consultation with the designated legal counsel, has authority to approve and sign each Non-Fee Based Record.

Subpart E—Gifts

§ 106.500 What is SBA's Gift authority?

This section covers SBA's Gift acceptance authority under sections 4(g), 8(b)(1)(G), 5(b)(9) and 7(k)(2) of the Small Business Act.

§ 106.501 What minimum requirements are applicable to SBA's solicitation and/or acceptance of Gifts?

While SBA may subject the solicitation and/or acceptance of Gifts to additional requirements through internal policy and procedure, the following requirements must apply to all Gift solicitations and/or acceptances under the authority of the Small Business Act sections cited in § 106.500:

(a) SBA is required to use the Gift (whether cash or in-kind) in a manner consistent with the original purpose of the Gift;

(b) There must be written documentation of each Gift solicitation and/or acceptance signed by an authorized SBA official;

(c) Any Gift solicited and/or accepted must undergo a determination, prior to solicitation of the Gift or prior to acceptance of the Gift if unsolicited, of whether a conflict of interest exists between the Donor and SBA; and

(d) All cash Gifts donated to SBA under the authority cited in § 106.500 must be deposited in an SBA trust account at the U.S. Department of the Treasury.

§ 106.502 Who has authority to perform a Gift conflict of interest determination?

(a) For Gifts solicited and/or accepted under sections 4(g), 8(b)(1)(G), and 7(k)(2) of the Small Business Act, the General Counsel, or designee, must make the final conflict of interest determination. No Gift shall be solicited and/or accepted under these sections of the Small Business Act if such solicitation and/or acceptance would, in the determination of the General Counsel (or designee), create a conflict of interest.

(b) For Gifts of services and facilities solicited and/or accepted under section 5(b)(9), the conflict of interest determination may be made by designated disaster legal counsel.

§ 106.503 Are there types of Gifts which SBA may not solicit and/or accept?

Yes. SBA shall not solicit and/or accept Gifts of or for (or use cash Gifts to purchase or engage in) the following:

(a) Alcohol products;

(b) Tobacco products;

(c) Pornographic or sexually explicit objects or services;

(d) Gambling (including raffles and lotteries);

(e) Parties primarily for the benefit of Government employees; and

(f) Any other product or service prohibited by law or policy.

Dated: June 29, 2005.

Hector V. Barreto,

Administrator.

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BILLING CODE 8025–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 36, 37, 38, 39 and 40

Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: On August 10, 2001, the Commodity Futures Trading Commission ("Commission") published final rules implementing the provisions of the Commodity Futures Modernization Act of 2000 ("CFMA") relating to trading facilities.[1] The amendments proposed herein are intended to clarify and codify acceptable practices under the rules for trading facilities, based on the Commission's experience over the intervening four years in applying those rules, including the adoption of several amendments to the original rules over the same period. The proposed amendments also would make various technical corrections and conforming amendments to the rules.

In addition, the proposed amendments would revise the application and review process for registration as a derivatives clearing organization ("DCO") by eliminating the presumption of automatic fast-track review of applications and replacing it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Commodity Exchange Act ("CEA" or "Act"). In lieu of the current 60-day automatic fast-track review, the Commission is proposing to permit applicants to request expedited review

[1] 66 FR 42256, August 10, 2001.

and to be registered as a DCO by affirmative Commission action not later than 90 days after the Commission receives the application.

DATES: Comments must be received by September 9, 2005.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202–418–5521 or, by e-mail to *secretary@cftc.gov*. Reference should be made to "Proposed Clarifying Amendments for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications."

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel (telephone 202–418–5041, e-mail *dheitman@cftc.gov*), Division of Market Oversight, or Lois Gregory, Special Counsel (telephone 202–418–5521, e-mail *lgregory@cftc.gov*), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The CFMA amended the Commodity Exchange Act (the "Act") to profoundly alter federal regulation of commodity futures and option markets. The new statutory framework created by the CFMA established two categories of markets subject to Commission regulatory oversight, designated contract markets ("DCMs") and registered derivatives transaction execution facilities ("DTEFs"), and two categories of exempt markets, exempt boards of trade ("EBOTs") and exempt commercial markets ("ECMs"). The original rules applicable to these trading facilities [2] established administrative procedures necessary to implement the CFMA, interpreted certain of the CFMA's provisions, and provided guidance on compliance with various of the CFMA's requirements. In addition, the Commission, under the general exemptive authority of section 4(c) of the Act, in a limited number of instances provided relief from, or greater flexibility than, the CFMA's provisions.

In addition, over the four years during which these new rules for trading facilities have been in effect, they have been amended several times.[3] The amendments proposed herein are intended to clarify and codify acceptable practices under the Commission's rules for trading facilities, as amended, based on the Commission's experience in applying those rules over the last four years. The proposed amendments also would make a number of technical and clarifying corrections and conforming amendments to enhance the consistency and clarity of the rules.

It should also be noted that the Commission has provided information that may be helpful to those subject to the rules for trading facilities on its Web site at *http://www.cftc.gov*. In particular, the website includes charts setting out information that may be helpful in: (1) Complying with the registration criteria as a DTEF (*see* Appendix A to part 37); (2) complying with the designation criteria as a DCM (*see* Appendix A to part 38); and (3) complying with the requirements for designation of physical delivery futures contracts (*see* Appendix A to part 40—Guideline No. 1). While these charts are not intended to be used as mandatory checklists, they may provide helpful guidance to those subject to the regulations governing trading facilities.

In addition, the Commission is proposing to revise the application and review procedures for registration as a DCO. Specifically, the Commission is proposing to eliminate the presumption of automatic fast-track review of applications and replace it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. In lieu of the automatic fast-track review (under which applicants were deemed to be registered as DCOs 60 days after receipt of an application), the Commission is proposing to permit applicants to request expedited review and to be registered as a DCO by the Commission not later than 90 days after the date of receipt of the application. The Commission is also proposing, among other things, to provide that review under the expedited review procedures may be terminated if it appears that the application is materially incomplete, raises novel or complex issues that require additional time for review, or has undergone substantive amendment or supplementation during the review period. The Commission is proposing these amendments based upon its experience in processing applications and in light of administrative practices that have been implemented since the rules were first adopted. These amendments would establish procedures substantially similar, where appropriate, to those recently amended in parts 37 and 38 for processing applications for registration of derivatives transaction execution facilities and contract market designation, respectively.[4]

II. The Proposed Amendments

A. Part 36—Exempt Markets

Sections 36.2(b) and 36.3(a) would be amended by deleting the reference to "hard copy" in the provisions requiring trading facilities operating as EBOTs and ECMs, respectively, to notify the Commission. In order to simplify and modernize the notification process, the amended rules would require that such notifications may only be filed electronically. Similar amendments are proposed in other sections requiring notifications or filings with the Commission, so that under the amended rules, all formal filings from ECMs, EBOTs, DTEFs, DCMs and DCOs must be filed electronically.

Section 36.2(c)(2), relating to market data dissemination for EBOTs, would be revised. Sections 2(h)(4)(D) and 5d(d) of the Act include similar language requiring ECMs and EBOTs, respectively, to daily disseminate certain basic trading information in the event either market becomes a significant source of price discovery for the underlying cash market for any commodity traded on the ECM or EBOT. The previously noted amendments to the rules applicable to ECMs [5] established clear procedures for ECMs to follow in complying with the price discovery/price dissemination requirement, by: (1) Providing criteria for making a price discovery determination; (2) requiring ECMs that meet those criteria and thus are performing a price discovery function to inform the Commission; (3) establishing procedures for the Commission to make a formal price discovery determination; (4) setting out the types of information

[2] *Id.*

[3] *See*, for example: Regulation To Restrict Dual Trading in Security Futures Products, 67 FR 11223 (March 15, 2002); Changes in Divisional Structure and Delegations of Authority, 67 FR 62350 (October 7, 2002); Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations, 67 FR 62873 (October 9, 2002); Exempt Commercial Markets, 69 FR 43285 (July 20, 2004); Confidential Information and Commission Records and Information, 69 FR 67503 (November 18, 2004); and Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market, 69 FR 67811 (November 22, 2004).

[4] 69 FR 67811, November 22, 2004.

[5] 69 FR 43285 (July 20, 2004).

an ECM that serves a price discovery function must disseminate; and (5) establishing procedures for modifying a price discovery determination.

The proposed rules would amend § 36.2(c)(2) to implement price discovery/price dissemination rules for EBOTs that closely parallel the price discovery/price dissemination rules currently applicable to ECMs. The wording of the Act's price discovery/price dissemination provision for EBOTs is substantially similar, although not identical, to the provision applicable to ECMs. However, both provisions are identical in their ultimate purpose. Furthermore, the regulatory provision applicable to ECMs has recently gone through the public comment process. Finally, parallel provisions would be easier for the industry to apply, since the price discovery/price dissemination rules would be essentially identical for both types of exempt markets.

The proposed rules would also add new §§ 36.2(c)(3) and 36.3(c)(4) requiring EBOTs and ECMs, respectively, to annually file a notice with the Commission, no later than the end of each calendar year. The notice must include a statement that the entity continues to operate under the exemption and a certification that the information in its original notification of operation is still correct. Annual notification of operation by the facility would allow the Commission to track whether facilities that notified the Commission of their intent to operate actually commenced operations and would allow the Commission to eliminate inactive facilities from any listing of active EBOTs or ECMs maintained on its Web site.

B. Part 37—Derivatives Transaction Execution Facilities

Section 37.1(a) would be amended to make clear that the provisions of Part 37 apply not only to boards of trade operating as registered DTEFs, but also to applicants for registration as DTEFs.

Section 37.2 would be revised to identify certain reserved provisions of the Commission's regulations that specifically and comprehensively reference DTEFs separately from other reserved provisions that do not. The proposed revisions also would make clear that all the references in § 37.2 to reserved provisions of the regulations applicable to DTEFs also include related definitions and cross-referenced sections cited in those reserved provisions. Finally, § 1.60 would be added to the list of reserved provisions of the regulations applicable to DTEFs under § 37.2 to make clear that DTEFs need to notify the Commission of any material legal proceeding to which the DTEF is a party or to which its property or assets are subject.

In § 37.3, subparagraph (a)(5) would be renumbered as subparagraph (b) and the remaining subparagraphs would be renumbered accordingly.

Section 37.6, Compliance with Core Principles, would be revised to harmonize DTEF core principle compliance with the previously noted new application procedures for DCMs and DTEFs.[6]

New § 37.6(c)(2) would be added delegating to the Division of Market Oversight (the "Division") the authority under § 37.6(c)(1) to request additional information in reviewing a DTEF's continued compliance with one or more core principles, or to enable the Commission to satisfy its obligations under the Act. The delegation provision notes that the Commission, at its election, may exercise the delegated authority directly. A similar delegation would be made in new § 38.5(c) to allow the Division to request additional information in reviewing a DCM's continued compliance with designation criteria and core principles, or to enable the Commission to satisfy its obligations under the Act. The foregoing delegated authority would also extend to other requests by Commission staff to DTEFs or DCMs for additional information: (1) Under new § 40.2(b), regarding compliance with respect to new products listed by certification; (2) under § 40.3(a)(9), regarding voluntary submission of new products for Commission review and approval; and (3) under new § 40.6(a)(4), regarding compliance with respect to self-certified rules. This delegated authority would aid the staff in reviewing DTEF and DCM compliance with the requirements of the Act or Commission regulations or policies thereunder without involving the Commission in the mechanics of day-to-day due diligence oversight.

In addition, the guidance in current § 37.6(d) would be deleted as duplicative of "Appendix B to Part 37—Guidance on Compliance with Core Principles" and would be replaced with a reference to Appendix B.

Section 37.8(b), regarding special calls for information, would be amended to make clear that the section applies not only to futures commission merchants, but to foreign brokers (as defined in § 15.00) as well.

The title of Appendix A to part 37 would be reworded to read, "Appendix A to part 37—Guidance on Compliance with Registration Criteria," to be consistent with the wording of the titles of the other appendices to parts 37 and 38. The introductory paragraph of the appendix also would be revised to make clear that registration criteria guidance applies both to new registrants that register by application and to DTEFs operated by DCMs, which would not need to file an application, but could become registered by notification/certification. The revised language also is consistent with the requirement that the registration criteria must be met initially and on an ongoing basis, rather than just upon application.

In Appendix B to part 37, subsection 1 of the appendix would be revised to make clear that the guidance therein applies to all registered DTEFs, whether they come in by notification under § 37.5(a) or by application. Subsection 3 of the appendix would be revised to make clear that, consistent with § 37.6(b)(2), the guidance therein applies to applicants for registration, rather than registered DTEFs.

Core Principle 5 of Appendix B to part 37, "Daily Publication of Trading Information," would be revised in a manner consistent with the price discovery/price dissemination provisions applicable to EBOTs and ECMs, which are not as comprehensive as those applicable to DCMs. This reflects the fact that DTEFs are subject to a different informational standard than DCMs. DCMs are subject to a blanket requirement, under Core Principle 8 of Appendix B to part 38, to publish daily trading information for all actively traded contracts. DTEFs, however, are subject to Core Principle 5 (section 5a(d)(5) of the Act), which includes language similar to that applicable to EBOTs and ECMs (under sections 5d(d) and 2(h)(4)(D) of the Act, respectively) requiring DTEFs to make public certain daily trading information only if the Commission determines that contracts traded on the facility perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts. The revised core principle explanatory language would apply to DTEFs the same standards that would apply to EBOTs and ECMs (*see* §§ 36.2(b)(2) and 36.3(c)(2), respectively) whereby a DTEF would perform a significant price discovery function if: (1) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or (2) the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions. If the

[6] 69 FR 67811 (November 22, 2004).

Commission has reason to believe that a DTEF may meet either of these standards, or if the facility holds itself out to the public as performing a price discovery function, the Commission will notify the DTEF and provide it with an opportunity for a hearing through the submission of written data, views and arguments. If, after considering all relevant matters, the Commission finds that the DTEF meets the price discovery standards, it will direct the DTEF to publish daily trading information in accordance with the core principle. The information could be published by providing it to a financial information service or by placing it on the facility's website. The information should be made available to the public without charge no later than the business day following the day to which the information pertains.

C. Part 38—Designated Contract Markets

In § 38.1, language would be added to make clear that the provisions of part 38 apply to applicants for designation as well as to already designated contract markets, and redundant and inapplicable references would be deleted.

In § 38.2, language would be added to make clear that the references therein to reserved provisions of the regulations applicable to DCMs also include related definitions and cross-referenced sections cited in those reserved provisions. Similar clarifying amendments, reserving the applicability of related definitions and cross-referenced sections, appear in other sections of the proposal. Also, § 1.60 would be added to the list of reserved provisions of the regulations applicable to DCMs under § 38.2 to make clear that DCMs need to notify the Commission of any material legal proceeding to which the DCM is a party or to which its property or assets are subject.

In § 38.5, subparagraph (b) would be amended to make clear that DCMs are required to comply with both the designation criteria and the core principles, initially and on an ongoing basis, and to conform its language to § 37.6(c)(1). As noted in the discussion of new § 37.6(c)(2) above, new § 38.5(c) would be added, delegating to the Division of Market Oversight the authority under § 38.5(b) to request additional information in reviewing a DCM's continued compliance with designation criteria or core principles, or to enable the Commission to satisfy its obligations under the Act.

The title of Appendix A to part 38 would be revised to refer to "Guidance on Compliance with Designation Criteria," and the introductory paragraph of the appendix would be revised in conformity with the revisions to the introductory paragraph of Appendix A to part 37, to make clear that the obligation to comply with the designation criteria applies not just to applicants, but is ongoing.

Designation Criterion 7 under Appendix A to part 38 would be updated to provide, consistent with the wording of other provisions regarding designation criteria and core principles, that a DCM "should" (rather than "may") provide information to the public by placing the information on its Web site.

In Appendix B to part 38, language would be added in subparagraph (1) to harmonize part 38, Appendices A and B, with part 37, Appendices A and B, consistent with the idea that the obligation to comply with the core principles applies both initially and on an ongoing basis. In subparagraph (2), a reference to "selected" requirements of the core principles would be added to make clear that the enumerated acceptable practices under each core principle are neither the complete nor the exclusive requirements for meeting that core principle. With respect to the completeness issue, the selected requirements in the acceptable practices section of a particular core principle may not address all the requirements necessary for compliance with the core principle. With respect to the exclusivity issue, the acceptable practices that are listed for a particular core principle requirement are for illustrative purposes only and do not state the only means of satisfying the particular requirement they address. There may be other ways of complying with that requirement of the core principle that would also be acceptable.

Under Core Principle 2 of Appendix B to part 38, a reference would be added in subparagraph (a)(1) to clarify that a DCM could carry out trade practice surveillance programs through delegation or "contracting out." A delegation confers upon another the authority to act in the delegating authority's name. A third party contractor would not act in the DCM's name, but the DCM would be required to maintain sufficient control over the contractor because it would remain the DCM's responsibility to assure that the DCM's obligations under the Act were met.[7]

Under Core Principle 6 of Appendix B, "Emergency Authority," the language now appearing under subparagraph (b), "Acceptable Practices," would be moved to subparagraph (a), "Application Guidance." This amendment would reflect that the language moved to subparagraph (a) more accurately describes guidance on establishing rules to exercise emergency authority in the first instance, rather than acceptable practices in implementing such rules.

Under Core Principle 7 of Appendix B, guidance would be added in subparagraph (b) as to what constitutes "timely placement" of information on a DCM's Web site. In noting that the DCM's rulebook should be "available to the public," the intent of the subparagraph is that the rulebook should be freely accessible to anyone who visits the Web site without the need to register, log in, provide a user name or obtain a password.

Core Principle 8 of Appendix B requires that a DCM shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts. New language would be added to subparagraph (b), Acceptable Practices, whereby compliance with § 16.01 of the Commission's regulations, which is mandatory since § 16.01 is one of the sections reserved under § 38.2, would constitute an acceptable practice under Core Principle 8. All currently designated DCMs are in compliance with § 16.01.

Under Core Principle 16 of Appendix B, paragraph (a) would be revised to refer to a contract market's board (rather than the contract market as a whole) in conformity with the language of the core principle.

D. Part 39—Derivatives Clearing Organizations

The Commission adopted the application procedures specified in Commission Regulation 39.3[8] for organizations applying to be registered as DCOs in 2001 when it first implemented the CFMA.[9] These procedures presume that an application will be submitted and reviewed pursuant to a fast-track procedure under which an organization is deemed to be designated as a DCO 60 days after submitting its application,[10] unless notified otherwise during the review period. DCO registration procedures are not subject to any statutory deadline under section 6(a) of the Act, which only applies to DCMs and DTEFs.

[7] *See* the discussion in 66 FR 42256, at 42266 (August 10, 2001).

[8] 17 CFR 39.3

[9] *See* 66 FR 45604 (August 29, 2001). The CFMA, Appendix E of Pub. L. 106–554, 114 Stat. 2763, substantially revised the Commodity Exchange Act (Act or CEA), 7 U.S.C. 1 *et seq.*

[10] 17 CFR 39.3(a).

However, the fast-track review period is substantially shorter than the 180-day review period specified in section 6(a) of the Act for DCMs and DTEFs. The rules provide procedures for terminating the fast-track review, including termination by the Commission if it appears that the application's form or substance fails to meet the requirements of the Commission's regulations.[11]

The application procedures also generally identify information required to be included in applications for registration as a DCO [12], and identify where additional guidance for applicants can be found.[13] The rules also provide procedures for the withdrawal of an application for registration [14] and specify the extent of the delegation of authority from the Commission to the Director of the Division of Clearing and Intermediary Oversight, with the concurrence of the General Counsel, with respect to, among other things, the termination of expedited review procedures.[15]

The Commission is proposing to modify the application procedures in a number of respects. Most of these modifications mirror changes recently made to parts 37 and 38 regarding, among other things, the review and processing of applications for registration of DTEFs and DCMs. With respect to the review period for applications generally, it is proposing to establish, as it recently has under parts 37 and 38, the presumption that all applications are submitted for review under the 180-day timeframe specified in section 6(a) of the Act for DCMs and DTEFs.[16] An expedited 90-day review could be requested by the applicant, in which case the Commission would register the applicant as a DCO during or by the end of the 90-day period unless the Commission terminated the expedited review for certain specifically identified reasons. In comparison to the current rules, the Commission is proposing to lengthen the expedited review periods for DCO applications by 30 days. The Commission believes, based upon its experience in processing DCO applications and in light of certain administrative practices that have developed since these rules were first adopted, that these potentially longer review periods are necessary to ensure a comprehensive review of applications and to meet other public policy objectives.

The Commission has reviewed nine DCO applications since passage of the CFMA. The applications themselves are large and contain technical documents describing operations and operational outsourcing agreements. The applications frequently need to be substantially amended or supplemented in various ways and generate a series of questions by Commission staff responsible for reviewing the applications. In addition, a new Commission policy to promote transparency in Commission operations, implemented in August of 2003, provides for the posting of all such applications on the Commission's Web site for a period of at least 15 days for public review and comment.[17] This will lengthen the review process. The proposed 90-day review period should provide the Commission with sufficient time to review these substantial applications and to respond to any public comments. The Commission notes that the proposed 90-day review period, while longer than the current fast-track review periods, would continue to be substantially shorter than the 180-day review period set forth in section 6(a) for DCMs and DTEFs.

The Commission also is proposing to modify its internal processing procedures under which an applicant would be registered as a DCO. Under the proposal, an applicant would no longer be deemed to be registered based upon the passage of time (currently 60 days for DCOs). If the applicant requested expedited review, the Commission would take affirmative action to register or designate the applicant as a DCO, subject to conditions if appropriate, not later than 90 days after receipt of the application, unless the Commission terminated the expedited review. Thus, registration as a DCO would involve affirmative action by the Commission, which would normally be in the form of issuance of a Commission order. It should be noted that it would be possible, under the proposed procedures, for applicants who submit applications that are complete and not amended or supplemented during the review period to be designated as a DCO in less than 90 days.

With respect to the termination of expedited review, the rules provide that fast-track review may be terminated because the application's form or substance fails to meet the requirements of part 39 or upon written instruction of the applicant during the review period. Based upon its experience in reviewing applications submitted to date and in light of its new practice of posting all such applications on the Commission's website for public review and comment, the Commission is proposing to clarify and expand the rationale for terminating expedited review. In addition to the reasons for termination cited above, the Commission is proposing that the expedited review period be terminated if the application is materially incomplete or, as more fully described below, undergoes major amendment or supplementation. The Commission is also proposing to provide for termination of expedited review if an application raises novel or complex issues that require additional time for review. This proposal is responsive to the public interest that the Commission has witnessed to date with respect to DCO applications and is substantially the same as a proposal recently adopted for DCMs and DTEFs.

The Commission is further proposing to delete the provision of the rules that would require the Commission, upon terminating fast-track review, to commence a proceeding to deny a DCO application upon the request of the applicant. This procedure has proved to be unnecessary to date, and an analogous procedure is available under the statutory review procedure.[18] Finally, the Commission is proposing to amend the expedited review procedures to expressly provide that expedited review would be terminated if an applicant so requests in writing. The Commission stresses that if expedited review were terminated for any of the reasons cited above, the application would continue to be reviewed pursuant to the 180-day procedure.

To further enhance the application process, the Commission is proposing to more completely identify the information required to be provided by an applicant under both the 180-day and the expedited 90-day review procedures. The proposal would make it clear that all applicants would be required to submit for review an executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant that enable the applicant to comply with the core principles. Final, signed copies of such documents would be required to be submitted prior to registration. The initial application would be required to

[11] 17 CFR 39.3(b).

[12] 17 CFR 39.3(a).

[13] 17 CFR 39.3(d).

[14] 17 CFR 39.3(c).

[15] 17 CFR 39.3(e).

[16] Under the current rules, DCO applications are routinely reviewed under the fast-track procedures unless the applicant instructs the Commission in writing at the time of the submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act. *See* 17 CFR 39.3(a)(8).

[17] The Commission has recently proposed revisions to Commission Regulation 40.8 to specify which portions of an application for registration as a DTEF or designation as a DCO will be made public. *See* 69 FR 44981 (July 28, 2004).

[18] 7 U.S.C. 8(a).

include something more than a letter of intent or draft contract or agreement, such as a final contract or agreement signed by at least one of the parties. While the Commission understands that applicants may prefer to defer the finalization of contracts in order to defer associated costs until registration or designation, it must balance that preference against the assurance that a contract or agreement will actually be executed prior to registration.

With respect to the additional information that would be required to be submitted as part of the application, the rule requires that applicants demonstrate how they are able to satisfy each of the core principles specified in section 5b of the Act. The proposal would amend the rule to eliminate the proviso, "to the extent it is not self-evident from the applicant's rules." Based upon experience in reviewing DCO applications, the Commission recognizes that this additional information is necessary for Commission review of the application when determining whether the applicant satisfies the core principles. The proposal would eliminate the requirement that the applicant support requests for confidential treatment of information included in the application with reasonable justification. The Commission believes that the procedures provided in Commission Regulation 145.9, "Petition for confidential treatment of information submitted to the Commission," should be followed by all applicants.

Under the proposal, the items required to be included in an application to be reviewed under the 180-day review procedures would be identical to those required to be included in an application to be reviewed under the expedited review procedures with the following additional requirements for the expedited review procedure: (1) An applicant must request expedited review; and (2) an application submitted for expedited review must not be amended or supplemented by the applicant, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions. The proposal provides that amending or supplementing an application in a manner that is inconsistent with the above provision would result in termination of the expedited review.

The Commission is also proposing to modify the delegation of authority provisions applicable to applications for registration as a DCO. Currently, the rules provide for the delegation of authority to the Director of the Division of Clearing and Intermediary Oversight, with the concurrence of the General Counsel: (1) To terminate the review of both fast-track applications and those reviewed under the 180-day procedure; and (2) to register an applicant as a DCO subject to conditions. The Commission is proposing to modify and standardize the delegation of authority as it applies to DCO applicants. Thus, under the proposal, the Commission would also delegate to the Director of the Division of Clearing and Intermediary Oversight, with the concurrence of the General Counsel, the authority to stay the running of the 180-day review period for applications if they are materially incomplete, as is provided under section 6(a) of the Act. Because one result of the proposed amendments would be that registration as a DCO would involve affirmative action on the part of the Commission, the proposal would rescind the delegation of the authority to designate the applicant as a DCO subject to conditions.

The Commission also is adding a provision for vacation of DCO registration. Under this provision, a registered DCO may vacate its registration under section 7 of the Act by filing a request with the Commission at its Washington, DC headquarters. Vacation of registration will not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the DCO was registered with the Commission. A similar provision with respect to contract markets is already part of part 38.[19]

Finally, the Commission is proposing to make minor word changes and deletions in order to clarify requirements and procedures.

The Commission continues to encourage applicants to consult with Commission staff prior to formally submitting an application for DCO registration to help ensure that an application, once submitted, will be able to be reviewed in a timely manner. The Commission encourages interested parties, particularly prior applicants, to comment upon these proposals.

E. Part 40—Provisions Common to Contract Markets, Derivatives Transaction Execution Facilities and Derivatives Clearing Organizations

In § 40.1, the definitions therein would be redesignated as numbered subparagraphs, beginning with subparagraph (a). In redesignated subparagraphs 40.1(b)–(e), the definitions of dormant contract/product, dormant contract market, dormant derivatives clearing organization and dormant derivatives transaction execution facility, respectively, the length of time during which no trading (or clearing) has occurred before dormancy could be declared would be extended from six to twelve calendar months. Also, in § 40.1(b), in the proviso granting a 36-month grace period after initial certification or Commission approval before a contract/product can be considered dormant, language would be added to make clear that, if the DCM or DTEF itself becomes dormant prior to the running of the 36-month period, the contract/product would likewise be considered dormant. Finally, language would be added to § 40.1(b) to allow a board of trade to self-declare a contract/product to be dormant at any time after initial certification or Commission approval.

Under new § 40.1(f), a definition of "dormant rule" would be added whereby a new rule or rule amendment that is not made effective and implemented within twelve months of initial certification or Commission approval would be considered dormant and would have to be resubmitted, either by certification or for approval, before it could be implemented.

Sections 40.2, 40.3, 40.5 and 40.6 would be revised for internal consistency between sections. In addition, in § 40.2, relating to listing new products for trading by certification, new subparagraph 40.2(b) would make clear that a registered entity shall provide, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies thereunder. Such evidence may be beneficial to the Commission in conducting a due diligence assessment of the product and the registered entity's compliance with these requirements, including the obligation that the registered entity must have reason to believe the certification is proper. This language is consistent with the Commission's obligation to assure that the Act and Commission regulations and policies thereunder are not being violated. Similar language would be added in § 40.3(a)(9) with respect to voluntary submission of new products for approval, and in §40.6(a)(4) with respect to self-certification of rules by DCMs and DTEFs. DCMs and DTEFs should be aware that, in conducting routine due diligence reviews of self-certified new product listings and new rules or rule amendments under § 40.2(b) and § 40.6(a)(4), respectively, the staff gives special consideration to

[19] 17 CFR 38.3(d).

particular requirements. For DTEFs, the key requirements are: § 5a(b)(2) of the Act (requirements for underlying commodities); Core Principle 3 (monitoring trading to assure an orderly market); and Core Principle 4 (disclosure of general information). For DCMs, the key requirements are: Core Principle 3 (listing contracts that are not readily susceptible to manipulation); Core Principle 4 (monitoring trading to prevent manipulation, price distortion or disruptions of the delivery or cash-settlement process); and Core Principle 5 (adopting position limits or position accountability rules to reduce the threat of market manipulation or distortion, especially in the delivery month). To the extent that a DCM or DTEF includes with its initial submission, data, research reports, trade interview reports, exchange or third party analyses, or other background information demonstrating compliance with these requirements, a DTEF or DCM can minimize the prospect of requests for additional information under § 40.2(b) or § 40.6(a)(4), respectively.

The proposed revisions to § 40.3 would set forth with greater particularity the information Commission staff needs to make a determination on whether to approve a new product voluntarily submitted for Commission review and approval.

Section 5c(c)(2)(B) of the Act and § 40.4 of the regulations require prior Commission approval of DCM rule amendments that, for a delivery month having open interest, would materially change a term or condition of a contract for future delivery of an enumerated agricultural commodity, or an option on such a contract or commodity.[20] The proposal would add new subsection 40.4(b)(8) to include fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution to the types of rule changes for which a materiality determination is not required. The proposal would also make clear that the non-material changes described in § 40.4(b), subparagraphs (1)–(8), would fall within the provisions of revised § 40.6(c) and would be subject to the weekly notification procedures set out therein. Also, in § 40.4(b)(9) under subparagraph (i), the deadline for Commission review of "non-material agricultural rule changes" would be changed from 10 calendar days to 10 business days to provide for a consistent review period for all submissions and to allow for more time for review. Under subparagraph (ii), the DCM would be required to provide an explanation of why the DCM believes the proposed rule change is non-material. Similarly, in § 40.5(c)(1), the review period for rules that are voluntarily submitted by DCMs or DTEFs for approval would be extended from 30 days to 45 days, to be consistent with § 40.3.

Under § 40.6, current § 40.6(a) sets out the conditions under which a DCM or DCO may implement new rules by certifying them to the Commission. Subparagraph 40.6(a)(1) provides that the certification procedure does not apply to rules of a DCM that materially change a term or condition of a futures or option contract on an enumerated agricultural commodity in a delivery month with open interest. Subparagraphs 40.6(a)(2) and (3) set out the filing requirements for rule certifications and the information to be provided in such certifications. Section 40.6(c) establishes an exception to the rule certification requirements of §§ 40.6 (a)(2) and (3) whereby DCMs and DCOs may place certain rules and rule amendments into effect without certification, provided that certain conditions are met. The conditions are that: (1) The DCM or DCO provide to the Commission a weekly summary of rule changes made effective pursuant to this paragraph; and (2) the rule change governs such routine matters as nonmaterial revisions, changes to delivery standards made by third parties that do not affect deliverable supplies or the pricing basis for the product, changes in the composition of an index (other than a stock index) that do not affect the pricing basis of the index, routine changes to option contract terms, and certain fee changes established by independent third parties. The proposed rules would add a reference to § 40.6(a)(1) to the exception established in § 40.6(c). The effect would be to make clear that, while material rule changes involving contract months with open interest in enumerated agricultural commodities may not be certified to the Commission, the type of routine changes described in § 40.6(c)(2), as well as the partially overlapping list of non-material changes in §§ 40.4(b)(1)–(8), would not constitute material changes within the meaning of the Act or Commission regulations. Therefore, DCMs could inform the Commission of such rule changes on a weekly basis under the provisions of § 40.6(c). Also, new § 40.6(c)(2)(vi) would add to the list of items that could be reported weekly under § 40.6(c)(1), changes in survey lists of banks, brokers or dealers that provide market information to an independent third party and that are incorporated by reference as product terms. Finally, new § 40.6(c)(3)(ii)(F) would add de minimis changes to security indexes to the list of information the Commission does not require to be certified or reported weekly by a DCM or DCO.

Under § 40.7, Delegations, new § 40.7(a)(3) would delegate to the Division the authority to notify a DCM that a rule change submitted for a materiality determination under § 40.4(b)(9) is material and must be submitted for Commission approval. Finally, new § 40.7(b)(3) would increase the Division's delegated authority to allow it, with the concurrence of the Office of the General Counsel, to approve rules regarding speculative limits or position accountability.

III. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, § 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, § 15(a) simply requires the Commission to "consider the costs and benefits" of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The amendments proposed herein are intended to clarify and codify acceptable practices under the rules for trading facilities, based on the Commission's experience over the past four years in applying those rules, including the adoption of several amendments to the original rules over the same period. The proposed amendments also would make various

[20] The "enumerated commodities" are those agricultural commodities listed in § 1a(4) of the Act.

technical corrections and conforming amendments to the rules.

In addition, the proposed amendments would revise the application and review process for registration as a DCO by eliminating the presumption of automatic fast-track review of applications and replacing it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. In lieu of the current 60-day automatic fast-track review, the Commission is proposing to permit applicants to request expedited review and to be registered as a DCO not later than 90 days after the Commission receives the application.

The Commission has endeavored, in proposing these amendments, to impose the minimum requirements necessary to enable the Commission to perform its oversight functions, to carry out its mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse.

After considering these factors, the Commission has determined to propose the rules and rule amendments set forth below.

The Commission specifically invites public comment on its application of the criteria contained in the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rules with their comment letter.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules proposed herein would affect exempt commercial markets, exempt boards of trade, derivatives transaction execution facilities, designated contract markets and designated clearing organizations. The Commission has previously determined that the foregoing entities are not small entities for purposes of the RFA.[21] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Rules Relating to Part 36, Establishing Procedures for Exempt Markets, OMB Control Number 3038–0054.

The estimated burden was calculated as follows:

Estimated number of respondents: 10.

Annual responses by each respondent: 1.

Total annual responses: 10.

Estimated average hours per response: 1.

Annual reporting burden: 10.

Collection of Information: Rules Relating to Part 38, Establishing Procedures for Entities to become Designated as Contract Markets, OMB Control Number 3038–0052. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

Estimated number of respondents: 13.

Annual responses by each respondent: 1.

Total annual responses: 13.

Estimated average hours per response: 300.

Annual reporting burden: 3,900.

Collection of Information: Rules Relating to Part 39, Establishing Procedures for Entities to Become Registered as Derivatives Clearing Organizations, OMB Control Number 3038–0051. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

Estimated number of respondents: 10.

Reports annually by each respondent: 1.

Total annual responses: 10.

Estimated average hours per response: 200.

Annual burden in fiscal year: 2,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collecting 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 39

Commodity futures, Consumer Protection.

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act and, in particular, sections 1a, 2, 3, 4, 4c, 4i, 5,

[21] 47 FR 18618, 18619 (April 30, 1982) discussing contract markets; 66 FR 42256, 42268 (August 10, 2001) discussing exempt boards of trade, exempt commercial markets and derivatives transaction execution facilities; 66 FR 45605, 45609 (August 29, 2001) discussing designated clearing organizations.

5a, 5b, 5c, 5d, 6 and 8a of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 36—EXEMPT MARKETS

1. The authority citation for part 36 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

1a. Section 36.2 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 36.2 Exempt boards of trade.

* * * * *

(b) *Notification.* Boards of trade operating under Section 5d of the Act as exempt boards of trade shall so notify the Commission. This notification shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in electronic form, shall be labeled as "Notification of Operation as an Exempt Board of Trade," and shall include:

(1) The name and address of the exempt board of trade; and

(2) The name and telephone number of a contact person.

(c) *Additional requirements.* (1) *Prohibited representation.* A board of trade notifying the Commission that it meets the criteria of Section 5d of the Act and elects to operate as an exempt board of trade shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(2) *Market data dissemination.* (i) *Criteria for price discovery determination.* An exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract, or transaction executed or traded on the facility when:

(A) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or

(B) The market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions.

(ii) *Notification.* An exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act shall notify the Commission when:

(A) It has reason to believe that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis;

(B) It has reason to believe that the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions; or

(C) The exempt board of trade holds out the market to the public as performing a price discovery function for the cash market for the commodity.

(iii) *Price discovery determination.* Following receipt of a notice under paragraph (c)(2)(ii) of this section, or on its own initiative, the Commission may notify an exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act that the facility appears to meet the criteria for performing a significant price discovery function under paragraph (c)(2)(i)(A) or (B) of this section. Before making a final price discovery determination under this paragraph, the Commission shall provide the exempt board of trade with an opportunity for a hearing through the submission of written data, views and arguments. Any such written data, views and arguments shall be filed with the Secretary of the Commission in the form and manner and within the time specified by the Commission. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the facility performs a significant price discovery function under the criteria of paragraph (c)(2)(i)(A) or (B) of this section.

(iv) *Price dissemination.* (A) An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section shall disseminate publicly, and on a daily basis, all of the following information with respect to transactions executed in reliance on the exemption in Section 5d of the Act:

(*1*) Contract terms and conditions, or a product description, and trading conventions, mechanisms and practices;

(*2*) Trading volume by commodity and, if available, open interest; and

(*3*) The opening and closing prices or price ranges, the daily high and low prices, a volume-weighted average price that is representative of trading on the board of trade, or such other daily price information as proposed by the board of trade and approved by the Commission.

(B) The exempt board of trade shall make such information readily available to the news media and the general public without charge no later than the business day following the day to which the information pertains.

(v) *Modification of price discovery determination.* An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section may petition the Commission at any time to modify or vacate that determination. The petition shall contain an appropriate justification for the request. The Commission, after notice and opportunity for a hearing through the submission of written data, views and arguments, shall by order grant, grant subject to conditions, or deny such request.

(3) *Annual Certification.* A board of trade operating under Section 5d of the Act as an exempt board of trade shall file with the Commission annually, no later than the end of each calendar year, a notice that includes:

(i) A statement that it continues to operate under the exemption; and

(ii) A certification that the information contained in the previous Notification of Operation as an Exempt Board of Trade is still correct.

2. Section 36.3 is proposed to be amended by revising paragraph (a) introductory text, revising paragraph (c)(2)(ii), and adding a new paragraph (c)(4) to read as follows:

§ 36.3 Exempt commercial markets.

(a) *Notification.* An electronic trading facility relying upon the exemption in Section 2(h)(3) of the Act shall notify the Commission of its intention to do so. This notification, and subsequent notification of any material changes in the information initially provided, shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in electronic form, shall be labeled as "Notification of Operation as an Exempt Commercial Market," and shall include the information and certifications specified in Section 2(h)(5)(A) of the Act.

* * * * *

(c) * * *

(2) * * *

(ii) *Notification.* An electronic trading facility operating in reliance on Section 2(h)(3) of the Act shall notify the Commission when:

(A) It has reason to believe that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis;

(B) It has reason to believe that the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions; or

(C) The market holds itself out to the public as performing a price discovery function for the cash market for the commodity.

* * * * *

(4) *Annual Certification.* An electronic trading facility operating in reliance upon the exemption in Section 2(h)(3) of the Act shall file with the Commission annually, no later than the end of each calendar year, a notice that includes:

(i) A statement that it continues to operate under the exemption; and

(ii) A certification that the information contained in the previous Notification of Operation as an Exempt Commercial Market is still correct.

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

3. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

3a. Section 37.1 is proposed to be amended by revising paragraph (a) to read as follows:

§ 37.1 Scope and definition.

(a) *Scope.* The provisions of this part apply to any board of trade operating as or applying to become registered as a derivatives transaction execution facility under Sections 5a and 6 of the Act.

* * * * *

4. Section 37.2 is proposed to be revised to read as follows:

§ 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under Section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 37 and:

(a) Section 15.05, part 40 and part 41 of this chapter, including any related definitions and cross-referenced sections; and

(b) Sections 1.3, 1.31, 1.59(d), 1.60, 1.63(c), 33.10, and part 190 of this chapter and, as applicable to the market, §§ 15.00 to 15.04 and parts 16 through 21 of this chapter, including any related definitions and cross-referenced sections, which are applicable as though they were set forth in this part 37 and included specific reference to derivatives transaction execution facilities.

5. Section 37.3 is proposed to be amended as follows:

a. By redesignating paragraphs (b) and (c) as paragraphs (d) and (e);

b. By redesignating paragraph (a)(5) as paragraph (b);

c. By redesignating paragraph (a)(6) introductory text as paragraph (c);

d. By redesignating paragraph (a)(6)(i) and (ii) as paragraphs (c)(1) and (2); and

e. By redesignating paragraphs (a)(6)(ii)(A) through (H) as paragraphs (c)(2)(i) through (viii).

6. Section 37.6 is proposed to be revised to read as follows:

§ 37.6 Compliance with core principles.

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(d) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of Section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under Section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles. Such demonstration may be included in an application submitted pursuant to § 37.5 of this part.

(i) The demonstration would include the following:

(A) The label, "Demonstration of Compliance with Core Principles for Operation";

(B) A document that describes the manner in which the applicant will comply with each core principle (such as a regulatory chart), which could cite to documents previously submitted including documents submitted pursuant to § 37.5(b)(1)(ii)(A)–(E); and

(C) To the extent that any of the items in § 37.5(b)(1)(ii)(A)–(E) raise issues that are novel, or for which compliance with a core principle is not self-evident, an explanation as to how that item and the application satisfy the core principle.

(ii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under Section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities*—(1) *In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in paragraph (c)(1) to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file electronically with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of Sections 5a(b) and 5a(c) of the Act, respectively.

(d) *Guidance regarding compliance with core principles.* Appendix B to this part provides guidance to registered derivatives transaction execution facilities on compliance with the core principles under Section 5a(d) of the Act.

7. Section 37.7 is proposed to be amended by revising paragraph (b) to read as follows:

§ 37.7 Additional requirements.

* * * * *

(b) *Material modifications.* Notwithstanding the provisions of Section 5c(c) of the Act, registered derivatives transaction execution facilities need not certify rules or rule amendments under § 40.6 of this chapter, and must only notify the Commission prior to placing into effect or amending such a rule, (as defined in § 40.1 of this chapter):

(1) By electronic notification to the Commission of the rule to be placed into effect or to be changed, in a format approved by the Secretary of the Commission, at the time traders or participants in the market are notified, but (unless taken as an emergency action) in no event later than the close of business on the business day preceding implementation. The submission notification shall be labeled "DTEF Rule Notices" and shall include the text of the rule or rule amendment (with deletions and additions indicated). *Provided, however,* the derivatives transaction execution facility need not notify the Commission of rules or rule amendments for which no certification is required under § 40.6(c) of this chapter.

(2) The derivatives transaction execution facility must maintain documentation regarding all changes to rules, terms and conditions or trading protocols.

* * * * *

8. Section 37.8 is proposed to be amended by revising paragraph (b) to read as follows:

§ 37.8 Information relating to transactions on derivatives transaction execution facilities.

* * * * *

(b) *Special calls for information from futures commission merchants or foreign brokers.* Upon special call by the Commission, each person registered as a futures commission merchant or a foreign broker (as defined in § 15.00 of this chapter) that carries or has carried an account for a customer on a derivatives transaction execution facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on that or other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

* * * * *

9. Appendix A to Part 37—Application Guidance is proposed to be amended by revising the heading of the appendix and the first paragraph of the appendix to read as follows:

Appendix A to Part 37—Guidance on Compliance With Registration Criteria

This appendix provides guidance on meeting the criteria for registration under Sections 5a(c) and 6 of the Act and this Part, both initially and on an ongoing basis. The guidance following each registration criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for registration. To the extent that compliance with, or satisfaction of, a criterion for registration is not self-explanatory from the face of the derivatives transaction execution facility's rules, (as defined in § 40.1 of this chapter), the application should include an explanation or other form of documentation demonstrating that the applicant meets the registration criteria of Section 5a(c) of the Act and § 37.5.

* * * * *

10. Appendix B to Part 37—Guidance on Compliance With Core Principles is proposed to be amended by revising paragraphs 1. and 3. of the appendix to read as follows:

Appendix B to Part 37—Guidance on Compliance With Core Principles

1. This appendix provides guidance on complying with the core principles in order to maintain registration under Section 5a(d) of the Act and this Part. This guidance is illustrative only and is not intended to be used as a mandatory checklist.

* * * * *

3. Alternatively, if an applicant for registration or for reinstatement of registration under § 37.6(b)(2) chooses to provide the Commission with a demonstration of its compliance with core principles, addressing the issues set forth in this appendix would help the Commission in its consideration of such compliance. To the extent that compliance with, or satisfaction of, the core principles is not self-explanatory from the face of the derivatives transaction execution facility's rules, (as defined in § 40.1 of this chapter) a submission under § 37.6(b)(2) should include an explanation or other form of documentation demonstrating that the derivatives transaction execution facility complies with the core principles.

* * * * *

11. Appendix B to part 37 is proposed to be further amended by revising the second paragraph of Core Principle 5 to read as follows:

Appendix B to Part 37—Guidance on Compliance With Core Principles

* * * * *

Core Principle 5 of Section 5a(d)(5) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION* * * *

A board of trade operating as a registered derivatives transaction execution facility should provide to the public information regarding settlement prices, price range, trading volume, open interest and other related market information for all applicable contracts, as determined by the Commission. In making such determination, the Commission will consider whether a contract performs a significant price discovery function for transactions in the cash market for the commodity underlying the contract. The Commission will apply the same standards applicable to exempt boards of trade and exempt commercial markets (see §§ 36.2(b)(2) and 36.3(c)(2), respectively) whereby a market performs a significant price discovery function for transactions in the cash market for an underlying commodity if: Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions. In the event the Commission has reason to believe that a derivatives transaction execution facility may meet either of the foregoing standards, or if the facility holds itself out to the public as performing a price discovery function for the cash market for the underlying commodity, the Commission shall notify the facility that it appears to meet the criteria for performing a significant price discovery function under Core Principle 5. Before making a final price discovery determination under this core principle, the Commission shall provide the facility with an opportunity for a hearing through the submission of written data, views and arguments. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the requirement of the core principle on publication of trading information under Section 5a(d)(5) of the Act applies to a particular contract traded on a facility. Provision of information for any applicable contract could be through such means as providing the information to a financial information service or by placing the information on a facility's website. Such information shall be made available to the public without charge no later than the business day following the day to which the information pertains.

* * * * *

PART 38—DESIGNATED CONTRACT MARKETS

12. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

12a. Section 38.1 is proposed to be revised to read as follows:

§ 38.1 Scope.

The provisions of this part 38 shall apply to every board of trade that has been designated or is applying to become designated as a contract market under Sections 5 and 6 of the Act. *Provided, however,* nothing in this provision affects the eligibility of designated contract markets to operate under the provisions of parts 36 or 37 of this chapter.

13. Section 38.2 is proposed to be revised to read as follows:

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under Section 5 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.60, 1.63(c), 1.67, 33.10, Part 9, Parts 15 through 21, Part 40, Part 41 and Part 190 of this chapter, including any related definitions and cross-referenced sections.

14. Section 38.5 is proposed to be amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) as follows:

§ 38.5 Information relating to contract market compliance.

* * * * *

(b) Upon request by the Commission, a designated contract market shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify, that the designated contract market is in compliance with one or more designation criteria or core principles as specified in the request, or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(c) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in paragraph (b) of this section to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(d) Upon a change of ownership of an existing designated contract market, the new owner shall file electronically with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the designated contract market meets all of the requirements of Sections 5(b) and 5(d) of the Act and the provisions of this Part 38.

* * * * *

15. Appendix A to Part 38—Application Guidance is proposed to be amended by revising the title of the appendix and the first paragraph of the appendix to read as follows:

Appendix A to Part 38—Guidance on Compliance With Designation Criteria

This appendix provides guidance on meeting the criteria for designation under Sections 5(b) and 6 of the Act and this Part, both initially and on an ongoing basis. The guidance following each designation criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for designation. To the extent that compliance with, or satisfaction of, a criterion for designation is not self-explanatory from the face of the contract market's rules (as defined in § 40.1 of this chapter), the application should include an explanation or other form of documentation demonstrating that the applicant meets the designation criteria of Section 5(b) of the Act.

* * * * *

16. Appendix A to Part 38 is proposed to be further amended by revising the second paragraph of Designation Criterion 7 to read as follows:

Appendix A to Part 38—Guidance on Compliance With Designation Criteria

* * * * *

Designation Criterion 7 of Section 5(b) of the Act: *PUBLIC ACCESS* * * *

A designated contract market should provide information to the public by placing the information on its website.

* * * * *

17. Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles is proposed to be amended by revising paragraphs 1. and 2. to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

1. This appendix provides guidance on complying with the core principles, both initially and on an ongoing basis, to maintain designation under Section 5(d) of the Act and this Part. The guidance is provided in paragraph (a) following each core principle and it can be used to demonstrate to the Commission core principle compliance, under §§ 38.3(a) and 38.5. The guidance for each core principle is illustrative only of the types of matters a board of trade may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the board of trade is in compliance with the core principles. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the board of trade's rules (as defined in § 40.1 of this chapter), an application pursuant to § 38.3, or a submission pursuant to § 38.5 should include an explanation or other form of documentation demonstrating that the board of trade complies with the core principles.

2. Acceptable practices meeting selected requirements of the core principles are set forth in paragraph (b) following each core principle. Boards of trade that follow the specific practices outlined under paragraph (b) for any core principle in this appendix will meet the selected requirements of the applicable core principle. Paragraph (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

* * * * *

18. Appendix B to Part 38 is proposed to be further amended by revising paragraph (a)(1) of Core Principle 2 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 2 of Section 5(d) of the Act: *COMPLIANCE WITH RULES* * * *

(a) *Application guidance.* (1) A designated contract market should have arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by the contract market's members and by non-intermediated market participants. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected. Trade practice surveillance programs may be carried out by the contract market itself or through delegation or contracting-out to a third party. If the contract market delegates or contracts-out the trade practice surveillance responsibility to a third party, such third party should have the capacity and authority to carry out such program, and the contract market should retain appropriate supervisory authority over the third party.

* * * * *

19. Appendix B to Part 38 is proposed to be further amended by revising paragraphs (a) and (b) of Core Principle 6 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 6 of Section 5(d) of the Act: *EMERGENCY AUTHORITY* * * *

(a) *Application guidance.* A designated contract market should have clear procedures and guidelines for contract market decision-making regarding emergency intervention in the market, including procedures and guidelines to avoid conflicts of interest while carrying out such decision-making. A contract market should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. Procedures and guidelines should include notifying the Commission of the exercise of a contract market's regulatory emergency authority, explaining how conflicts of interest are minimized, and documenting the contract market's decision-making process and the reasons for using its emergency action authority. Information on steps taken under such procedures should be included in a submission of a certified rule and any related submissions for rule approval pursuant to Part 40, when carried out pursuant to a contract market's emergency authority. To address perceived market threats, the contract market, among other things, should be able to impose position limits in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member including non-intermediated market participants of the contract market to another, or alter the delivery terms or conditions, or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

(b) *Acceptable practices.* [Reserved]

* * * * *

20. Appendix B to Part 38 is proposed to be further amended by adding paragraph (b) to Core Principle 7 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 7 of Section 5(d) of the Act: *AVAILABILITY OF GENERAL INFORMATION* * * *

* * * * *

(b) *Acceptable practices.* In making information available to market participants and the public, on its website, a designated contract market should place information on the website no later than the day a new product is listed, the day a new or amended rule is implemented or the day previously disclosed information is changed. For example, the timely provision of this information on a contract market's website could be done through press releases, newsletters or notices to members. Additionally, a contract market should ensure that the rulebook posted on its website is available to the public (*i.e.*, can be accessed by visitors to the website without the need to register, log in, provide a user name or obtain a password) and is current to within one day of implementation of a new or amended rule.

* * * * *

20. Appendix B to Part 38 is proposed to be further amended by adding paragraph (b) of Core Principle 8 to read as follows:

Appendix B to Part 38—Guidance on, Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 8 of Section 5(d) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION* * * *

* * * * *

(b) *Acceptable Practices.* The mandatory compliance with Section 16.01, "Trading volume, open contracts, prices and critical dates," required under the regulations, would constitute an acceptable practice under Core Principle 8.

* * * * *

21. Appendix B to Part 38 is proposed to be further amended by revising paragraph (a) of Core Principle 16 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 16 of Section 5(d) of the Act: *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS* * * *

(a) *Application guidance.* The composition of a mutually-owned contract market's governing board should fairly represent the diversity of interests of the contract market's market participants.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 7b as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

22a. Section 39.3 is proposed to be revised to read as follows:

§ 39.3 Procedures for registration.

(a) *Application Procedures. (1) 180-day review procedures.* An organization desiring to be registered as a derivatives clearing organization shall file electronically an application for registration with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(3) of this section, the Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

(2) The following must be included:

(i) The application is labeled as being submitted pursuant to this Part 39;

(ii) The applicant represents that it will operate in accordance with the definition of derivatives clearing organization contained in Section 1a(9) of the Act;

(iii) The application includes a copy of the applicant's rules;

(iv) The application demonstrates how the applicant is able to satisfy each of the core principles specified in Section 5b(c)(2) of the Act;

(v) The applicant submits agreements entered into or to be entered into between or among the applicant, its operator or its participants, and descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply, or demonstrate the applicant's ability to comply, with the core principles specified in Section 5b(c)(2) of the Act; and

(vi) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment.

(3) *Ninety-day review procedures.* An organization desiring to be registered as a derivatives clearing organization may request that its application be reviewed on a 90-day basis and that the applicant be registered as a derivatives clearing organization 90 days after the date of receipt of the application for registration by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 39.3(b), the Commission will register the applicant as a derivatives clearing organization during the 90-day period. If deemed appropriate by the Commission, the registration may be subject to such conditions as the Commission may stipulate.

(i) The application must include the items described in §§ 39.3(a)(2)(i)–(vi); and

(ii) The applicant must not amend or supplement the application except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period.

(b) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (a)(3) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the 180-day time period and procedures of Section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete;

(ii) Fails in form or substance to meet the requirements of this part;

(iii) Raises novel or complex issues that require additional time for review; or

(iv) Is amended or supplemented in a manner that is inconsistent with § 39.3(a)(3)(ii).

(2) This termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, or the novel or complex issues that require additional time for review. The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraphs (a)(1)–(2) or (a)(3) of this section by filing with the Commission such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Guidance for applicants and registrants.* Appendix A to this part provides guidance to applicants and registrants on how the core principles specified in Section 5b(c)(2) of the Act may be satisfied.

(e) *Reinstatement of dormant registration.* Before listing or relisting contracts for clearing, a dormant registered derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a)(1)–(2) or (a)(3) of this section; *provided, however,* that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(f) *Request for vacation of registration.* A registered derivatives clearing organization may vacate its registration under Section 7 of the Act by filing electronically such a request with the Commission at its Washington, DC headquarters. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

(g) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or the Director's delegates, with the concurrence of the General Counsel or the General Counsel's delegates, the authority to notify an applicant seeking designation under Section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (a)(3) of this section is terminated.

(2) The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (g)(1) of this section.

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

23. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

23a. Section 40.1 is proposed to be revised to read as follows:

§ 40.1 Definitions.

As used in this part:

(a) *Business hours* means the hours between 8:15 a.m. and 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC, all days except Saturdays, Sundays and legal public holidays.

(b) *Dormant contract or dormant product* means any commodity futures or option contract or other agreement, contract, transaction or instrument in which no trading has occurred in any future or option expiration for a period of twelve complete calendar months and in which there is no open interest; *provided, however,* no contract or instrument shall be considered to be dormant until the end of 36 complete calendar months following initial exchange certification or Commission approval, or until the designated contract market or derivatives transaction execution facility on which it is traded becomes dormant. Notwithstanding the above, a board of trade may, by certifying to the Commission, self-declare a contract to be dormant at any time following initial exchange certification or Commission approval.

(c) *Dormant contract market* means any designated contract market on which no trading has occurred for a period of twelve complete calendar months; *provided, however,* no contract market shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of designation was issued.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of registration was issued.

(e) *Dormant derivatives transaction execution facility* means any derivatives transaction execution facility on which no trading has occurred for a period of twelve complete calendar months; *provided, however,* no derivatives transaction execution facility shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of registration was issued.

(f) *Dormant rule* means any new rule or rule amendment which the designated contract market, derivatives transaction execution facility or derivatives clearing organization has not made effective and implemented; *provided, however,* no new rule or rule amendment shall be considered to be dormant until the end of twelve complete calendar months following initial certification or Commission approval. Prior to implementing a dormant rule, it should be resubmitted to the Commission, either by certification or for approval.

(g) *Emergency* means any occurrence or circumstance which, in the opinion

of the governing board of the contract market, derivatives transaction execution facility or derivatives clearing organization, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions on such a trading facility, including: Any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any circumstances which may materially affect the performance of agreements, contracts or transactions traded on the trading facility, including failure of the payment system or the bankruptcy or insolvency of any participant; any action taken by any governmental body, or any other board of trade, market or facility which may have a direct impact on trading on the trading facility; and any other circumstance which may have a severe, adverse effect upon the functioning of a designated contract market or derivatives transaction execution facility.

(h) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof, except those provisions relating to the setting of levels of margin for commodities other than those subject to the provisions of Section 2(a)(1)(C)(v) of the Act and security futures as defined in Section 1a(31) of the Act.

(i) *Terms and conditions* mean any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

(1) Quality and other standards that define the commodity or instrument underlying the contract;

(2) Quantity standards or other provisions related to contract size;

(3) Any applicable premiums or discounts for delivery of nonpar products;

(4) Trading hours, trading months and the listing of contracts;

(5) The pricing basis and minimum price fluctuations;

(6) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(7) Position limits, position accountability standards, and position reporting requirements;

(8) Delivery points and locational price differentials;

(9) Delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

(10) If cash settled; all provisions related to the definition, composition, calculation and revision of the cash settlement price or index; and

(11) Payment or collection of commodity option premiums or margins.

24. Section 40.2 is proposed to be revised to read as follows:

§ 40.2 Listing products for trading by certification.

(a) A registered entity may list a new product for trading, list a product for trading that has become dormant, or accept for clearing a product that is not traded on a designated contract market or a registered derivatives transaction execution facility, if the following conditions have been met:

(1) The registered entity has filed its submission electronically with the Secretary of the Commission and at the regional office having local jurisdiction over the registered entity, in a format specified by the Secretary of the Commission;

(2) The Commission has received the submission at its headquarters by close of business on the business day preceding the product's listing or acceptance for clearing, and:

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(ii) A copy of the product's rules, including all rules related to its terms and conditions, or the rules establishing the terms and conditions of the listed product that make it acceptable for clearing;

(iii) The intended listing date; and

(iv) A certification by the registered entity that the product to be listed complies with the Act and regulations thereunder.

(b) A registered entity shall provide, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies thereunder which may be beneficial to the Commission in conducting a due diligence assessment of the product and the entity's compliance with these requirements.

(c) *Stay.* The Commission may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Act. The decision to stay the listing of a contract in such circumstances shall not be delegable to any employee of the Commission.

25. Section 40.3 is proposed to be amended by revising paragraphs (a), (c), and (e)(2) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A designated contract market or registered derivatives transaction execution facility may request under Section 5c(c)(2) of the Act that the Commission approve new products. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Comply with the requirements of Appendix A to this Part—Guideline No. 1. To demonstrate compliance, the submission shall include:

(i) An explanation, if not self-evident from the rules, as to how the specific terms and conditions satisfy the acceptable practices set forth in Guideline No. 1, Appendix A to Part 40. This information may be provided in narrative form or by completion of the applicable chart.

(ii) For physical delivery contracts, an explanation as to how the terms and conditions as a whole will result in a deliverable supply such that the contract will not be conducive to price manipulation or distortion and that the deliverable supply reasonably can be expected to be available to short traders and salable by long traders at its market

value in normal cash marketing channels.

(iii) For cash settled contracts, an explanation as to how the cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely.

(iv)(A) A brief description of the cash market for the commodity, instrument, index or interest that underlies the contract. The description may include materials prepared by the designated contract market or registered derivatives transaction execution facility, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials, which provide a description of the underlying cash market.

(B) The cash market description may, however, be confined only to those aspects relevant to particular term(s) or condition(s) that differ from an existing contract, where a contract based on the same, or a closely related, commodity is already listed for trading and is not dormant.

(5) Describe any agreements or contracts entered into with other parties that enable the designated contract market or derivatives transaction execution facility to carry out its responsibilities.

(6) Include the certifications required in § 41.22 of this chapter for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(31) or 1a(32) of the Act, respectively;

(7) Identify with particularity information in the submission (except for the product's terms and conditions which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification;

(8) Include the filing fee required under Appendix B to this part; and

(9) Include, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, or any other requirement for designation under the Act or Commission regulations or policies thereunder.

* * * * *

(c) *Extension of time.* The Commission may extend the forty-five day review period in paragraph (b) of this section for:

(1) An additional forty-five days, if the product raises novel or complex issues that require additional time for review or is of major economic significance, in which case, the Commission would notify the submitting registered entity within the initial forty-five day review period and would briefly describe the nature of the specific issues for which additional time for review would be required; or

(2) Such extended period as the submitting registered entity so instructs the Commission in writing.

* * * * *

(e) *Effect of non-approval.*

(1) * * *

(2) Notification to a submitting registered entity under paragraph (d) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or regulations thereunder.

26. Section 40.4 is proposed to be revised to read as follows:

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Designated contract markets must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or rule amendment that, for a delivery month having open interest, would materially change a term or condition as defined in § 40.1(i), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(4) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material changes and, except as provided in paragraph (b)(9) of this section, may be reported to the Commission pursuant to the provisions of § 40.6(c):

(1) Changes in trading hours;

(2) Changes in lists of approved delivery facilities pursuant to previously set standards or criteria;

(3) Changes to terms and conditions of options on futures other than those relating to last trading day, expiration date, option strike price delistings, and speculative position limits;

(4) Reductions in the minimum price fluctuation (or "tick");

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another federal regulatory authority;

(6) Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(7) Fees or fee changes of less than $1.00 per contract;

(8) Fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution; and

(9) Any other rule:

(i) The text of which has been submitted for review to the Secretary of the Commission electronically in a format specified by the Secretary of the Commission, at least ten business days prior to its implementation and that has been labeled "Non-Material Agricultural Rule Change;"

(ii) For which the registered entity has provided an explanation as to why it considers the rule "non-material," and any other information that may be beneficial to the Commission in analyzing the merits of the entity's claim of non-materiality; and

(iii) With respect to which the Commission has not notified the contract market during the review period that the rule appears to require or does require prior approval under this section.

27. Section 40.5 is proposed to be amended by revising paragraph (a), revising paragraph (c)(1) and revising paragraph (e)(2) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A registered entity may request pursuant to Section 5c(c) of the Act that the Commission approve any proposed rule or rule amendment. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the registered entity in a format specified by the Secretary of the Commission.

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Set forth the text of the proposed rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(5) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market

participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the registered entity's framework of self-regulation, a demonstration that the submission complies with the requirements of Appendix A to this part—Guideline No. 1, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting registered entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(6) Briefly describe any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants with respect to the proposed rule that were not incorporated into the proposed rule;

(7) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret, in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission regulation or the interpretation;

(8) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification; and

(9) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

* * * * *

(c) *Extensions of time.* The Commission may extend the review period in paragraph (b) of this section for:

(1) An additional forty-five days, if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, in which case, the Commission would notify the submitting registered entity within the initial forty-five day review period and would briefly describe the nature of the specific issues for which additional time for review would be required; or

* * * * *

(e) *Effect of non-approval.* (1) * * *

(2) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment does not violate the Act or regulations thereunder.

* * * * *

28. Section 40.6 is proposed to be amended by revising paragraph (a) introductory text, paragraphs (a)(2), (3), and (4), paragraph (c) introductory text, and paragraphs (c)(1), (c)(2)(iii) and (c)(2)(v), and by adding new paragraphs (c)(2)(vi) and (c)(3)(ii)(F) to read as follows:

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) *Required certification.* A designated contract market or a registered derivatives clearing organization may implement any new rule or rule amendment (other than a rule or rule amendment approved or deemed approved by the Commission under § 40.5) if the following conditions have been met:

(1) * * *

(2) The designated contract market or registered derivatives clearing organization has filed a submission electronically for the rule or rule amendment with the Secretary of the Commission and at the regional office having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission, and the Commission has received the submission at its headquarters by close of business on the business day preceding implementation of the rule; *provided, however,* rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than 24 hours after implementation; and

(3) The rule submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, "Emergency Rule Certification" should be noted in the Description section of the submission cover sheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of implementation;

(iv) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule; and

(v) A certification by the registered entity that the rule complies with the Act and regulations thereunder.

(4) The registered entity shall provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the certification filing and the entity's compliance with any of the requirements of the Act or Commission regulations or policies thereunder.

* * * * *

(c) *Notification of rule amendments.* Notwithstanding the rule certification requirement of Section 5c(c)(1) of the Act, and paragraphs (a)(1), (a)(2) and (a)(3) of this section, a designated contract market or a registered derivatives clearing organization may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The designated contract market or registered derivatives clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly Notification of Rule Changes" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format specified by the Secretary of the Commission; and

(2) * * *

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

* * * * *

(v) *Fees.* Fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(vi) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities

that provide price or cash market information to an independent third party and that are incorporated by reference as product terms.

(3) * * *

(ii) * * *

(F) *Securities Indexes.* Routine changes to the composition, computation or method of security selection of an index that is referenced and defined in the product's rules, and which are made by an independent third party.

29. Section 40.7 is proposed to be amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 40.7 Delegations.

(a) *Procedural matters* * * *

(3) The Commission hereby delegates to the Director of the Division of Market Oversight or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, the authority to notify a designated contract market that a rule change submitted for materiality determination under § 40.4(b)(9) is material and must be submitted for the Commission's prior approval.

(b) *Approval authority.* * * *

(3) Establish or amend speculative limits or position accountability provisions that are in compliance with the requirements of the Act and Commission regulations;

* * * * *

30. Section 40.8 is proposed to be amended by revising paragraph (b) to read as follows:

§ 40.8 Availability of public information.

* * * * *

(b) Any information required to be made publicly available by a registered entity under Sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, or a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the day following its certification by the registered entity.

31. Appendix D to Part 40—Submission Cover Sheet and Instructions is proposed to be amended by revising the first paragraph to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

A properly completed submission cover sheet must accompany all rule submissions submitted electronically by a designated contract market, registered derivatives transaction execution facility, or registered derivatives clearing organization to the Secretary of the Commodity Futures Trading Commission, at *submissions@cftc.gov* in a format specified by the Secretary of the Commission. Each submission should include the following:

* * * * *

Issued in Washington, DC, this first day of July, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–13467 Filed 7–8–05; 8:45 am]

BILLING CODE 6351–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No.16]

RIN–0960–AG00

Rules for Helping Blind and Disabled Individuals Achieve Self-Support

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to amend our regulations to implement section 203 of the Social Security Independence and Program Improvements Act of 1994. Section 203 of this law amended section 1633 of the Social Security Act to require us to establish by regulations criteria for time limits and other criteria related to plans to achieve self-support (PASS). The law requires that the time limits take into account the length of time that a person needs to achieve his or her employment goal, within a reasonable period, and other factors as determined by the Commissioner to be appropriate.

A PASS allows some people who receive or are eligible for Supplemental Security Income (SSI) disability benefits to set aside part of their income and/or resources to meet an employment goal. The income and/or resources set aside under a PASS will not be counted in determining the amount of the person's SSI payment or his or her eligibility.

DATES: To be sure that your comments are considered, we must receive them by September 9, 2005.

ADDRESSES: You may give us your comments by using: Our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal: *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830, or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at: *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Mary Hoover, Policy Analyst, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 965–5651 or TTY 1–800–325–0778 for information about these proposed rules. For information on eligibility or filing for benefits, call our national toll-free number 1–(800) 772–1213 or TTY 1–(800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/*.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice of Proposed Rulemaking (NPRM)?

In this NPRM, we propose to amend our regulations to implement section 203 of the Social Security Independence and Program Improvements Act of 1994 (Pub. L. 103–296). This law amended section 1633 of the Social Security Act to provide that, as of January 1, 1995, in establishing time limits and other criteria related to a PASS, we take into account the length of time that you will need to achieve your employment goal, within a reasonable period, and other factors as determined by the Commissioner to be appropriate. This requirement for a more individualized time limit voided the time limit requirements for PASS in our existing regulations, which provided for an initial period of not more than 18 months, an extension of up to an additional 18 months, and a maximum of 48 months. We propose to revise the current rules to take into account your individual needs and your employment goal in determining what a reasonable length of time is to achieve your employment goal. These proposed revisions will add language to some of our rules describing the information that must be contained in a PASS. They will clarify requirements currently in our PASS rules and operating procedures.

These revisions do not reflect a change in policy because after the enactment of Pub. L. 103–296, we updated our operating manual to reflect the need for a more individualized assessment of a PASS time limit.

What Is a Plan to Achieve Self-Support (PASS)?

A PASS allows people who are blind or disabled and who receive, are eligible for, or are applying for SSI, to set aside income and/or resources for expenses needed in meeting an employment goal. We will not count the income and/or resources set aside under a PASS in determining your eligibility for and receipt of SSI. If you receive title II disability benefits, you may also use a PASS to meet an employment goal if you:

- Would meet all other income and resource eligibility requirements for SSI if some or all of your title II benefit was excluded;
- Apply for SSI; and
- Develop an approved PASS that sets aside some or all of your title II benefit towards meeting an employment goal.

The purpose of a PASS is to help people who are blind or disabled become self-supporting. A PASS must meet specific requirements that are set out in our regulations at 20 CFR 416.1180 through 416.1182 and in chapter SI 00870 of our Program Operations Manual at: *http://policy.ssa.gov/poms.nsf/partlist?OpenView*. It must be individualized with an employment goal that is feasible and with a plan to reach that employment goal that is viable for you. It must be in writing, contain reasonable start and ending dates for meeting your employment goal, and establish target dates for milestones, *i.e.* intermediate steps, towards attainment of your goal. It must be approved by us, and we will review your progress under the plan at least annually.

What Revisions Are We Proposing To Make and Why?

As of January 1, 1995, section 1633(d) of the Act requires that, in establishing time limits and other criteria for a PASS, we consider the reasonable amount of time that a person needs to meet his or her employment goal and other factors that we determine are appropriate.

We propose to revise our rules to eliminate the current monthly time limits and to add rules that will take into account your individual needs and your employment goal in determining what a reasonable length of time is for you to achieve that goal. These proposed revisions will describe the requirements for and contents of a PASS to clarify requirements currently in our PASS rules and operating procedures. These revisions will clarify that a PASS must have a feasible employment goal and a viable plan to reach that goal. have reasonable beginning and ending dates, include target dates for milestones toward completion of the goal, and that we will review progress under a plan at least annually. We will help you establish a reasonable ending date. We may adjust or extend the ending date of your PASS based on progress towards your goal and earnings level reached. We will review your PASS progress at least annually to determine if you continue to follow the provisions of your PASS.

The following is an explanation of the specific changes we are proposing and our reasons for making these proposals:

We propose to revise § 416.1180 by adding that we will exclude income used to meet expenses that are reasonable and necessary to fulfill an approved PASS. In addition, we propose to revise § 416.1225 to clarify that we will not count resources that are used for expenses that are reasonable and necessary to fulfill a PASS. Requiring that the expenses be reasonable and necessary to fulfill a PASS is not a change in policy. It is contained in our operating procedures.

We propose to revise § 416.1181 to list the requirements of a PASS that sets aside income to meet an employment goal and § 416.1226 to list the requirements of a PASS that sets aside resources to meet an employment goal. A PASS must be individualized, be in writing, specify an employment goal that is feasible, include a plan to reach the goal that is viable for you, and contain a reasonable start and ending date for meeting your employment goal. You must propose a reasonable ending date to your PASS. If necessary, we will help you establish an ending date, which may be different than the ending date that you propose. Once the ending date is set and you begin following a PASS, we may adjust or extend the PASS ending date based on progress towards your goal and earnings level reached. We will review your PASS progress at least annually to determine if you continue to follow the provisions of your PASS.

A PASS must include target dates for milestones and must be approved by us. We will review your progress at least annually. A PASS that sets aside income or resources must show anticipated expenses and explain how they are necessary for the employment goal. It must show anticipated income (or resources you have and will receive) and explain how the income or resources will be used to meet expenses towards the employment goal. It must show how the money or resources set aside under a PASS will be kept separate from other funds or resources. It must show how living expenses will be met while the PASS is in effect. If the employment goal is self-employment, it must include a plan that defines the business, provides a marketing strategy, details financial data, outlines the operational procedures, and describes the management plan.

Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order (E.O.) 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13256. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements in §§ 416.1181 and 416.1226. The public reporting burden is accounted for in the

Information Collection Request for the form that the public uses to submit the information to SSA. Therefore, a one hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of this burden because it was not considered during the clearance of the form.

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454. Comments should be submitted and/or faxed to OMB and SSA at the following address/numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Room 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income, Reporting and recordkeeping requirements.

Dated: April 4, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart K and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income [Amended]

1. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 702(1)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. The second sentence of § 416.1180 is revised to read as follows:

§ 416.1180 General.

* * * If you are blind or disabled, we will pay you SSI benefits and will not count the part of your income (for example, your or a family member's wages, title II benefits, or pensions) that you use or set aside to use for expenses that we determine to be reasonable and necessary to fulfill an approved plan to become self-supporting. * * *

3. Section 416.1181 is revised to read as follows:

§ 416.1181 What is a plan to achieve self-support (PASS)?

(a) A PASS must—

(1) Be designed especially for you;

(2) Be in writing;

(3) Be approved by us (a change of plan must also be approved by us);

(4) Have a specific employment goal that is feasible and a plan to reach it that is viable for you;

(5) Be limited to one employment goal; however, the employment goal may be modified and any changes related to the modification must be made to the plan;

(6) Show how the employment goal will generate sufficient earnings to substantially reduce or eliminate your dependence on SSI or eliminate your need for title II disability benefits;

(7) Contain a beginning date and a reasonable ending date to meet your employment goal;

(8) Give target dates for meeting milestones towards your employment goal;

(9) Show what expenses you will have and how they are reasonable and necessary to meet your employment goal;

(10) Show what money you have and will receive, how you will use or spend it to attain your employment goal, and how you will meet your living expenses; and

(11) Show how the money you set aside under the plan will be kept separate from your other funds.

(b) You must propose a reasonable ending date for your PASS. If necessary, we can help you establish an ending date, which may be different than the ending date you propose. Once the ending date is set and you begin your PASS, we may adjust or extend the ending date of your PASS based on progress towards your goal and earnings level reached.

(c) If your employment goal is self-employment, you must include a business plan that defines the business, provides a marketing strategy, details financial data, outlines the operational procedures, and describes the management plan.

(d) Your progress will be reviewed at least annually to determine if you are following the provisions of your plan.

Subpart L—[Amended]

4. The authority citation for subpart L is revised to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

5. Section 416.1225 is revised to read as follows:

§ 416.1225 An approved plan to achieve self-support; general.

If you are blind or disabled, we will pay you SSI benefits and will not count resources that you use or set aside for expenses that we determine to be reasonable and necessary to fulfill an approved plan to achieve self-support.

6. Section 416.1226 is revised to read as follows:

§ 416.1226 What is a plan to achieve self-support (PASS)?

(a) A PASS must—

(1) Be designed especially for you;

(2) Be in writing;

(3) Be approved by us (a change of plan must also be approved by us);

(4) Have a specific employment goal that is feasible and a plan to reach it that is viable for you;

(5) Be limited to one employment goal; however, the employment goal may be modified and any changes related to the modification must be made to the plan;

(6) Show how the employment goal will generate sufficient earnings to substantially reduce your dependence on SSI or eliminate your need for title II disability benefits;

(7) Contain a beginning date and a reasonable ending date to meet your employment goal;

(8) Give target dates for meeting milestones towards your employment goal;

(9) Show what expenses you will have and how they are reasonable and necessary to meet your employment goal;

(10) Show what resources you have and will receive, how you will use them to attain your employment goal, and how you will meet your living expenses; and

(11) Show how the resources you set aside under the plan will be kept separate from your other resources.

(b) You must propose a reasonable ending date for your PASS. If necessary, we can help you establish an ending date, which may be different than the ending date you propose. Once the ending date is set and you begin your PASS, we may adjust or extend the ending date of your PASS based on your progress towards your goal and earnings level reached.

(c) If your employment goal is self-employment, you must include a business plan that defines the business, provides a marketing strategy, details financial data, outlines the operational procedures, and describes the management plan.

(d) Your progress will be reviewed at least annually to determine if you are following the provisions of your plan.

[FR Doc. 05–13584 Filed 7–8–05; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2005–20764]

RIN 2125—AF05

Project Authorization and Agreements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its regulations relating to project authorization and agreements and the effect on obligations of Federal-aid highway funds under these requirements. The proposed changes would: (1) Require the deobligation of Federal funds that remain committed to inactive projects as well as the deobligation of unneeded or excess project funding; (2) reduce the occurrences where Federal funds are committed to inactive projects or where an obligation is in excess of the amount needed to complete the project; (3) establish a project completion date that would be annotated in all new project agreements and modifications to existing project agreements; and (4) require States to assure that third party contracts and agreements are processed and billed promptly when the work is completed. These proposed changes would also assist the States and the FHWA in monitoring Federal-aid highway projects and provide better assurance that the Federal funds obligated reflect the current estimated costs of the project. Federal funds deobligated may then be obligated for new or other active projects needing additional funding to the extent permitted by law. The proposed changes would have no effect on obligated funds that are needed for projects that are congressionally mandated.

DATES: Comments must be received on or before September 9, 2005.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the eRulemaking Portal at *http://www.regulations.gov*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form on all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Gray, Federal-aid Financial Management Division, (202) 366–0978, or Mr. Steven Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word, MS Word for Mac, Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using the internet to reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

The State and FHWA must enter into a formal project agreement for each Federal-aid highway project that the State requests an authorization of work to be performed (23 CFR 630.106(a)(2)). The project agreement includes the work to be undertaken, project costs, and other conditions related to the project, and its execution constitutes a contractual obligation of the Federal government under Section 106 of Title 23 United States Code (*see also* 31 U.S.C. 1501(a)(5)(B); 23 CFR 630.106(c)).

The amount of Federal funds obligated on a Federal-aid highway project is based on a cost estimate. In some cases, as work progresses, the amount of Federal funds obligated is not revised to reflect a change in the cost estimate or to reflect an adjustment in the cost of the project. In other cases, an amount remains obligated on a project although no longer needed, sometimes for a substantial period of time after a project has been completed, and in some cases, where a project has been cancelled.

The FHWA and the States have monitored inactive projects for a number of years to identify projects where the amounts obligated could be reduced. During this time, the FHWA has issued additional guidance, and identified best practices to help validate the amounts obligated.[1] Notwithstanding these practices and actions, it is apparent that inactive projects with excess obligations have not been addressed in a timely fashion.

In March 2004, the Inspector General of the Department of Transportation issued a report on inactive obligations.[2] The results of the Inspector General audit revealed that some amounts obligated were unneeded, primarily

[1] Examples of FHWA policies and guidance are available in the docket. (*See:* Federal Highway Administration National Quality Financial Management Initiative, Project Funds Management, March 1999; Financial Management Improvement Program; Project Funds Management Process Improvement Review, December 2002).

[2] The DOT Inspector General Report, Report Number FI–2004–039, entitled "Inactive Obligations, Federal Highway Administration," dated March 31, 2004, is available at the following URL: *http://www.oig.dot.gov/show_pdf.php?id=1282*.

because they were associated with cancelled, reduced scope, or completed projects. The report stated, "the success of efforts by FHWA to ensure obligated amounts continue to represent valid liabilities is a critical measure of the effectiveness of its financial management practices. When unneeded obligations for grants are identified, the funds should be deobligated and reapplied to other projects."

The purpose of this NPRM is to revise the FHWA's regulations on project agreements, 23 CFR 630, establish a systematic process that will assist the States and the FHWA to monitor projects, provide greater assurance that the amount of Federal funds obligated on a project reflects the current cost estimate, and that funds no longer needed are timely deobligated and reapplied to other eligible projects.

The FHWA also proposes to reduce amounts obligated on inactive projects when it determines that the project is not advancing or the amount of Federal funds obligated exceeds the amount needed to complete the project. A project is considered inactive when no expenditures have been charged against Federal funds during the previous twelve months.

The FHWA proposes to require a project completion date in all new project agreements and modifications of existing projects agreements. The project completion date may be revised by the State with adequate written justification for the extension. When the project completion date occurs, the State will be required to close the project and release any unexpended obligations. If the State fails to close the project within 90 days, the FHWA shall take appropriate action to assure that the amount obligated is properly adjusted. The 90-day period is consistent with the closeout requirements in section 18.50(b) of 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments which requires a grantee to submit all financial reports within 90 days after the expiration or termination of a grant.

When a State enters into a contract or agreement with a third party to conduct certain types of work on a project, the third party must submit a billing or claim to the State as the work progresses. The State cannot receive reimbursement of Federal funds until the third party submits a billing or claim to the State for payment. Therefore, the FHWA proposes to require States to assure that third party billings are submitted and processed promptly when the work is completed.

Proposed Changes

The FHWA proposes to revise its regulation as it relates to the project agreements and the effect on obligation of Federal funds.

In § 630.106, we propose to add paragraph (a)(3) that would require a State to (1) adjust the Federal funds obligated on any project, active or inactive, when the estimated costs decrease by more than 10 percent or $100,000, and (2) adjust the Federal funds obligated on an inactive project when no activity is expected in the next year or the amount obligated is in excess of the funds needed to complete the project based on the estimated cost of the project as documented. An inactive project means that no expenditures were charged against Federal funds during the previous twelve months. We also propose to add paragraph (a)(4) that would allow the FHWA to revise the obligations or take other actions if a State fails to take prompt actions to reduce Federal obligations.

In § 630.108, we propose to add paragraph (b)(9) that would require a project completion date be included in the project agreement for project costs billed to FHWA. When the project completion date occurs, the State will be required to close the project and release any unexpended obligations with 90 days. A project completion date will ensure that the States engage in prompt billing and timely processing of claims of work done by a third party. We also propose to add paragraph (b)(10) that would require FHWA to reduce the Federal obligation to the amount expended unless justification is provided by the State for maintaining a certain amount of unexpended obligation necessary to complete the project .

In § 630.108, we propose to add paragraph (e) that would outline the States responsibility relating to third party contracts and agreements when inactive projects involve work done by a third party. The State is responsible for ensuring that the third party processes and submits a claim for reimbursement to the State for the work it has done in a timely manner. A delay in receiving or processing of billings or claims is not a valid reason for the State to request an extension of the project completion date.

In § 630.110, we propose to add paragraph (d) that would advise States to provide support that the remaining unexpended obligations are still needed if a revision to the project completion date is requested.

Rulemaking Analyses and Notices

All comments received before close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 nor is it significant within the meaning of the Department of Transportation regulatory policies and procedures. We anticipate that the economic impact of this rulemaking would be minimal. In fact, funds released as a result of a deobligation under the proposed rule would be credited to the same program category and would be immediately available for obligation and expenditure on eligible projects in accordance with 23 U.S.C. 118(d).

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses obligation of Federal funds to States for Federal-aid highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, tribal governments, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532 *et seq.*).

Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector. Additionally, the definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), the FHWA must obtain approval from the Office of Management and Budget (OMB) for each collection of information we conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain a collection of information requirement for purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Reimbursement, Grant Programs-transportation, Highways and roads.

Issued on: July 1, 2005.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend part 630 of title 23, Code of Federal Regulations, as follows:

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—Project Authorization and Agreements

1. The authority citation for part 630 continues to read as follows:

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 31 U.S.C. 1501(a)(5)(B); 23 CFR 1.32; and 49 CFR 1.48(b).

2. Amend § 630.106 by adding paragraphs (a)(3) and (4) to read as follows:

§ 630.106 Authorization to proceed.

(a) * * *

(3) The State shall monitor all projects and shall promptly revise the Federal funds obligated for a project when the cost estimate has decreased by more than ten percent or $100,000. For inactive projects (for purposes of this subpart an "inactive project" means a project in which no expenditures have been charged against Federal funds during the past twelve consecutive months), the State shall promptly revise the Federal funds obligated for the project to reflect the amount of Federal funds expended on the project or the Federal share of the current documented cost estimate if:

(i) The project is unlikely to be advanced within the next twelve months; or

(ii) The amount obligated for the project exceeds the current estimated cost of the project.

(4) If the State fails to take prompt action to reduce Federal obligations as required in paragraph (a)(3) of this section, then FHWA shall revise the obligations or take such other action as authorized by 23 CFR 1.36.

* * * * *

3. Amend § 630.108 by adding paragraphs (b)(9) and (10) and (e) to read as follows:

§ 630.108 Preparation of agreement.

(b) * * *

(9) The agreement shall specify a project completion date. The project completion date will be the date when work on the project is expected to be completed. Within 90 days after the project completion date, the State shall submit a request to FHWA to close the project and release any unexpended obligations on the project.

(10) If the State does not close the project within 90 days after the project completion date, then the FHWA shall reduce the Federal obligation to the amount expended unless justification is provided by the State for maintaining a certain amount of unexpended obligation necessary to complete the project.

* * * * *

(e) The State is responsible for assuring that third party contracts and agreements provide for the timely billing and processing of final claims following the completion of work by the third party. A delay in receiving or processing third party claims will not be justification for extending the project completion date as permitted in §630.110(d) of this subpart unless the delay is the result of an unusual circumstance beyond the control of the State and the third party.

4. Amend §630.110 by adding paragraph (d) to read as follows:

§ 630.110 Modification of the original agreement.

* * * * *

(d) The modification may include a revised project completion date provided the State submits a revised project schedule and support that the remaining unexpended obligation amount is still needed.

[FR Doc. 05–13514 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102144–04]

RIN 1545–BD10

Dual Consolidated Loss Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29868). The proposed regulations provide guidance regarding dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

FOR FURTHER INFORMATION CONTACT: Kathryn T. Holman, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–102144–04) that is the subject of these corrections are under sections 1503, 953 and 367 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–102144–04) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–102144–04), that was the subject of FR Doc. 05–10160, is corrected as follows:

1. On page 29869, column 1, in the preamble under the paragraph heading "Background", paragraph 3 from the top of the column, line 5, the language "as if such unit where a wholly owned" is corrected to read "as if such unit were a wholly owned"

§ 1.1503(d)–4 [Corrected]

2. On page 29897, column 2, "§ 1503(d)–4 (i)(1), line 6, the language, "through (ix) of this section, including" is corrected to read "through (viii) of this section, including"

§ 1.1503(d)–5 [Corrected]

3. On page 29903, column 2, § 1.1503(d)–5(c), paragraph (i), of *Example 34.*, the language, "its worldwide income F_x, a an unrelated" is corrected to read "its worldwide income, F_x, an unrelated"

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 05–13381 Filed 7–8–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100420–03]

RIN 1545–BB90

Safe Harbor for Valuation Under Section 475; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29663). The proposed regulations provide guidance regarding elective safe harbor for dealers and traders in securities and commodities.

FOR FURTHER INFORMATION CONTACT: Marsha A. Sabin or John W. Rogers III (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–100420–03) that is the subject of these corrections is under section 475 of the Internal Revenue Code.

Need for Correction

The notice of proposed rulemaking (REG–100420–03) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice proposed rulemaking (REG–100420–03), that was the subject of FR Doc. 05–10167, is corrected as follows:

1. On page 29666, column 2, under paragraph heading Record Retention and Production; Use of Different Values, first paragraph, lines 15 through 18 from

the bottom of the paragraph, the language "such as the Schedule M–1, "Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More," Schedule M–3, "Net" is corrected to read "such as the Schedule M–1, "Reconciliation of Income (Loss) per Books with Income per Return", Schedule M–3, "Net".

§ 1.475(a)–4 [Corrected]

2. On page 29670, column 3, § 1.475(a)–4 (k)(2)(i)(A), lines 11 through 13 from the top of the column, the language, "Schedule M–1, "Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More" is corrected to read "Schedule M–1, "Reconciliation of Income (Loss) per Books with Income per Return".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 05–13382 Filed 7–8–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 003–2005]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a new Privacy Act system of records entitled, Department of Justice Regional Data Exchange System (RDEX), DOJ–012, from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). The information in this system of records relates to matters of criminal law enforcement, and the exemption is necessary in order to avoid interference with law enforcement responsibilities and functions and to protect criminal law enforcement information as described in the proposed rule.

DATES: Comments must be received by August 10, 2005.

ADDRESSES: Address all comments in writing to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), Facsimile Number (202) 307–1853. To ensure proper handling, please reference the AAG/A Order No. on your correspondence. You may review an electronic version of this proposed rule at *http://www.regulations.gov*. You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: *DOJPrivacyACT ProposedRegulations@usdoj.gov;* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of this system of records.

Regulatory Flexibility Act

This proposed rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Privacy Act, Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems Under the Privacy Act

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.133 is added to read as follows:

§ 16.133 Exemption of Department of Justice Regional Data Exchange System (RDEX), DOJ–012.

(a) The Department of Justice Regional Data Exchange System (RDEX), DOJ–012, is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) This system is exempted from the following subsections for the reasons set forth below:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures of criminal law enforcement records concerning him or her could inform that individual of the existence, nature, or scope of an investigation, or could otherwise seriously impede law enforcement efforts.

(2) From subsection (c)(4) because this system is exempt from subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of criminal law enforcement information could interfere with an investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others.

(4) From subsection (d)(2) because amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent that exemption is claimed from subsections (d)(1) and (2).

(6) From subsection (e)(1) because it is often impossible to determine in advance if criminal law enforcement records contained in this system are relevant and necessary, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) From subsection (e)(2) because collecting information from the subject individual could serve notice that he or she is the subject of a criminal law enforcement matter and thereby present a serious impediment to law enforcement efforts. Further, because of the nature of criminal law enforcement matters, vital information about an individual frequently can be obtained only from other persons who are familiar with the individual and his or her activities and it often is not practicable to rely on information provided directly by the individual.

(8) From subsection (e)(3) because informing individuals as required by this subsection could reveal the existence of a criminal law enforcement matter and compromise criminal law enforcement efforts.

(9) From subsection (e)(5) because it is often impossible to determine in advance if criminal law enforcement records contained in this system are accurate, relevant, timely, and complete,

but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and obtaining investigative leads.

(10) From subsection (e)(8) because serving notice could give persons sufficient warning to evade criminal law enforcement efforts.

(11) From subsection (g) to the extent that this system is exempt from other specific subsections of the Privacy Act.

Dated: June 30, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 05–13551 Filed 7–8–05; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–072]

RIN 1625–AA08

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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

DATES: Comments and related material must reach the Coast Guard on or before July 26, 2005.

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

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–05–072, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

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

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. The regulated area includes a section of the Atlantic Ocean approximately 2.5 miles long, running from Pennsylvania Avenue to Columbia Avenue, and extending approximately 900 yards out from the shoreline. The temporary special local regulations will be enforced from 10:30 a.m. to 3 p.m. on August 31, 2005, and will restrict general navigation in the regulated area during the aerial demonstration. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

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

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

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

Small Entities

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

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

this section of the Atlantic Ocean during the event.

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

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

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

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

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean, adjacent to Atlantic

City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W. All coordinates reference Datum NAD 1983.

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

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

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

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

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

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

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

Dated: June 26, 2005.

Sally Brice-O'Hara,

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

[FR Doc. 05–13576 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

49 CFR Chapter I

[USCG–2005–20052]

Potable Water on Inspected Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of inquiry; request for information.

SUMMARY: This notice solicits public input on the amount of potable water that should be available on inspected vessels. Section 416 of the Coast Guard and Marine Transportation Act of 2004 amended 46 U.S.C. 3305 on "Scope and standards of inspection." This amendment adds a new item to the inspection process; that is, to ensure that each inspected vessel has an adequate supply of potable water for drinking and washing by passengers and crew. The Coast Guard is considering the options for implementing the new statute and seeks public input and information on criteria to determine the amount of potable water that should be available on inspected vessels.

DATES: Information and related material must reach the Docket Management Facility on or before September 9, 2005.

ADDRESSES: You may submit information identified by Coast Guard docket number USCG–2005–20052 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Mr. Craig Burch, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–267–2206, e-mail *cburch@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Information

All comments and information received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments and information: If you submit information, please include your name and address, identify the docket number for this notice (USCG–2005–20052) and give the reason for each comment or for bringing information to our attention. You may submit your information by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your information by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and information received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments and information received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

Section 416 of the Coast Guard and Marine Transportation Act of 2004 amended 46 U.S.C. 3305 on "Scope and standards of inspection." This amendment adds a new item to the inspection process; that is, to ensure that each inspected vessel has an adequate supply of potable water for drinking and washing by passengers and crew. The Coast Guard seeks public input and information on criteria that could be used to determine an adequate supply of potable water on inspected vessels. In this case, inspected vessels include ships, manned barges, and Mobile Offshore Drilling Units. Factors that will be used to determine an adequate supply are:

- The size and type of vessel;
- The number of passengers and crew on board;
- The duration and routing of voyages; and
- Guidelines for potable water recommended by the Centers for Disease Control and Prevention and the Public Health Service.

Through this notice, the Coast Guard asks for comments and information related to the following questions:

- What other factors should be considered in determining the amount of potable water that should be available on a vessel?
- What design practices and policies are used for potable water systems on vessels?
- Are periodic water tests conducted on U.S. vessels to determine continued potability?
- What protocols or test methods are being used and who is conducting the testing?
- What industry standards could be applied to the design and testing of potable water systems on vessels?
- Should the Coast Guard consider incorporating the International Organization for Standardization (ISO)standards 15748–1 on Ships and marine technology—Potable water supply on ships and marine structures—Part 1: Planning and Design and 15748–2 on Ships and marine technology—Potable water supply on ships and marine structures—Part 2: Method of calculation?

ISO standards 15748–1 and 15748–2 have not been put into the public docket because they are protected by copyright. These standards are available for purchase through the International Organization for Standardization, 1, rue de Varembé, Case postale 56, CH–1211 Geneva 20, Switzerland. These standards may also be viewed at U.S. Coast Guard Headquarters. Please call or e-mail Mr. Craig Burch, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–267–2206, e-mail *cburch@comdt.uscg.mil* to schedule an appointment.

Authority: 46 U.S.C. 3305, 46 U.S.C. 3306, Department of Homeland Security Delegation No. 0170.1.

Dated: June 27, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, and Environmental Protection.

[FR Doc. 05–13074 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 040517149–5173–03; I.D. 050304C]

Petition for Emergency Rulemaking to Protect Deep-Sea Coral and Sponge Habitat from Mobile Bottom-Tending Fishing Gear Under the Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Provisions

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

ACTION: Petition for rulemaking; denial of emergency action.

SUMMARY: NMFS announces its decision on a petition for rulemaking under the Administrative Procedure Act (APA). Oceana, a non-governmental organization (NGO), petitioned the U.S. Department of Commerce to promulgate immediately a rule to protect deep-sea coral and sponge (DSCS) habitat from the impacts of mobile bottom-tending fishing gear. NMFS finds that the petitioned emergency rulemaking is not warranted. NMFS will work actively with each Regional Fishery Management Council (Council) to evaluate, and take action where appropriate to protect DSCS and may pursue future rulemakings to protect DSCS in specific locations based on analyses for specific fisheries. Additionally, NMFS plans to develop a strategy to address research, conservation, and management issues regarding DSCS habitat, which eventually may result in rulemaking for some fisheries.

ADDRESSES: Copies of NMFS decision on the Oceana petition are available from Tom Hourigan, NMFS Coral Reef Coordinator, Office of Habitat Conservation, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301–713–3459 ext. 122. NMFS decision on the Oceana petition is available via internet at: *http://www.nmfs.noaa.gov/habitat/habitatconservation/DSC_petition*.

FOR FURTHER INFORMATION CONTACT: Tom Hourigan, NMFS Coral Reef Coordinator; telephone: 301–713–3459 Ext. 122; e-mail: *Tom.Hourigan@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published a notice of receipt of petition for rulemaking on June 14, 2004 (69 FR 32991) and invited public comments for 60 days ending August 13, 2004. NMFS reopened the comment period on August 31, 2004 (69 FR 53043) to allow for more time to comment. This comment period ran 45 days, concluding on October 15, 2004. NMFS received 16 letters from interest groups including 6 Councils, commercial fishermen, fisheries organizations, a Federal agency, environmental groups, and other interested individuals. NMFS also received more than 32,000 form letters of similar content and two lists of signatures from interested members of the general public. Summaries of and responses to comments are provided under the Public Comments section below.

The Petition

The petition filed by Oceana sought rulemaking to protect DSCS habitat. This petition states that DSCS habitat comprises long-lived, slow-growing organisms that are especially vulnerable to destructive fishing practices, such as the use of mobile bottom-tending fishing gear and claims that without immediate protection, many of these sensitive DSCS habitats will suffer irreparable harm.

The petition cites specific legal responsibilities of NMFS for EFH and HAPCs under the Magnuson-Stevens Act and the EFH regulatory guidelines at 50 CFR 600, subparts J and K, and concludes that NMFS must: identify and describe DSCS habitat as EFH; designate some, if not all, of these habitat types as HAPCs; take appropriate measures to minimize to the extent practicable adverse fishing effects on this EFH; and protect such habitat from other forms of destructive activity. The petition gives a short overview of known DSCS habitat in regions off the mainland United States, including areas known in the North Pacific, Pacific, Northeast and Mid-Atlantic, Southeast, and Gulf of Mexico fishery management regions. The petition asserts that DSCS habitat satisfy the definition of EFH in the Magnuson-Stevens Act and concludes that such areas must be identified and described as EFH under the relevant FMPs. In addition, the petition states that DSCS habitat should be identified as HAPCs because it meets the definition of HAPC and satisfies one or more of the criteria set forth in the EFH guidelines for creating HAPCs. Further, the petition argues that the Magnuson-Stevens Act requires NMFS to protect areas identified as EFH and HAPC and that such protection, as articulated in the petition, is "practicable." Finally, the petition asserts that the Magnuson-Stevens Act requires the Secretary and the Councils to develop FMPs

specifically for the protection of DSCS, if existing FMPs cannot provide the means for protecting such habitats.

The petition specifically requests that NMFS immediately initiate rulemaking to protect DSCS habitats in the U.S. Exclusive Economic Zone (EEZ) by taking the following measures:

1. Identify, map, and list all known deep-sea coral and sponge areas containing high concentrations of deep-sea coral and sponge habitats;

2. Designate all known areas containing high concentrations of deep-sea coral and sponge habitat as both EFH and 'habitat areas of particular concern' (HAPC) and close these HAPC to bottom trawling;

3. Identify all areas not fished within the last three years with bottom-tending mobile fishing gear, and close these areas to bottom trawling;

4. Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close areas to bottom trawling where these limits or caps are reached, until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected;

5. Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling;

6. Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessel fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC);

7. Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas; and

8. Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.

The exact and complete assertions of legal responsibilities under Federal law are contained in the text of Oceana's petition, which is available via internet at the following NMFS web address: *http://www.nmfs.noaa.gov/habitat/habitatconservation/DSC_petition/Oceana/HAPC_Coral_Petition.pdf.* Copies of this petition also may be obtained by contacting NMFS at the address provided above.

Agency Decision

After carefully considering the petition and all public comments, NMFS has determined that the measures requested by the petition do not require specific rulemaking at this time. NMFS has determined that certain fishing practices, especially mobile bottom-tending gear (defined by Oceana as including dredges, beam and otter trawls, and other mobile fishing gear that is dragged along the ocean floor), may adversely affect DSCS and the communities that depend upon them and that this issue is important to address, but that it does not represent an emergency as defined in the Magnuson-Stevens Act 16 U.S.C 1855(c)(1). Absent Council request, the Secretary has the discretion to issue emergency regulations when an "emergency exists." This discretion however is limited to only urgent or special circumstances. DSCS areas within the existing mobile bottom-tending gear footprint, and any areas not impacted or areas threatened by future fishery expansion can be addressed through current or future Council rulemaking processes. Thus, the DSCS conservation issue outlined by the petition is not an immediate and urgent threat to the fishery resource. Furthermore, emergency rulemaking by the Secretary substantially limits the participation of the public and other interested parties in the rulemaking process. In fact, the Magnuson-Stevens Act and the APA make it clear that the full scope of public participation and comment must generally be permitted. As such, even controversial actions with serious economic effects should be conducted through typical notice and comment rulemaking. In this instance, the perceived immediate benefits from emergency action do not outweigh the value of advance notice, public comment and deliberative consideration of the impacts of the requested action on the interested parties (62 FR 44421, *NMFS Policy Guidelines for the Use of Emergency Rules*).

Given the nature of the issues raised by the Oceana and the need for additional information, the agency intends to follow the normal rulemaking process in the event that rulemaking is warranted thereby involving the various stakeholders, providing an open forum for scientific review and addressing the potential impacts on the affected communities. The previous actions undertaken by NOAA, NMFS and the eight Councils have addressed or are in the process of addressing many DSCS protection issues that are covered under the Magnuson-Stevens Act. However, it is unclear whether DSCS qualifies as EFH for Federally managed species in all regions and additional research is needed to determine the connection between DSCS and those species. In addition, other factors besides mobile bottom-tending fishing gear should be evaluated in assessing all impacts on DSCS. DSCS damage may result from other types of fishing gear and/or other natural environmental stressors. DSCS bycatch information also differs amongst regions, and less is known about using bycatch data to indicate the presence of important DSCS communities. DSCS research, conservation, and management issues vary amongst regions, and are best addressed through a regional ecosystem approach to management.

Instead of emergency rulemaking, NMFS will enhance its pursuit of a regional approach working through existing regulatory processes to address the conservation and management of these resources. The effectiveness of this approach has been demonstrated by recent actions of several Councils to protect DSCS resources. In cases where the best available science indicates that action should be taken under the Magnuson-Stevens Act to conserve and enhance DSCS habitat and reduce DSCS bycatch, NMFS will work with the appropriate Council(s) to minimize adverse effects from fishing to the extent practicable.

In addition to the emergency rulemaking aspect of the petition's requests, NMFS has considered the petitioner's eight requested measures as well as other aspects of the petition and has instead adopted an approach to address DSCS issues that will be formalized in a National DSCS Conservation and Management Strategy. A description of the National strategy, the public comments to the petition, and the responses to those comments appear below.

Decision on the Eight Requested Measures

Measure 1. NOAA will continue (and, within budget constraints, expand) research efforts to identify and map the location of areas containing high concentrations of structure-forming deep-sea corals (also known as cold-water or deep-water corals). Known areas will be discussed in the NOAA report, *Status of Deep-Coral Communities of the United States*, which is planned for publication in late 2005 or early 2006. Current mapping and research efforts are being undertaken through partnerships between NOAA and the U.S. Geological Survey (USGS), Minerals Management

Service (MMS), the Councils, and several academic institutions. These mapping efforts are ongoing and involve exploration of new areas and synthesizing existing data for deep-sea coral maps. Information included in these maps, any relevant documents, and the maps themselves, may be found on web pages managed by the participating agencies and Councils. NOAA deep-sea coral maps will be made available to the public. Subsequent mapping activities will expand these efforts to include deep-sea sponges, about which less is currently known.

Measure 2. NOAA will continue to support the Councils by providing information on DSCS location and function as potential habitat for Federally managed species. NMFS will encourage Councils in each region to use all available information to describe and identify such EFH, and to identify specific areas as HAPCs where appropriate. In regions where DSCS are described and identified as EFH/HAPCs, NMFS will work proactively with the appropriate Council(s) to minimize adverse effects from fishing to the extent practicable, including consideration of additional closures to mobile bottom-tending gear and other bottom-tending gear as appropriate.

Measure 3. NMFS will work with each Council, using the best available information, to identify areas that have not been subject to mobile bottom-tending gear in the past 5 to 10 years, and that may therefore include undamaged DSCS communities. NMFS will work with each Council to minimize to the extent practicable adverse fishing effects on DSCS identified and described as EFH, to minimize DSCS bycatch to the extent practicable where bycatch is a concern, and to sustain DSCS that are treated as Federally managed species in FMPs. Furthermore, NMFS will work with each Council to evaluate and take action, where applicable, to prevent or prohibit expansion of mobile bottom-tending gear into new areas that may support substantial DSCS, until NMFS has determined through necessary discovery, mapping, and research that such fishing activities would not be likely to damage major DSCS habitats. NMFS believes taking proactive measures to restrict the mobile bottom-tending gear footprint on a regional basis may be the best way to comprehensively protect DSCS EFH and prevent DSCS bycatch while minimizing adverse economic impacts on the fishing industry.

Measure 4. NMFS will work with the Councils through existing bycatch monitoring and observer programs to increase monitoring of DSCS bycatch. NMFS will recognize DSCS as a specific component of the NMFS National Bycatch Strategy and will need to evaluate current standardized bycatch reporting methodology for inclusion of DSCS bycatch reporting methodologies. NMFS will explore the feasibility of using bycatch as a practical indicator of the presence of important DSCS communities. NMFS is not convinced that deep-sea coral bycatch caps will work to protect deep-sea corals, as fishing would inevitably be allowed to impact deep-sea corals until a certain threshold is met. Specifying a threshold would be difficult to relate to sustainable resource management of deep-sea corals. The bycatch of deep-sea sponges has not been well analyzed and the resilience of their communities to fishing gear impacts is very poorly understood.

Measure 5. NMFS will work with the Councils through existing bycatch monitoring and observer programs to increase monitoring of DSCS bycatch, and encourage Councils to consider whether such information is sufficient to identify closure areas to protect EFH/HAPCs and avoid bycatch if appropriate.

Measure 6. NMFS agrees that enhanced monitoring is beneficial to the fishing community, the fishery, and the marine environment. NMFS will continue to work within budget constraints with other agencies and Councils to enforce existing closure areas and any new closure areas related to DSCS.

Measure 7. NMFS Office for Law Enforcement (OLE) is researching and testing other viable ways (e.g., joint enforcement agreements with state counterparts and satellites) to help enforce fishery compliance with all fisheries regulations, including DSCS closure areas. NMFS OLE will continue to work with various NOAA and NMFS divisions, the Councils, NOAA General Counsel, and the U.S. Attorney's Office to determine the appropriate prosecution method and penalties for any fishery regulation offense.

Measure 8. NOAA will continue to survey, research, and protect DSCS habitat within budget constraints. NOAA currently makes available to the public a detailed description of selected expeditions conducted through NOAA's Ocean Exploration Program on DSCS at the following website: http://oceanexplorer.noaa.gov/. NOAA also has funded a pilot research project to examine the potential for coral restoration in the *Oculina* Research Reserve, one of the shallowest deep-sea coral habitats. However, NOAA is not convinced that restoration of most deep-sea coral and sponge habitats is practical, cost-effective, or possible, and has no plans to fund or initiate restoration research beyond the existing pilot at this time.

National Deep-Sea Coral and Sponge Conservation and Management Strategy

NOAA has determined that an agency strategy is needed to effectively and efficiently address DSCS habitat issues. The primary goal of this strategy would be to improve research, conservation, and management of DSCS communities, while balancing long-term uses of the marine ecosystem with maintenance of biodiversity.

NOAA will continue research and mapping of DSCS and work proactively with the Councils and through the NOAA National Ocean Service (NOS) National Marine Sanctuary Program (NMSP) to take near-term steps to meet this goal while developing the broader strategy. Conservation and management actions should at least address the following two objectives: (1) enhance the long-term sustainability of economic use in areas already impacted by fishing gear or other stressors, and (2) conserve DSCS in habitat areas relatively undisturbed by mobile bottom-tending gear until it is determined that such fishing gear activity will not damage DSCS in those areas.

The NOAA strategy will:

1. Develop measurable objectives to meet the national DSCS conservation goal stated above and assess progress toward meeting the goal.
2. Develop regional implementation plans for mapping, monitoring, research, and management initiatives.
3. Encourage education and outreach efforts among fishery managers, scientists, fishermen, and other stakeholders.
4. Use existing partnerships and develop new international approaches to protect DSCS communities.
5. Identify funding needs to implement short-, mid-, and long-term deliverables in support of a NOAA National Strategy.

Managing bycatch and habitat impacts of existing fisheries: The first component of the NOAA DSCS conservation and management strategy will involve the preparation of a DSCS conservation and management report in consultation with the Councils. This report will use the peer reviewed scientific report, *Status Report of Deep-Coral Communities of the United States*, as well as other appropriate information sources, and include the following information: (1) definitions of DSCS to

encourage consistent use of terminology for management purposes; (2) identification of known DSCS areas/communities of concern within the U.S. EEZ; (3) maps of known DSCS areas, fishing effort, and DSCS bycatch; and (4) characterization of bycatch of DSCS and inclusion of DSCS as a specific component of NMFS National Bycatch Strategy. NOAA will invite public comment on the report. Based on information from this conservation and management report and other appropriate information sources, NMFS will work with each Council to evaluate and take appropriate protective action, if new fishery management actions appear to be warranted under the Magnuson-Stevens Act to address fishing impacts. NOAA will also incorporate information regarding the presence of DSCS areas into its management of the National Marine Sanctuaries. The NMSP will, as appropriate, direct necessary management actions to the increased protection of these areas, including where warranted, issuing additional regulations to enhance that protection.

Managing potential expansion of fisheries using mobile bottom-tending gear beyond current areas: The second component of the NOAA DSCS conservation and management strategy will be to identify areas in each Council region that have not been subject to mobile bottom-tending gear in the past 5 to 10 years and that may be reasonably expected to contain DSCS resources that are vulnerable to impacts by this fishing gear. These areas will be identified in the DSCS conservation and management report if sufficient information is available. Based on this information, NMFS will work with each Council to evaluate and take action, where appropriate, to prevent or prohibit expansion of mobile bottom-tending gear into new areas that may support substantial DSCS, until NOAA has determined through necessary discovery, mapping, and research that such fishing activities would not be likely to damage DSCS habitats in these areas.

Research, monitoring, and additional management activities: The third component of the NOAA DSCS conservation and management strategy will be to identify DSCS research and management gaps and for NOAA and the Councils to develop regional implementation plans for mapping, monitoring, research, and additional management actions, where applicable. Plans will also include recommendations for expanding education and outreach activities. These plans will be integrated as appropriate with current efforts to map, monitor, conduct research, and conserve other NOAA trust living marine resources and their habitats. These plans should carry out the objectives and strategies identified in the above report for addressing the NOAA DSCS conservation and management goal. The timing of the actual implementation of these plans will vary, depending on rulemaking schedules as well as resources.

Additional components of the strategy may address needs and opportunities to expand international conservation partnerships and identify funding needs to implement short-, mid-, and long-term deliverables in support of the strategy.

Accomplishments and Ongoing Activities

Activities currently undertaken by NOS NMSP, NMFS regional offices and science centers, NOAA Oceanic and Atmospheric Research (OAR) Office of Ocean Exploration (OE) and National Undersea Research Program (NURP), and the Councils have addressed or are in the process of addressing many of the petition's requested measures outlined above. These activities promote deep-sea coral conservation, scientific research, technical reports, establishment of marine protect areas, sanctuaries, closed areas, HAPC designations, and prohibitions on gear types used near DSCS.

1. NOAA Activities

Scientific Research

NOAA continues to conduct DSCS research nationally, spanning all coastal regions of the United States (Southeast, Northeast, Southwest, Northwest, Alaska, and Pacific Islands). NOAA recently completed an internal document, *Profiles of NOAA Deep-Sea Coral Activities*, that contains an inventory of recent and upcoming DSCS projects from each program. The NOAA offices and partners involved in the DSCS research effort to date include NMSP, NURP, OE, and the NMFS Science Centers. Most of these programs have completed projects/cruises that include mapping, monitoring and ecological studies of DSCS during FY 2003–2004 and have detailed long-term research plans for the future. These programs have also collaborated with other Federal agencies, state and local territories, private organizations, contractors, institutions, universities, and foreign government agencies to improve coordination of DSCS research efforts. The NOAA profiles document on deep-sea coral research is an evolving document with periodic updates and will be made public at a later date.

International Planning

Scientifically, the United States supports and participates in international efforts to assess and, where appropriate, help conserve vulnerable cold-water ecosystems and habitat. NOAA has worked with Canada, Norway, Sweden, Germany, Belgium, the United Kingdom, and Ireland to convene scientific workshops and conduct DSCS research. These relationships have identified critical research and management needs for DSCS in the Atlantic, led to development of objectives for conducting at-sea investigations, and fostered agreement on objectives for processing and sharing the data collected to meet shared needs. In addition, the workshops provided a platform to begin development of an International, Trans-Atlantic Expedition to explore and research DSCS communities of the Gulf Stream, from the Gulf of Mexico to Northern Europe. OAR OE and NURP currently are conducting several cruises off the U.S. East Coast that involve European partners, primarily in terms of acquiring and sharing data and information to help meet critical deep-sea coral community research objectives outlined during the international workshop in Galway. OE is currently funding several expeditions in international waters that include international partners in the Pacific and Atlantic Oceans. NOAA is also a co-sponsor of the upcoming Third International Symposium on Deep-Sea Corals. NOAA will continue to support these research efforts within budget constraints.

NMFS Observer Program

The NMFS Observer Program currently records most DSCS bycatch landed by U.S. fishing vessels having observer coverage in the EEZ. The degree of DSCS bycatch species identification varies by region, but the weight of DSCS bycatch in sampled tows is recorded in every region where DSCS are caught. In the Alaska region, observers separate coral species in the genus *Primnoa* from the rest of the coral bycatch (a category in the observer database that includes soft and hard corals as well as bryozoans, which are not corals). *Primnoa* species and the remaining coral bycatch are weighed separately and recorded. Deep-sea sponge bycatch is categorized as invertebrate or sponge and weighed. In the Northwest regions, observers identify deep-sea coral species to the

lowest practical taxonomic level, calculate the total weight of deep-sea coral bycatch, and collect specimens for later identification in the laboratory. Deep-sea sponge bycatch is categorized and weighed. DSCS bycatch data is not collected in the U.S. Pacific Islands region because trawls, dredges, and bottom-set longlines and gillnets are not allowed. The Southwest Region does not collect DSCS bycatch because the pelagic fisheries with observer coverage do not use fishing methods that impact bottom habitat. In most observer programs in the Southeast region and all observer programs in the Northeast region, deep-sea coral bycatch is weighed and recorded. Deep-sea sponge bycatch is categorized and the weight is estimated or an actual amount in the Northeast. Deep-sea sponge bycatch in the Southeast is listed as invertebrate when monitoring bycatch reduction devices, and listed as sponge and weighed during bycatch characterization trips.

In summary, the NMFS Observer Program is collecting information on both the presence and weight of most deep-sea coral and some deep-sea sponge bycatch caught by U.S. fishing vessels having observer coverage, but there are regional differences in the level of observer coverage and the level of DSCS species identification conducted by observers. NOAA is evaluating methods to increase the efficiency and effectiveness of DSCS bycatch reporting methodologies.

2. Regional Fishery Management Council Activities

New England Council

On April 28, 2005, (70 FR 21927) NMFS approved the New England and Mid-Atlantic Council actions to close *Lydonia* and Oceanographer Canyon areas off Georges Bank to monkfish days-at-sea vessels. This action was taken to minimize to the extent practicable adverse effects on EFH from monkfish fishing. These protective canyon closures prohibit monkfish bottom trawl and gillnet gear from impacting hard-bottom, deep-water habitat found in the canyons, which is important to many fish species and also home to vulnerable deep-sea corals. The actions, which were effective immediately, also limit monkfish roller trawl gear to 6 inches in the Southern Fishery Management Area to ensure that fishing vessels avoid complex habitat, particularly in other offshore canyons that contain important deep-water habitats.

The New England Council published a Notice of Intent on February 24, 2004, (69 FR 8367) to prepare a programmatic environmental impact statement (EIS) and Omnibus EFH Amendment that will apply to all Council-managed FMPs. The amendment will identify and implement mechanisms to protect, conserve, and enhance the EFH and define metrics for achieving the requirements to minimize adverse impacts to the extent practicable. The Council is reviewing proposals for HAPC and Dedicated Habitat Research Area designations (70 FR 15841). This amendment will holistically address the protection of vulnerable EFH across all New England Council FMPs. The New England Council may evaluate whether protective measures in addition to Monkfish FMP deep-sea coral protection measures are necessary as part of this comprehensive approach.

Mid-Atlantic Council

The Mid-Atlantic Council shares management responsibility for the Monkfish FMP with the New England Council. The gear modification mentioned above ensures that Mid-Atlantic fishing vessels avoid complex habitat, such as offshore canyons that may contain DSCS. These deep areas of the continental shelf and submarine canyons contain DSCS. In addition, the Mid-Atlantic Council has just begun the development of Tilefish Amendment 2. As part of this process, the Council will review any new information related to tilefish EFH and HAPC as well as habitat protection measures.

South Atlantic Council

The South Atlantic Council established a 315–km^2 area, the *Oculina* Habitat of Area of Particular Concern (HAPC), in 1984, and prohibited trawling, bottom longlines, dredges, and fish traps. Further management measures prohibiting anchoring or use of grapples in the *Oculina* HAPC were approved later. A subset of the *Oculina* HAPC was established as a Research Reserve in 1994, known as the *Oculina* Experimental Closed Area (OECA). The OECA was one of the first deep-sea coral banks in the world to receive protection. All restrictions within the larger HAPC apply within the OECA. The area was closed in order to evaluate the effectiveness of the reserve for the management and conservation of reef fish, namely the recovery of their populations and grouper spawning aggregations. The Council designated the *Oculina* HAPC under the Magnuson-Stevens Act EFH provisions in 1999. In 2000 the South Atlantic Council expanded the *Oculina* HAPC to 1029 km^2. In 2003, vessel monitoring systems (VMS) were required for all rock shrimp fishing vessels in the South Atlantic region, to enhance surveillance and enforcement of the *Oculina* HAPC (68 FR 2188).

The South Atlantic Council is developing a regional coral and benthic habitat geographic information system (GIS) of shallow and deep-water areas. This information will support a proposed South Atlantic Council fisheries ecosystem plan (FEP). The South Atlantic FEP may represent a future vehicle for achieving additional protections for DSCS habitat; however, FEP development will take several years. The Council recently proposed 10 deep-water coral HAPC areas, some of which contain deep-water sponges, to be considered in the development of its FEP (69 FR 60363). Action to establish the HAPC designation will be taken through the Comprehensive Fishery Ecosystem Plan Amendment.

Gulf of Mexico Council

The Gulf Council published a record of decision (ROD) on July 29, 2004, (69 FR 45307) to describe and identify coral as EFH for Gulf fisheries; to identify several HAPCs that contain coral; and to identify measures to minimize, to the extent practicable, the adverse effects of fishing on coral EFH. However, the coral areas identified in the EIS mentioned by the ROD do not distinguish DSCS from other coral and sponge habitats.

Caribbean Council

The Caribbean Council published a ROD on May 25, 2004, (69 FR 29693) to describe and identify coral as EFH for Caribbean fisheries; to identify HAPCs that contain coral; and to identify measures to minimize, to the extent practicable, the adverse effects of fishing on coral EFH. However, the coral areas identified in the EIS mentioned by the ROD do not distinguish deep-sea coral and sponge from other coral and sponge habitats.

Pacific Council

Significant research is underway to improve information on the location and abundance of DSCS in the Pacific EEZ and the function of coral in the ecosystem. Several actions being taken or considered by the Council and NOAA may have the benefit of protecting DSCS; however, the extent of the protection is unknown.

The Council has described and identified EFH as biological communities living on substrates along the rocky shelf, non-rocky shelf, and canyon areas between certain depths. Although DSCS are not directly identified as EFH, they can be inferred

to be a representative biological community.

Cow Cod Conservation Areas were implemented in January 2000 off Southern California. Commercial fishing is prohibited within these areas. Recreational fishing was prohibited shoreward of 20 fathoms. Also beginning in 2000, the Pacific Council prohibited large footrope trawls in most of the EEZ. The effect of the prohibition is that many complex, rocky habitats expected to include DSCS are inaccessible to trawlers. The Council also created the Rockfish Conservation Areas in 2003; commercial fishing effort has been significantly curtailed within these areas, which comprise most of the continental shelf.

The Channel Island Marine Reserves were implemented on April 9, 2003. The Pacific Council is discussing expansion of the reserve into Federal waters. In fall 2003, the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries began development of a revised (draft) management plan that may involve marine reserves in state and/or Federal waters. These marine reserves contain DSCS.

The Pacific Council published a notice of availability for the groundfish EFH DEIS on February 11, 2005, (70 FR 7257) to identify and describe EFH, designate HAPCs, and minimize adverse effects of fishing on EFH to the extent practicable. The DEIS contains several alternatives that would identify and describe HAPC areas containing ecologically important habitat such as DSCS, and suggests several alternatives that would prevent fishing in areas containing DSCS. Based on the DEIS information, the Council voted in June 2005 to choose preferred alternatives that would protect about 200,000 square nautical miles of marine habitat on the West Coast between the Canadian and Mexican borders, amounting to over 75% of the ocean within United States jurisdiction off the coast of Washington, Oregon, and California. The Pacific Groundfish EFH Final EIS (FEIS) will be published by December 9, 2005, and the record of decision on this action will be published by February 28, 2006.

Western Pacific Council

The Western Pacific Council developed a Precious Corals FMP in September 1983. The FMP coral beds include deep-sea coral species. The FMP and amendments adopted through 2002 prohibit nonselective gear in the entire Western Pacific region; establish quotas and size limits for pink, black, gold, and bamboo coral; and list other harvest restrictions. No other Council FMPs allow the use of mobile bottom-tending gear within the EEZ around the Hawaiian Islands or other U.S. Pacific islands.

North Pacific Council

The North Pacific Council prohibited trawling in southeast Alaska within a 52,600–square nautical mile area in 1998 as part of a license-limitation program under Gulf of Alaska Groundfish Amendment 41. This measure originally was proposed in 1991 under the rationale to (1) protect deep-sea coral from long-term damage by trawl gear due to conservation concerns for rockfish, and (2) alleviate social disruption to the local fishing industry. Amendment 59 established the 3.1–square nautical mile Sitka Pinnacles Marine Reserve in the Gulf of Alaska in 2000 and prohibited all bottom-fish gear types (except pelagic troll gear for salmon) in the reserve. These pinnacles contain high relief habitat with aggregates of lingcod and several rockfish species. The purpose of the restriction was to protect lingcod concentrations from overfishing. Numerous hydrocorals (*Stylasterids*) and the occasional *Primnoa* colony of deep-sea corals inhabit the pinnacles. The Council also worked in 2002 with the State of Alaska to prohibit the retention of corals and sponges within the State's 3–mile limit.

The North Pacific Council published a notice of availability for the EFH FEIS on May 6, 2005, (70 FR 24038). The FEIS contains an analysis of the effects of fishing on EFH as a whole and does not analyze individual habitat types (such as DSCS) separately. The analysis indicates that fishing has long-term effects on certain habitat features, and acknowledges there is considerable scientific uncertainty about the consequences of such habitat changes for the sustained productivity of managed species. Nevertheless, the analysis concludes that the effects on EFH are minimal, because there is no indication that continuing current fishing activities would alter the capacity of EFH to support healthy populations of managed species over the long term. Due to the uncertainty behind the analysis of the impacts on EFH, the North Pacific Council selected alternative 5(c) to minimize adverse effects of fishing on EFH and within HAPCs. The proposed actions include a 279,114–square nautical mile closure in the Aleutian Islands to protect relatively undisturbed habitats; six DSCS garden closures within the current bottom-trawl foot print measuring 110–square nautical miles; 15 seamount closures measuring 5,329–square nautical miles; 10 Gulf of Alaska slope bottom trawl closures to protect hard-bottom habitats over a 2,086–square nautical mile area; four Gulf of Alaska closures to all bottom-tending fishing gear to protect DSCS totaling 13.5–square nautical miles; and a closure to mobile bottom-tending fishing gear on Bowers Ridge totaling 5,286–square nautical miles. NMFS will complete its record of decision for the EFH EIS by August 13, 2005.

3. National Marine Sanctuary Program Activities

The NOS NMSP has recognized the importance of protecting deep-sea corals in sanctuaries, and is moving toward establishing protection for them under the management authority of the National Marine Sanctuaries Act (NMSA). System-wide, little information is available on the extent and location of significant aggregations of these deep-sea coral communities. Contingent on available funds, the NMSP is incorporating the need to inventory and characterize deep-sea coral assemblages as one of the drivers for prioritizing seabed mapping needs in the sanctuaries. As management plans are reviewed and updated for each site, the issue of deep-sea corals is being integrated. One example of this is the review of Davidson Seamount for possible inclusion in the Monterey Bay NMS, where deep-sea corals are known to occur. Inclusion of the seamount into the sanctuary would provide legal authority, under the NMSA, to protect coral aggregations in this area. Survey work has been conducted for the area of the seamount and coral resources have been identified.

Deep-sea corals are known to exist in a number of other sanctuaries in the NMS System, and NOAA is actively conducting survey and inventory work in these sanctuaries. At the Olympic Coast Sanctuary, several research cruises have been directed at deep-sea coral inventory activities, and last year a species of Lophelia generally associated with the Atlantic was discovered there. Surveys are also being conducted in deep-water areas of the Gulf of Mexico by the Flower Garden Banks staff, and similar work is being conducted off the Florida Keys. Contingent on available funding, the NMSP intends to initiate deep-sea coral surveys at all the national marine sanctuaries, and where appropriate, seek to protect these fragile sanctuary resources through regulation, education, research, monitoring, and enforcement.

4. Endangered Species Act Activities

No DSCS species are listed under the Endangered Species Act (ESA). Therefore, the direct protections and prohibitions for ESA-listed species do not apply to DSCS. However, through the ESA consultation process, the ESA may provide a degree of protection to non-listed species that co-occur with listed species.

For example, Hawaiian monk seals have been observed diving on deep-sea coral in the Northwestern Hawaiian Islands. Because the Hawaiian monk seal is listed as an endangered species under the ESA, any Federal action that may affect Hawaiian monk seals would trigger an ESA consultation to ensure the action would not jeopardize the species. Through the consultation process, a proposed action may be modified to reduce the threat to listed species. If the proposed action would adversely affect both monk seals and deep-sea coral beds, modifications to the action may protect both the seals and corals.

In 1998 NMFS designated critical habitat for the Hawaiian monk seal in 10 areas of the Northwestern Hawaiian Islands, including some areas near known deep-sea coral beds. However, it is unlikely that monk seal critical habitat provides significant protection for these beds. By definition critical habitat is limited to shallow waters less than 20 fathoms (120 feet). The shallowest of deep-sea coral species in the Northwestern Hawaiian Islands is the black coral, with a depth range that begins at 40 m (130 feet). Therefore, critical habitat for the Hawaiian monk seal does not overlap with the distribution of deep-sea corals.

Public Comments on the Need for the Petitioned Regulations, Its Objectives, and Alternative Approaches

More than 32,000 form-letter comments and two lists of signatures were received in favor of the eight measures proposed in the rulemaking petition. These commenters urged NMFS to immediately implement the measures because DSCS habitats are too vulnerable and valuable for ocean health, and potentially for human pharmaceuticals, to allow bottom-trawling fishing vessels to destroy them. They felt that the proposed rulemaking would provide the most reasonable protection from damage to living DSCS while having the least harmful impact on the economic well-being of existing fisheries and fishing communities. Many commenters expressed concern about the effects of bottom trawling on DSCS communities in relation to the entire marine ecosystem, which could affect the sustainability and recovery of the nation's fisheries.

Of the remaining 16 letters, 11 commenters urged that the petition be rejected or denied, one provided mixed comments, and four commenters supported the petition to protect DSCS communities from bottom trawling. Many of the commenters opposed to the petition expressed the belief that the effects of bottom trawling on DSCS communities are minimal, and that Oceana's proposed measures are already being addressed through Council FMPs, HAPC designations, and other regulatory efforts. Those opposed expressed the opinion that there is no "emergency," and Oceana's actions were an attempt to circumvent the public process mandated by the Magnuson-Stevens Act and National Environmental Policy Act (NEPA) that allows for public participation, involvement of stakeholders, and an open forum for scientific review. They stated that this public process is already underway with regard to the preparation of EISs for EFH that satisfies a 2000 court order in *AOC* v. *Daley*, in which Oceana was a plaintiff. Furthermore, many who were opposed to the petition stated that it is uncertain whether DSCS communities serve as EFH for Federally managed species, and additional research must be done to determine the degree of connectivity between DSCS and managed species.

One commenter provided mixed comments in response to the petition, and agreed that DSCS are valuable habitats that promote biodiversity, record climate change, and are potential sources of future medicines. However, the commenter pointed out that bottom-trawling is not the only damaging factor in deep-sea coral environments and that an evaluation on natural and anthropogenic stressors must be undertaken before concentrating on trawling as the only major issue.

Those in favor of the petition urged NMFS to protect DSCS communities from bottom trawling because they provide fish habitat essential for breeding, feeding, resting, and growth until maturity (regardless of status as a Federally-managed species or a commercial species). Many stated that even though DSCS communities can be protected under the EFH/HAPC, bycatch, and the discretionary provisions of Magnuson-Stevens Act, the Coral Reef Protection Executive Order 13089, and NEPA, few Councils have acted to protect these habitats from bottom trawling. These commenters stated in general terms that economic gains from protecting these resources far outweigh allowing bottom trawling to continue, and that immediate protection should be bestowed upon DSCS habitat.

Responses to the specific points of the 16 letters are provided below, organized under the headings corresponding to the proposed measures outlined in the petition.

Emergency Rulemaking Comments

Comment 1: A group of commenters indicated that the petition is a statutorily mandated part of the agency decision-making process that should result in a rulemaking carried out consistent with the requirements of Magnuson-Stevens Act EFH, bycatch, and discretionary provisions, the Coral Reef Protection Executive Order 13089, NEPA, APA, and any other controlling law.

Response: Rulemaking petitions are part of the agency decision-making process under 5 USC 553(e). Agencies have discretion to determine whether rulemaking is necessary, as part of the petition process. If the agency finds that rulemaking is warranted, any measures implemented must be consistent with applicable laws.

Comment 2: Many commenters stated that DOC has responsibility and opportunity to take action immediately to save DSCS.

Response: NMFS, with delegated authority from DOC, has determined that the fishing threat to DSCS is an important issue to address but does not represent an emergency as defined in 16 USC 1855(c)(1). DSCS areas within the existing mobile bottom-tending gear footprint, and any areas not impacted or areas threatened by future fishery expansion can be addressed through current or future Council rulemaking processes.

Comment 3: Another commenter disagreed with Oceana's assertion that the Secretary does not have any discretion or choice but to implement its proposal. NMFS has extensive discretion in making regulatory decisions, and the courts have only overturned decisions if they are ruled arbitrary and capricious.

Response: NMFS agrees that agency does have discretion in making regulatory decisions, and that the courts have only overturned decisions if they are ruled arbitrary and capricious or fail to follow procedural requirements under the Regulatory Flexibility Act or Regulatory Impact Review or other laws as applicable.

Comment 4: One commenter stated that DSCS are not adequately protected under existing FMPs or pending rulemakings, and current efforts proceed too slowly to offer immediate

protection. This petition would provide needed consistency, research priorities, and protection to DSCS.

Response: DSCS themselves may not be adequately protected under existing FMPs. However, potential future rulemakings are appropriate for addressing the threat to DSCS under the Magnuson-Stevens Act, which is not immediate.

Comment 5: One commenter indicated that the North Pacific Draft EIS failed to adequately address impacts on coral and sponge habitat and that the current preferred alternative will result in continued destruction of these habitats. The commenter was also concerned with the Pacific EFH EIS process that has not incorporated all available data into all management alternatives to minimize the adverse effects of fishing on EFH.

Response: The North Pacific EFH DEIS used the best scientific information available to evaluate potential adverse effects on DSCS. NMFS revised and expanded upon that analysis for the EFH FEIS. In addition, the North Pacific Council selected a final preferred alternative 5(c) that includes extensive precautionary management measures to minimize potential adverse effects of fishing on EFH, including large areas that support DSCS. The Pacific Groundfish EFH EIS process has thoroughly examined most facets of information regarding the identification and description of EFH, the designation of HAPCs, and the minimization of adverse fishing impacts. The Pacific Groundfish EFH EIS will contain future environmental analysis of this information related to a reasonable range of management alternatives.

Comment 6: One commenter felt that DSCS closures need to be integrated under one common decision-maker, because implementation of requests without regional consideration of FMPs can lead to harm of managed stocks of fish by displacement and concentration of fishing effort.

Response: DSCS research, conservation, and management issues vary amongst regions, and are best addressed at the regional level. NMFS believes that DSCS management measures need to be examined in the context of existing FMP management measures under each Council's jurisdiction to avoid harm to managed fish stocks, protected species, and other complex habitat by displacement and concentration of fishing effort.

Comment 7: Several commenters felt that DSCS protection best occurs through the existing management framework (Council-led EFH NEPA process), which would address potential social and economic impacts to communities, consider a range of alternatives for EFH designations, allow public participation, involve stakeholders, and provide an open forum for scientific review.

Response: NMFS agrees that DSCS protection best occurs through existing Council Processes to manage through FMPS, consistent with the Magnuson-Stevens Act National Standards. The Magnuson-Stevens Act, NEPA, and other procedures provide for analysis of actions and public participation. NMFS notes, however, that public comment on this rulemaking petition allowed for public participation in the rulemaking petition decision process, and recognizes the value of emergency rulemaking under appropriate circumstances.

Comment 8: One commenter felt that the petition uses inadequate information, assumptions, and a loose interpretation of Magnuson-Stevens Act and regulations to support demand for immediate action, which limits such action to extremely urgent and special circumstances where substantial harm will be caused during the time required to conduct normal rulemaking. The petition did not address whether and how the Magnuson-Stevens Act national standards are met, which are clear requirements for emergency action.

Response: The DSCS rulemaking petition makes a case for the protection of DSCS as EFH and HAPCs, and through bycatch and discretional provisions of Magnuson-Stevens Act. NMFS believes in taking a regional approach to evaluate and take action where appropriate to protect DSCS and may pursue future rulemakings to protect DSCS in specific locations based on analyses for specific fisheries. However, NMFS does not find the information in the petition compelling for nationwide emergency action. In addition, NMFS acknowledges that any action taken under Magnuson-Stevens Act provisions to protect DSCS would need to address National Standards, and other applicable law.

Comment 9: A group of commenters indicated that marine scientists and their research assert DSCS support entire ecosystems of fish and invertebrates, and high biodiversity.

Response: NMFS recognizes the importance of DSCS as living marine resources, and in many cases forming complex structured habitat for fish and invertebrates. NMFS also recognizes the current research indicating the contribution DSCS communities make to high biodiversity in the deep ocean. Currently, Magnuson-Stevens Act requires a link between DSCS and a Federally managed fish species to provide protection to DSCS as EFH. At this time, not all regions have scientific evidence providing a link between managed fish species and DSCS to warrant DSCS description as EFH and HAPCs.

Comment 10: A group of commenters felt there is broad citizen support in place to protect DSCS, as evidenced by the political interest of Senators McCain, Hollings, Biden, and Leahy, and the urging of former Secretary of State Powell to seek a UN resolution prohibiting bottom trawling on the high seas until measures to protect deep-sea ecosystems are in place.

Response: NMFS agrees there is citizen interest in DSCS protection, as indicated by the 32,000–plus comments received in favor of the petition. NMFS also recognizes increased interest from the Councils and several fishery groups regarding DSCS and habitat protection through the Council process. NMFS believes that DSCS should be addressed at a regional level and will work with the Councils to implement measures to protect these habitats, as appropriate.

Comment 11: One commenter stated that overfished species may not be able to recover without their preferred habitats if those habitats are DSCS. Another commenter felt that certain DSCS species are highly vulnerable to physical impacts, including fishing gear, due to long-lived and slow-growing life history.

Response: The Magnuson-Stevens Act 16 U.S.C. 1801(9) states that, "One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats." DSCS that are EFH for managed species can be important for overfished species recovery. DSCS vulnerability to fishing impacts is evident through research on fishing impacts on deep-sea coral in the *Oculina* HAPC in the Southeast Region and through DSCS bycatch records in the Pacific and North Pacific. Research has aged deep-sea coral reefs up to 8,000 years, and the corals that form them grow at a mere 4 to 25 millimeters per year (whereas shallow tropical corals can grow up to 150–millimeters per year). Therefore, data supports the assertion that DSCS are long-lived and slow-growing.

Comment 12: Several commenters stated that long-term damage to the ecosystem for short-term gain puts unknown stress on an ecosystem that could provide continued income and livelihood for fishing communities if exploited sustainably. Protection of

highly vulnerable habitats should be at the forefront of management until better understood, or legislation to fund research will be for naught if DSCS are destroyed before we know where they are.

Response: NMFS and Councils seek to manage fisheries sustainably and to minimize adverse impacts on EFH that are at least more than minimal and not temporary. NMFS encourages Councils to take protective action where DSCS are identified as EFH due to the uncertainty regarding the degree of impacts to DSCS and their effects on managed species and the marine ecosystem. NMFS also encourages Councils to take actions that address impacts to the marine ecosystem that minimize bycatch of DSCS, where bycatch is a concern, or through the development of DSCS FMPs, where applicable, even when information does not warrant identifying DSCS as EFH.

Comment 13: One commenter pointed out that allowing bottom trawling to expand into new areas without identifying DSCS is a missed chance to protect DSCS and the species that depend on them. The petition urges action to freeze the current trawling footprint to prevent trawling from destroying areas that have not yet been explored and protects a few known coral and sponge areas which are either already closed to bottom trawling or into which large-scale trawling has not yet expanded.

Response: NMFS agrees that allowing bottom trawling to expand into new areas without identifying DSCS could result in adverse effects to DSCS. Consistent with NMFS regional approach, some Councils have taken action to prevent trawling activity to extend into new areas. For example, NMFS acknowledges the North Pacific Council's action to restrict the bottom-trawl fishery footprint in the Aleutian Islands and the Pacific Council's efforts to examine the possibility of similar action.

Comment 14: One commenter stated that although impacts of low-intensity fishing can overwhelm DSCS species recovery, it is doubtful that such declines have significant effects on many managed species. Any established trawling ground will already have been degraded and will not recover within meaningful human time scales.

Response: NMFS believes that more research is needed on DSCS links to managed species populations. Established trawling grounds are most likely degraded in many areas; however, certain areas contain DSCS that could be important for protection.

Comment 15: One commenter stated that fish species only become fisheries resources if they are abundant, and fish species cannot have this abundance by being dependent on rare habitat types. Therefore, DSCS rarity in most regions makes conservation a minor issue for resource production and for fisheries.

Response: DSCS are not necessarily rare in each region or for each managed species. DSCS conservation is still a concern for DSCS themselves, and for unknown importance to resource and fish production.

Comment 16: Three commenters felt other gears and stressors (besides bottom trawling) should be considered in minimizing fishing impacts to DSCS. Only future expansions of intensive bottom-fishing gear in areas of "high concentrations" of DSCS habitat pose an immediate and urgent threat, but these expansions do not justify immediate national actions.

Response: NMFS agrees that other gears and stressors should be examined on a region-by-region basis to address all impacts to DSCS. The term "high concentration" of DSCS is difficult to define due to lack of research on the extent of DSCS distribution and importance for managed species production. NMFS encourages Councils to take proactive actions to protect DSCS EFH until "high concentrations" of DSCS can be identified.

Comment 17: One commenter stated that the petition will drain away valuable NMFS staff time and resources, necessary to meet court-ordered timelines for addressing DSCS issues.

Response: The petition, public comment period, and analysis of petition measures will not drain NMFS staff time and resources. NMFS supports a regional approach to address DSCS conservation and management issues. NMFS staff time and resources will be balanced in addressing various mandated needs in addition to analysis of DSCS issues.

Comment 18: A commenter felt that the petition does not consider the practicability of proposed regulations or economic impacts on fishermen, processors, and communities. Another commenter indicated that the requested petition actions are not the only or best actions to achieve EFH/HAPC goals.

Response: Practicability is mentioned in the petition, but not to the degree of a formal rulemaking process. The requested petition actions would not achieve all EFH/HAPC goals, but they would achieve certain goals related to DSCS protection. NMFS recognizes the importance of practicability in minimizing adverse fishing effects on DSCS through the regional Council process.

Comment 19: One commenter stated that practicability is not defined by all that is possible, but rather allowing for the application of agency expertise and discretion in determining how best to manage fishery resources. To be practicable, EFH protection measures must have proof of benefit to fishery production that is greater than the costs of the measure.

Response: NMFS disagrees that to be practicable EFH protection measures must have proof of benefit to fishery production that is greater than the costs of the measure. Regulatory guidelines on determining practicability state that Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost-benefit analysis (50 CFR 600.815(a)(2)(iii)).

Comment 20: A commenter indicated that the North Pacific EFH EIS alternatives consider many of the petition's measures: mapping, bottom trawl prohibition, bycatch limits, research and monitoring, and observer coverage. They also indicated that the North Pacific HAPC Environmental Assessment (EA) will consider prohibiting bottom trawling in certain areas.

Response: NMFS agrees this is a good example of pending regulatory action that will address many of the petition's requested measures within the context of all fishery management issues in a region. This approach may not be appropriate in other regions. Accordingly, NMFS will work with the Councils to evaluate and take action, where applicable, to address DSCS protection issues related to specific fisheries.

Comment 21: A commenter felt petition measures would prevent DSCS destruction without hurting fishers, and allow fishers to continue to receive income from areas already damaged or destroyed. They also felt that overall economic gain from DSCS protection far outweighs the costs of DSCS destruction.

Response: A formal cost-benefit analysis has not been conducted regarding the benefits of DSCS conservation for all NMFS regions. Measures that restrict fishing activities may have socioeconomic impacts to fishing communities, and NMFS would analyze such potential effects for any

proposed measures under Executive Order 12866, the Regulatory Flexibility Act, and other applicable law.

Comments on Specific Measures

Measure 1

Identify, map, and list all known deep-sea coral and sponge areas containing high concentrations of deep-sea coral and sponge habitat.

Comment 22: One commenter felt that the petition did not adequately define DSCS species requiring protection, and therefore a clearer definition of DSCS is needed before the term is introduced to the management regime.

Response: NMFS agrees that the petitioner did not fully define all the DSCS species requiring protection. However, different DSCS species are components of known habitat types found in all NMFS regions, and management measures could be developed for DSCS communities rather than specific DSCS species.

Comment 23: Many commenters cited examples of efforts currently underway to identify and map DSCS areas and disseminate this information.

Response: NMFS agrees that several efforts are currently underway in a number of relevant agencies to identify and map DSCS habitats throughout the U.S. EEZ. Many of these efforts are being undertaken through partnerships between NOAA, USGS, MMS, the Councils, and academic institutions. Exploration, characterization and mapping of deep-sea coral habitats are ongoing in areas such as the Gulf of Mexico, pinnacles adjacent to the *Oculina* HAPC and the deeper Lophelia beds offshore the Southeast U.S., and extensive coral communities in the Aleutian Islands. Mapping and characterization of these areas supports the identification and description of EFH. The information included in these maps, any relevant documents, and the maps themselves may be found on web pages managed by the participating agencies and the Councils.

Comment 24: One commenter stated that high concentration reef areas discovered during mapping could be designated as no-trawling HAPCs, and another stated that any EFH and HAPC designations and regulations must be accompanied by an initial baseline analysis and an on-going monitoring program.

Response: A no-trawling HAPC cannot be designated solely on the basis of exploratory mapping, unless (1) a Federally managed fish species occurs in that area, (2) EFH has been described for that species, (3) the area identified with coral or sponge from these mapping efforts occurs within the area defined as EFH, and (4) rationale exists to determine that adverse fishing effects must be minimized to the extent practicable. The Magnuson-Stevens Act requires regional Councils to describe and identify EFH for each fish stock managed under an FMP, to minimize to the extent practicable adverse effects on such habitat caused by fishing, and to identify other actions to encourage habitat conservation and enhancement.

HAPCs are a specific subset of a much larger area identified as EFH that play a particularly important ecological role in the fish life cycle or are especially sensitive, rare, or vulnerable. Whereas EFH is identified for each species and life stage in an FMP, HAPCs are identified on the basis of one or more of the following considerations: (1) the importance of the ecological function provided by the habitat, (2) the extent to which the habitat is sensitive to human-induced environmental degradation, (3) whether and to what extent development activities are or will be stressing the habitat type, and (4) the rarity of the habitat type. Designated HAPCs are not afforded any additional regulatory protection than EFH, but actions with potential adverse impacts to HAPCs should be more carefully scrutinized. Depending on the conservation needs, an HAPC may have appropriate fishery management measures associated with the HAPC. Designation of HAPCs would require initial baseline information (existing or developing knowledge) of species-habitat associations, the characteristics of a particular habitat type, the threats to sensitive habitats, or the importance of an area to multiple species. Although on-going biological monitoring programs provide useful information for management, EFH regulatory guidelines do not require an on going monitoring program.

Measure 2

Designate all known areas containing high concentrations of deep-sea coral and sponge habitat both as EFH and "habitat areas of particular concern" (HAPC) and close these HAPCs to bottom trawling.

Comment 25: Several commenters stated that the South Atlantic Council, North Pacific Council, Pacific Council, and Western Pacific Council have taken measures to protect DSCS directly or indirectly by identifying them as EFH, and the South Atlantic Council has designated a few DSCS as HAPCs. Another commentator stated that DSCS are not described as EFH in New England, therefore DSCS HAPCs cannot be designated.

Response: As indicated by the summary of Council activities, the South Atlantic, North Pacific, Pacific, Western Pacific, New England, and Mid-Atlantic Councils have taken measures that directly protect DSCS or that indirectly provide DSCS protection. The Gulf of Mexico and Caribbean Councils have taken measures to protect hard and soft corals, but have not directly specified actions to protect DSCS. DSCS are not described as EFH in New England or the Mid-Atlantic, but are indicative of hard bottom, which is described as EFH for several managed species in New England and the Mid-Atlantic. New information on DSCS locations and their roles as EFH will support NMFS and Council efforts to examine future actions to protect important DSCS communities from fishing impacts.

Comment 26: A few commenters stated there are significant information gaps in determining the dependence of Federally managed species on marine habitat, and there is little evidence available to support the petition's claim that managed species use DSCS as EFH (besides redfish in New England).

Response: Using the best available scientific information, DSCS were described and identified as EFH for Federally managed species by the North Pacific and Pacific Councils in existing FMPs. The North Pacific Council recently reviewed this information in its EFH FEIS, and the Pacific Council is currently reviewing this information. The South Atlantic Council has identified deep-sea corals as EFH for Federally managed species. Current scientific information regarding DSCS as EFH in the New England, Mid-Atlantic, Gulf, and Caribbean Councils is not as conclusive, thus limiting the use of EFH authority to directly protect DSCS. However, New England established the *Lydonia* and Oceanographer submarine canyon closures to monkfish days-at-sea fishermen to protect hard-bottom, which is indicative of deep-sea corals, as indicated by current scientific research in that area.

Comment 27: Two commenters stated that small DSCS "hot spots" may exist but there was no evidence that these areas represent a large or important portion of the overall abundance of DSCS habitat. Another commenter stated the petition does not provide a basis to demonstrate how impacts to DSCS habitat may alter ecosystems and/or affect populations of associated species.

Response: The extent of areas surveyed for DSCS location is limited. On occasion, research has identified areas where more DSCS occur compared

to other areas surveyed. This information does not indicate whether these areas represent a large or important portion of the overall abundance of DSCS habitats. The petition does not directly state how impacts to DSCS habitat may alter ecosystems and/or affect managed species populations. However, the petition does present the case that DSCS represent complex three-dimensional habitat for multiple marine species and are highly vulnerable to bottom-tending mobile gear, thus indicating an impact to the marine ecosystem, but not the degree of impact.

Comment 28: Several commenters noted that deep-sea corals may have a significant presence in selected areas and may play a habitat role that is meaningful for certain species (e.g., rockfish and redfish). Therefore, corals cannot be ruled out as possible important EFH and should be protected to avoid permanent destruction.

Response: Several managed species are known to associate with DSCS, and the best available scientific information has warranted their description and identification as EFH in several FMPs. Deep-sea corals have been identified as EFH for South Atlantic managed species, and deep-sea corals are managed species in the Western Pacific Council areas. In other regions, the scientific connection between managed fish species and DSCS as important habitat has not been clear enough to warrant DSCS identification as EFH, and subsequent protection under Magnuson-Stevens Act, section 303(a)(7).

Comment 29: One commenter stated that to protect DSCS as EFH, these habitats must meet the legal definition of "waters and substrate necessary to support managed species."

Response: DSCS must be described and identified as EFH for Federally managed fish species by Councils and NMFS to protect DSCS using Magnuson-Stevens Act EFH provisions at 16 U.S.C. 1853(a)(7). EFH is defined to mean those waters and substrate necessary for fish to spawn, to breed, to feed, or grow to maturity. For the purpose of interpreting the definition of EFH: "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard-bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle (50 CFR 600.10). DSCS described as EFH in the Pacific and North Pacific, and deep-sea corals described as EFH in the South Atlantic and Western Pacific, are considered living substrates important for either egg, juvenile, and/or adult life stages of certain managed fish species. The New England Council is evaluating whether new science suggests this connection between managed species and DSCS, as well as many other habitats.

Comment 30: Another commenter noted that the EFH Final Rule and Magnuson-Stevens Act do not preclude Councils from identifying habitat (other than EFH) of a fishery resource under its authority even if the species is not managed under an FMP. However, Council action to protect habitats of managed or non-managed species is limited to protecting habitats from fishing activities.

Response: The preamble to the EFH Final Rule at 67 FR 2348 notes that the Magnuson-Stevens Act does not preclude Councils from identifying habitat (other than EFH) of a fishery resource under its authority even if the species is not managed under an FMP. Council action to protect the habitats of managed or non-managed species is limited to protecting habits from fishing activities. Councils have no authority to protect habitats from other activities, although they may comment to state and Federal agencies on non-fishing activities under section 305(b)(3) of the Magnuson-Stevens Act.

Comment 31: Two commenters stated that HAPCs are not required by the Magnuson-Stevens Act, and are not automatically afforded any additional regulatory protection under the act.

Response: HAPCs are not required by the Magnuson-Stevens Act, but are recommended under EFH regulatory guidelines 50 CFR 600.815(a)(8). HAPCs are useful for helping focus EFH management on habitat areas that provide important ecological functions, are sensitive to human-induced environmental degradation, are stressed by development activities, and/or constitute rare habitat types. However, HAPC designations do not afford any additional regulatory protection under the EFH regulatory guidelines.

Comment 32: One commenter stated that Federal regulations require the Councils to base their recommendations for EFH designation on the "best scientific information available" and to interpret available ecological, environmental, and fisheries information "in a risk-averse fashion to ensure that adequate areas are identified" and protected. Another commenter indicated that if the best scientific information available does not show DSCS are utilized as EFH, then action needs to wait until congressionally authorized. The petition appears to call for actions that exceed the mandate provided by the Magnuson-Stevens Act legislation.

Response: Magnuson-Stevens Act EFH provisions at 16 U.S.C. 1853(a)(7) require Councils to minimize to the extent practicable adverse effects of fishing on EFH. The EFH regulatory guidelines state that FMPs should minimize those impacts that are more than minimal and not temporary (MMNT) (50 CFR 600.815(a)(2)(ii)). DSCS must first be described and identified as EFH using the best scientific information available, and have adverse affects from fishing that meet the MMNT threshold, before Councils must take action to protect DSCS. Councils can manage fishing activity for habitats that are not EFH but that represent a conservation and management concern for the fishery, for example, where DSCS bycatch is a concern or if DSCS themselves are Federally managed species. The DSCS protection measures requested by the petition are supported by current mandates if the administrative record supports the actions (see response to comment 24 on no trawling HAPCs, and responses to comments 25 and 29 on the description and identification of DSCS as EFH). However, the administrative record does not support taking emergency rulemaking under the Magnuson-Stevens Act.

Comment 33: One commenter indicated that closures to trawling targeting one type of fish and not others does not provide comprehensive protection for DSCS areas and the ecosystems that depend on them.

Response: NMFS agrees that DSCS closures targeting one type of fish and not others do not provide comprehensive protection for DSCS areas. DSCS closures should be implemented based on an evaluation of the need for DSCS closures to all fishing gears that will adversely affect DSCS and an evaluation of any new DSCS closures in connection with existing closure areas in each region.

Comment 34: The term "high concentrations" is inherently subjective and needs to be defined and made clear.

Response; NMFS agrees that the term "high concentrations' of DSCS are difficult to determine without quantitative information on DSCS counts. High concentrations should be evaluated in each region on a case-by-case basis to determine what constitutes

high concentrations for management. Any evaluation must take into account the uncertainties of current DSCS knowledge and the applicability of this information in this management context.

Comment 35: Two commenters believe the pinnacle proposal lacks merit and criteria for defining pinnacles in the North Pacific, and that the petition's listing of all pinnacles as HAPCs masks the importance of some pinnacles. One of the commenters cautioned that the petition's list of DSCS proposed closed areas may be incorrect (e.g. Mednyy Seamount, which is in Russian waters).

Response: NMFS agrees that the petition lacks criteria for identifying specific pinnacles as HAPCs. The North Pacific Council EFH EIS preferred alternative to minimize adverse effects of fishing on EFH includes measures that would protect 16 seamounts. NMFS expects to complete its record of decision for the EFH EIS by August 13, 2005.

Measure 3

Identify all areas not fished within the past 3 years with bottom-tending mobile fishing gear, and close these areas to bottom-trawling.

Comment 36: Two commenters stated this request goes beyond the stated objective of protecting DSCS habitat, and would conflict with the agency's mandate to achieve sustainable and optimal yields related to scallops, flounder, and haddock in New England, and groundfish species in the Pacific.

Response: NMFS encourages Councils to take a proactive approach to address the expansion of trawl or other fisheries using bottom-tending gear to areas that have not yet been fished with such gear and that may contain DSCS communities. However, NMFS agrees that a number of areas may have been closed to mobile bottom-tending gear before the past three years for reasons other than impacts to habitat, and permanent closures of such areas could conflict with regional Council efforts to achieve sustainable and optimal yields. Areas closed to manage fishing mortality could be opened when the fishery is rebuilt. Portions of these areas represent important fishing grounds that would continue to be closed under this proposed Oceana measure until mapped for DSCS, even if any DSCS that might have existed there had been destroyed by fishing that pre-dated the closures. NMFS believes that the Councils should consider proactive DSCS closure measures within the context of past, current, and future management objectives and goals for multiple living marine resources.

Comment 37: Two commenters felt the petition was misleading to conclude that the Secretary has information on where bottom-trawling occurs, because high-precision, accurate information on fishing effort location is currently unavailable. Another commenter felt that 3 years was too short a time frame to distinguish between fished and unfished areas due to the complexity in determining what area was "fished." Others felt that fishing effort must be mapped to determine whether bottom trawling overlaps with DSCS areas and whether that fishing interaction is significant.

Response: NMFS disagrees with the comments that the Secretary does not have information on where bottom trawling is occurring. NMFS has some information, primarily based on log-book data, but also including some VMS and observer information for certain fisheries; however, reporting standards and the precision of the data varies widely among fisheries and regions. NMFS has information regarding fishing effort and deep-sea coral presence in different states that vary region by region. A quantitative analysis of the degree to which mobile bottom-tending gear overlapped with known deep-sea coral communities may not be possible with current information. A single bottom trawl by a commercial fishing vessel may extend for many kilometers. Evidence of DSCS discovered in a trawl net may have been retrieved from any point along the trawl. Thus, with current information, it is not possible to determine specific locations where bottom trawling is encountering DSCS.

NMFS agrees with the comment that restricting the analysis to areas trawled in the past 3-years does not provide a sufficient time period to determine fished and un-fished areas. Each region collects fishery dependent data differently. For instance, the NMFS Southeast Region collect only landing data from shrimp trawlers, not locations of trawls, while the NMFS Alaska and Northwest Regions collect trawl start points in 10–square nautical mile grids. Careful analysis of logbook data combined with observer and VMS data (where available and applicable) using GIS at appropriate scales is needed to accurately address the area of the fishing footprint. This analysis combined with an analysis of current fishery management closures is very complex. Due to this complexity, 3-years may not provide enough data to accurately reflect the historical fishing footprint, which the measure seeks not to close to avoid economic harm to fishermen.

Comment 38: A few commenters felt there is no basis for sweeping closures, which are more remote from the applicable legal standards than the general call to close potential coral areas. *HADAJA, Inc.* v. *Evans* (2003 WL 21190990 (D.R.I.) Smith) was referenced by another commenter stating mitigation measures based on inference, speculation, or surmise were in violation of National Standard 2.

Response: In the event that action is warranted to protect DSCS habitat, NMFS would need to build an adequate administrative record to support this decision. This administrative record would have to demonstrate that the chosen action is in compliance with the Magnuson-Stevens Act and its regulations, as well as the National Standards, including National Standard 2, which calls for the use of the best scientific information available.

Comment 39: Another commenter referenced *NRDC* v. *Evans* (F. Supp. 2d S.D. N.Y. Berman) to indicate that reliance on the best available scientific evidence is sufficient and NMFS had no obligation to impose mitigation measures in absence of demonstrated adverse impacts from fishing. One commenter felt that an adverse effect determination is difficult for fishing impacts on DSCS because the evidence available is limited to connections from managed species, to a demonstrated dependence on habitat, to physical impacts of fishing on those habitat features, and to adverse effects on managed species.

Response: Physical disturbance to DSCS can be observed, but adverse effects to fish populations are more difficult to assess. Nevertheless, it is not appropriate to require definitive proof of a link between fishing impacts to EFH and reduced stock productivity before Councils can take action to minimize adverse fishing impacts to EFH to the extent practicable (67 FR 2354). EFH regulatory guidelines 50 CFR 600.815(a)(2)(ii) encourage Councils to use the best available science as well as other appropriate information sources when evaluating the impacts of fishing activities on EFH, and to consider different types of information according to its scientific rigor. Through exploratory submersible dives, video footage, and remotely operated vehicles (ROVs), adverse effects on deep-sea coral habitats have been identified in some locations, including trawl tracks. Submersible dives by the Harbor Branch Oceanographic Institute submersible *Clelia* found trawl tracks in *Oculina* HAPC off the Florida's East Coast,

which has been protected since 1984. Approximately 39 percent of the total area of the seafloor observed on 25 NMFS video transects in the Aleutian Islands was disturbed to some degree by fishing gear, and 8.5% of the corals on those transects were damaged or otherwise disturbed. Existing scientific information on the slow growth of many deep-sea corals indicates that damage recovery times will be extremely long.

Coral and sponge bycatch is common in trawl fisheries in some areas of Alaska. NMFS estimates that 81.5–metric tons of mixed soft and hard corals and bryozoans are removed from the sea floor each year as commercial bycatch and that 87 percent of this bycatch is captured in bottom trawls. Under Magnuson-Stevens Act, NMFS is obligated to reduce bycatch associated with Federally managed fisheries. The Magnuson-Stevens Act at 16 U.S.C. 1851(a)(9) states that NMFS must "include conservation and management measures that, to the extent practicable and in the following priority (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided."

Comment 40: One commenter stated that the request to permanently close all areas to bottom trawling that were not fished within the past 3 years by bottom-tending mobile gear is excessive and unnecessary. It appears to focus on eliminating one fishing sector without any mitigation or alternatives for participants or processing components of the industry. A commenter felt that where there is a high degree of overlap between bottom trawls and DSCS, NMFS should consider buyout programs to recompense fishermen for the loss of their livelihood.

Response: NMFS supports addressing these issues on a regional case by case basis. If NMFS determines that areas not fished by mobile bottom-tending gear within a certain amount of time should be closed to protect DSCS from fishing, NMFS would evaluate appropriate alternatives and mitigation, such as buyout programs for various fishing sectors components.

Comment 41: A few commenters believed that the petition's conclusion that closures will have little economic harm is incorrect due to (1) lost short-term revenue from scallops that would die from starfish predation, disease, and/or old age; (2) costs associated with monitoring, enforcing, and complying with transit provisions; and (3) lost future revenue from closed areas if economic and resource conditions changed and fishermen want to fish these areas in the future.

Response: It is the responsibility of NMFS under the Magnuson-Stevens Act to "describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat." If DSCS are found to be EFH, NMFS is mandated to minimize adverse fishing effects on DSCS EFH. The designating Council and NMFS would address short-term losses of revenue in a fishery, through appropriate NEPA analysis. NMFS agrees there are costs associated with monitoring and enforcing restricted areas. However, if the restriction of that habitat is in the best interest of sustaining the fishery, then those costs to both NMFS and the industry are offset by the benefits to all resources.

Comment 42: One commenter felt that the North Pacific Council EFH EIS Alternative 5(b) accomplishes the petition's third measure for the Aleutian Islands, where fish aggregations are determined by DSCS. However, the commenter felt this measure would not be proper for the Bering Sea where fish aggregations are determined by water temperature.

Response: Fish aggregations are determined by a variety of factors, including water temperature and substrate type. The best scientific information available in the North Pacific indicates that fish aggregate around DSCS and pinnacles in the Aleutian Islands, but fish in the Bering Sea aggregate based on water temperature. The preferred alternative 5(c) in the North Pacific Council EFH EIS addresses the commenter's concerns in that it includes new measures to protect DSCS in the Aleutian Islands and Gulf of Alaska, but no new measures in the Bering Sea.

Comment 43: Another commenter stated that non-trawled areas in the Gulf of Mexico between 120 and 1,000 meters should be identified and investigated for coral reef resources. If DSCS exist, amendments to the Shrimp FMP could be added to protect them.

Response: NMFS agrees that further investigations are needed on the locations of DSCS in the Gulf of Mexico. NOAA is collaborating with USGS and the MMS in surveying deep-sea corals in the Gulf of Mexico. However, to justify the protection of these DSCS areas under the Gulf Council's Shrimp FMP as EFH, a strong link must be made that these areas are necessary habitat for Federally managed species life stages in the Gulf of Mexico. Such a link has not yet been identified by the Gulf of Mexico Council.

Measure 4

Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close areas to bottom trawling where these limits or caps are reached, until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected.

Comment 44: A few commenters noted that the South Atlantic and Gulf of Mexico Councils have taken measures to protect DSCS, prohibit taking of both soft and hard coral species, require fishing vessels to return coral bycatch to the sea, and improve bycatch monitoring and reporting.

Response: NMFS recognizes the efforts by these and other Councils to monitor and control bycatch of corals. Less information is available on deep-sea sponge bycatch. Council activities relating to DSCS were discussed earlier in this notice. The Councils perform an important role in recommending fishery management actions for approval and regulatory implementation by NMFS.

Comment 45: A commenter felt it was premature to regulate bycatch efforts in the Pacific Coast groundfish fishery because the Pacific Council is developing a programmatic bycatch EIS to address West Coast bycatch issues.

Response: In September 2004, NMFS, in cooperation with the Pacific Council, completed a Final EIS (FEIS) on the Pacific Coast Groundfish Fishery Management Plan Bycatch Mitigation Program. However, that FEIS did not specifically address bycatch of corals or sponges in the groundfish fishery.

Comment 46: Another commenter indicated that DSCS bycatch monitored by observers does not constitute a basis for DSCS caps. The extrapolation of past observer data may result in unrealistic caps, especially when combined with a different level of prioritization of DSCS monitoring the future.

Response: Current bycatch of DSCS is neither uniformly collected by observers nor recorded in fishery logbooks maintained by fishermen. The determination of realistic caps based on extrapolation of past observer data or other DSCS data that may exist (e.g., from trawl surveys conducted by NMFS as part of stock assessments) would entail substantial uncertainties. As part of an overall strategy, NMFS will take steps to determine how existing observer information on DSCS bycatch can be standardized or enhanced in each region, and assess the feasibility of

such reporting to inform potential closures. Current regional standardized bycatch reporting methodologies will then be evaluated for including DSCS bycatch reporting methods.

Comment 47: Two commenters supported identifying ongoing and future cases of DSCS removal and taking swift action to halt such damage where and when it occurs. However, they felt that bycatch caps were not useful for several reasons: (1) 100 percent observer coverage cannot be accurately monitored or enforced; (2) DSCS recovery rates are so low that there are no meaningful "sustainable harvest" levels; and (3) DSCS bycatch caps are redundant compared to other methods for DSCS protection, and would include potential large costs compared to minimal gain for habitat.

Response: NMFS believes that DSCS should be managed to preserve biodiversity and sustainable use of marine resources. As indicated in its response to Comment 46 above, NMFS will study the applicability of DSCS bycatch monitoring as a mechanism to inform DSCS management action, and believes such studies are necessary before imposition in specific fisheries. NMFS agrees that bycatch monitoring, observer coverage, and enforcement coverage are not at full capacity and that sustainable bycatch levels of DSCS would be difficult to ascertain. Bycatch cap measures could be relatively costly, and there are other management measures that could be employed to protect DSCS.

Comment 48: One commenter recommended that NMFS initiate a pilot observer program to monitor bycatch in the Gulf Council Royal Red Shrimp Fishery to evaluate potential DSCS bycatch.

Response: NMFS is considering ways to monitor bycatch of DSCS in various fisheries and is supportive of cost-effective ways to reduce such bycatch or eliminate it altogether where deemed necessary and appropriate.

Measure 5

Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling.

Comment 49: Another commenter felt that additional closures based on DSCS bycatch would be difficult to identify.

Response: Because of the lack of data and uniformity problems in data collected on DSCS bycatch, area closures based on DSCS bycatch may be difficult. As with capping fishing based on DSCS bycatch, NMFS will need to evaluate current standardized bycatch reporting methodology to include bycatch reporting methodology for DSCS before NMFS can evaluate the potential use of monitoring bycatch in individual fisheries for the purpose of closing areas to fishing (see response to Comment 47 under Measure 4 above).

Comment 50: One Commenter felt that identifying new areas containing high concentrations of DSCS through bycatch monitoring might be the most economical approach due to the limited amount of bottom trawling occurring in coral areas of the Gulf of Mexico.

Response: NMFS agrees that bycatch monitoring may be an economical method to prioritize a more detailed examination of the benthic community in the Gulf of Mexico. However, trawl and other types of surveys conducted or contracted by NMFS may also prove economical and more expeditious in identifying high concentrations of DSCS for possible designation as EFH and HAPC and potentially closing them to bottom trawling. NMFS will work with the Councils through existing bycatch monitoring and observer programs to increase monitoring of DSCS bycatch, and encourage Councils to consider whether such information is sufficient to identify closure areas to protect EFH/HAPCs and avoid bycatch if appropriate.

Comment 51: A few commenters stated that DSCS knowledge is limited, so establishing a bycatch monitoring research program is reasonable within constraints of budget. When areas are discovered, they should go through the proper NEPA process before adding protection.

Response: NMFS agrees.

Measure 6

Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessels fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC).

Comment 52: Several commenters supported enhanced monitoring infrastructure that is more efficient and effective; improves understanding of the ecosystem; and is within constraints of practical fishing operations, reasonable costs, and budget priorities that also include what is necessary for fisheries and endangered species issues.

Response: NMFS agrees that enhanced monitoring is beneficial to the fishing community, the fishery, and DSCS resources. NMFS strives to have effective and efficient monitoring systems in place that are appropriate to the fishery for which they are employed and for the living marine resources NMFS protects. For instance, the rock shrimp fishery in the South Atlantic is required to have vessel monitoring systems (VMS) on all commercially licensed vessels and all shrimp vessels are also required to incorporate turtle excluder devices (TED) into their nets to reduce the mortality of sea turtles in shrimp trawls. As technology develops and as budgets permit, NMFS incorporates technological advances into its monitoring programs.

Comment 53: Two commenters stated that the South Atlantic and the Gulf of Mexico Councils have taken measures to require observers and VMS to monitor DSCS.

Response: The Gulf Council does not require observers on vessels that potentially may impact deep-sea corals. Shrimp vessels in the Gulf of Mexico take observers on a voluntary basis and coral bycatch is not currently recorded specifically as "coral" but rather as "invertebrate unidentified." Any coral bycatch is included along with other invertebrate species by weight, which include sponges. The Gulf Council has placed VMS on its vessels fishing with fish traps and all commercial reef fish vessels. The South Atlantic Council requires VMS on its rock shrimp vessels. The rock shrimp fleet fishes close to the *Oculina* HAPC, a known location of deep-sea coral communities. NMFS monitors more than 2,100 fishing vessels using VMS. The following is an approximation of VMS vessels by region: Northwest (380), Alaska (600), Northeast (578), Southeast (260), Pacific Islands (160), and Southwest (190). The following is an approximation of NOAA observers serving annually by region: Northwest (50), Alaska (270), Northeast (75), Southeast (30), Pacific Islands (30), and Southwest (20). NMFS supports the use of VMS systems; these systems should be paired with observers to accurately monitor trawl gear impacts on DSCS.

Comment 54: A commenter questioned the accuracy of electronic logbooks of DSCS bycatch kept by fishermen. The commenter also indicated 100 percent observer coverage of bottom-trawling vessels needs to be balanced against the costs for any vessel smaller than a large factory trawler to carry the observer.

Response: NMFS believes electronic logbooks can be kept accurate with compliance tools such as observers, VMS, for U.S. Coast Guard (USCG) and NMFS enforcement. NMFS encourages the fishing community to understand

the need for accurate log-books to provide the best management for the fishery. In most observer programs, observer coverage ranges from 5 to 20 percent. Currently, in all regions except the Gulf of Mexico, vessels receive observers based on a statistically valid and randomized process. In the Gulf of Mexico, shrimp vessels volunteer for the NMFS observer coverage.

Measure 7

Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas.

Comment 55: Three commenters noted that efforts are underway in the South Atlantic, New England, and North Pacific Councils to increase enforcement and penalties for the destruction of DSCS and illegal fishing in DSCS closed areas. Another commenter indicated that the Gulf Council is not an enforcement agency, but is developing Shrimp Amendment 14 to require VMS to aid enforcement.

Response: NMFS OLE, USCG, and deputized agents—not the Councils—are responsible for enforcing marine managed areas. Councils provide recommendations to NMFS after extensive consultation with stakeholders. Several Councils have recommend measures to require fishing fleets under their jurisdiction to carry VMS and observers, which have proved to be effective enforcement tools. NMFS OLE works with various NOAA and NMFS divisions, the Councils, NOAA General Counsel, and the U.S. Attorney's Office to determine the appropriate prosecution method for an offense. For civil violations, these include verbal warnings, fix-it notices, written warnings, summary settlement fines, as well as monetary penalties permit sanctions, permit suspensions, and permit revocations from NOAA General Counsel. For criminal violations, penalties include monetary penalties, home confinement, and/or imprisonment. Criminal investigations and prosecutions are saved for the intentional violators who commit a violation many times, conspire with others, or intentionally commit a serious offense where a civil penalty would not be appropriate or adequate.

Comment 56: One commenter indicated that illegal trawling does occur in the South Atlantic's DSCS *Oculina* HAPC, and another commenter was unsure how deliberate destruction of DSCS could be defined.

Response: The South Atlantic Council has noted that even though the *Oculina* Closed Area has been off-limits to bottom fishing since 1984, there is evidence of subsequent illegal trawling efforts. The South Atlantic Council is working closely with NMFS OLE to address these issues. Based on evidence of damage from illegal trawling, the Council and NMFS have recently mandated VMS on shrimp trawlers to aid enforcement. To prosecute illegal trawling, deliberate destruction of DSCS will require a showing of "intent" to destroy DSCS before a violation occurs. NMFS Enforcement encourages anyone who witnesses or has knowledge of a violation to report it via the NMFS Enforcement hotline number at 1–800–853–1964.

Comment 57: Many commenters supported increased enforcement efforts for all aspects of fisheries management to enforce existing closures, and other fishing regulations.

Response: NMFS agrees that effective fishery management requires effective enforcement and cooperation by all parties to obey the regulations. NMFS OLE is also researching and testing other viable ways (e.g., joint enforcement agreements with state counterparts and satellites) to help enforce fishery compliance.

Measure 8

Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.

Comment 58: Many commenters supported increased funding for research, mapping, and monitoring to better manage our nation's oceans, within usual budget constraints. One commenter felt Oceana should match funds for research.

Response: NMFS shares the commenters' recognition of the need for further research and mapping of these communities. A better understanding of where these resources are, how they are impacted by humans, and their ecological role in the deep ocean leads to more informed management decisions. NOAA is working to address research gaps in our understanding of DSCS within current budget constraints (see the previous section on scientific research). Although NOAA encourages joint research with NGOs, academia, and other agencies, it would be both inappropriate and illegal to require an NGO to match federal research dollars.

Comment 59: One commenter felt that establishing a research budget is not appropriate for a rulemaking petition.

Response: NMFS agrees that establishing a research budget through any petition is not appropriate.

Comment 60: A commenter indicated that the South Atlantic Council is currently drafting plans for further research to explore DSCS.

Response: The South Atlantic Council is developing an *Oculina* Research and Monitoring Plan and a Deep Coral Research and Monitoring Plan. The goal of the *Oculina* research plan is to evaluate restoration methods for destroyed and damaged *Oculina* habitat and assess long-term survival of restored colonies.

Deep-Sea Coral and Sponge FMP Development

Comment 61: Several commenters noted that the South Atlantic, Western Pacific, and Gulf of Mexico Councils have already developed Coral FMPs to protect corals from activities such as trawling, anchoring, and placing traps within coral areas.

Response: The South Atlantic and Western Pacific Councils have developed coral FMPs to regulate harvest of species that include deep-sea corals, and that also provide protection from other fishing impacts. The Gulf of Mexico and Caribbean Councils have developed coral FMPs to regulate the harvest and protect warm-water corals from fishing impacts, but do not identify DSCS species for protection. No Council currently has an FMP to manage impacts to deep-sea sponges.

Comment 62: Another commenter stated that DSCS are not currently commercially harvested, managed under FMPs, or identified as EFH in New England. However, they stated that the New England Council is at the forefront for protecting marine habitats through large closure areas for EFH.

Response: DSCS are not harvested, managed under FMPs, or identified as EFH in New England. However, certain areas of DSCS are protected by recent monkfish closure areas to protect hard-bottom identified as EFH. The New England Council has also closed off large areas to protect marine habitats identified as EFH that are vulnerable to fishing. This example is one of many positive examples of Council actions to conserve marine habitat resources.

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

Dated: July 5, 2005.

Rebecca Lent

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

[FR Doc. 05–13589 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 131
Monday, July 11, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 5, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Control Number: 0579–0076.

Summary of Collection: The Endangered Species Act of 1973 (16 U.S.C. 1513 *et seq.*) directs Federal departments to utilize their authorities under the Act to conserve endangered and threatened species. Section 3 of the Act specifies that the Secretary of Agriculture is authorized to promulgate such regulations as may be appropriate to enforce the Act. The regulations contained in 7 CFR part 355 are intended to carry out the provisions of the Act. The Plant Protection and Quarantine (PPQ) division of USDA's Animal & Plant Health Inspection Service (APHIS) is responsible for implementing these regulations. Specifically, Section 9 (d) of the Act authorizes 7 CFR 355.11, which requires a general permit to engage in the business of importing or exporting terrestrial plants listed in 50 CFR parts 17 and 23. APHIS will collect information using several PPQ forms.

Need and Use of the Information: APHIS will collect information on the applicant's name and address, whether the applicant is affiliated with a business, and the address of all the applicant's business locations in order for the applicant to obtain a general permit. Upon approval of the permit, any endangered species shipped via mail must be sent to an authorized port of entry and must be accompanied by appropriate supporting documentation.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,400.

Frequency of Responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 4,738.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–13516 Filed 7–8–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Chief Information Officer; Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Notice and request for comments.

SUMMARY: The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Office of the Chief Information Officer (OCIO) to request approval for information collection necessary to allow USDA customers to securely and confidently share data and receive services electronically. Authority for obtaining information from customers is included in the Freedom to E-File Act, the Government Paperwork Elimination Act (GPEA), the Electronic Signatures in Global and National Commerce Act (E–SIGN), and the E-Government Act of 2002. Customer information is collected through the USDA eAuthentication Service, located at *http://www.eauth.egov.usda.gov*. USDA's eAuthentication Service plays a vital role in the Expanded Electronic Government (e-Government) initiative of the President's Management Agenda. The USDA eAuthentication Service provides the public and government businesses with a single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA's eAuthentication Service obtains customer information through an electronic self-registration process provided through the eAuthentication Web site. This voluntary online self-registration process enables USDA customers, as well as employees, to obtain accounts as authorized users that will provide single sign-on capability to access USDA Web applications and services via the Internet. The USDA eAuthentication system stems from the Web-based Centralized Authentication and Authorization Facility (WebCAAF), the former USDA authentication system.

DATES: Comments on this notice must be received by September 9, 2005 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Owen Unangst, Program Manager, Office of the Chief Information Officer, United States Department of Agriculture, NRCS Information Technology Center, 2150 Centre Avenue Building A, Fort Collins, CO 80526–1891 or via e-mail at *owen.unangst@ftc.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* USDA eAuthentication Service Customer Registration.

OMB Control Number: 0503–0014.

Type of Request: Revision of a currently approved collection.

Abstract: The USDA OCIO has developed the eAuthentication Service as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a one-time electronic self-registration to obtain an eAuthentication account for each USDA customer desiring access to online services or applications that require user authentication. USDA customers can self-register for a Level 1 or Level 2 Access account. A Level 1 Access account provides users with limited access to USDA Web site portals and applications that have minimal security requirements. A Level 2 Access account enables users to conduct official electronic business transactions via the Internet, enter into a contract with the USDA, and submit forms electronically via the Internet to USDA Agencies. Due to the increased customer access associated with a Level 2 Access account, customers must be authenticated in person at a USDA Service Center by a local registration authority, in addition to an electronic self-registration. Once an account is activated, customers may use the associated user ID and password that they created to access USDA resources that are protected by eAuthentication. It is estimated to take 8 minutes to complete the self-registration process for a Level 1 Access account. A Level 2 Access account registration is estimated to be completed in 1 hour 10 minutes due to the travel time to the USDA Service Center.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 8 minutes for a Level 1 Access account and 1 hour 10 minutes for a Level 2 Access account per customer.

Respondents: Individual USDA Customers.

Estimated Number of Respondents: 38,604.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 18,909.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of the information on those who respond, including the use of appropriate automated, electronic, mechanical, or techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, *OIRA_Submission@omb.eop.gov* or Fax (202) 395–5806, and to Owen Unangst, Program Manager, Office of the Chief Information Officer, United States Department of Agriculture, NRCS Information Technology Center, 2150 Centre Avenue Building A, Fort Collins, CO 80526–1891, e-mail *owen.unangst@ftc.usda.gov.* All comments received will be available for public inspection during regular business hours at the same address. Copies of the information collection may be obtained from Mr. Unangst at the address above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 5, 2005.

Dave Combs,

Acting Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 05–13538 Filed 7–8–05; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 6, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Hispanic Perception and Use of the Urban Forest in Gainesville, GA.

OMB Control Number: 0596–NEW.

Summary of Collection: The proposed study relates to the Forest Service's national Urban and Community Forestry Program that focuses on community involvement with the urban forest. This research examines Hispanic residents' perceptions of and use of the urban forest where they live. This space includes yards outside private homes; common space in an apartment complex or mobile home park; neighborhood streets; and city parks. Hispanic use of outdoor environments in the Southeast is an important consideration for U.S. Forest Service State and Private Forest managers because of the impact of a growing population on the region's finite natural resources. Federal statutes that authorize this information collection include the Food Agriculture, Conservation, and Trade Act of 1990; Executive Order 12898 (1994) relating to environmental justice; and the National Environmental Policy Act of 1969.

Need and Use of the Information: FS will collect information focusing on (1) the perceptions Hispanics have of trees

and other green space outside their homes; (2) the kinds of trees Hispanics prefer, such as oak, pine, sycamore; (3) the ways Hispanics use yard space; and (4) the perceptions Hispanics have of trees and other green space in their neighborhoods. The information will enable the FS to better understand the types of tree coverage and green spaces preferred by recent Hispanic immigrants and migrants to Gainesville, GA.

Description of Respondents: Individuals or households.

Number of Respondents: 300.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 75.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–13539 Filed 7–8–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

[No. TM–05–06]

Notice of Agricultural Management Assistance Organic Certification Cost Share Program

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Notice.

SUMMARY: This notice invites eligible States to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the Allocation of Organic Certification Cost-Share Funds. The AMS has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2005. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified by the Department of Agriculture (USDA) accredited certifying agents to the National Organic Program (NOP). Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

DATES: Completed applications for federal assistance along with signed cooperative agreements must be received by August 25, 2005, in order to participate in this program.

ADDRESSES: Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; telephone: (202) 720–3252; Fax: (202) 205–7808; e-mail: *bob.pooler@usda.gov*. Additional information may be found through the National Organic Program's home page at *http://www.ams.usda.gov/nop*.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; telephone: (202) 720–3252; Fax: (202) 205–7808; e-mail: *bob.pooler@usda.gov*.

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1524). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. This organic certification cost share program provides financial assistance to organic producers certified to the National Organic Program authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*)

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or update of certification by a USDA accredited certifying agent from October 1, 2005, through September 30, 2006. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

Authority: 7 U.S.C. 1524.

Dated: July 5, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–13537 Filed 7–8–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: August 9–10, 2005, 8 a.m. to 4 p.m. both days. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Ballroom D, Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building, 12th Street and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The eighth meeting of the AC21 has been scheduled for February 7–8, 2004. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as "ex officio" members.

At this meeting, new members will be introduced and the Committee will be provided updates on reports already completed. The Committee will then consider how best to complete, in a timely fashion, ongoing examining the impacts of agricultural biotechnology on American agriculture and USDA over

the next 5 to 10 years. In particular, the AC21 will review the status of current sections of text and discuss how best to modify and finalize them to provide a coherent report to USDA. A work plan for completion of ongoing work will be developed. In addition, there will be preliminary discussions of potential future work topics of the Committee.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html*. On August 9, 2005, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by e-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: June 30, 2005.

Bernice Slutsky,

Special Assistant for Biotechnology.

[FR Doc. 05–13515 Filed 7–8–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bugtown Gulch Mountain Pine Beetle and Fuels Project Hell Canyon Ranger District, Black Hills National Forest Custer, South Dakota

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: On March 1, 2005, the Forest Service published a Notice of Intent to prepare an environmental impact statement (EIS) for the Bugtown Gulch Mountain Pine Beetle and Fuels Project. This is an authorized project under Section 102(a)(4) of the Healthy Forest Restoration Act of 2003. The Forest Service is modifying the proposed action and decision to be made, name and address of the Responsible Official, the expected dates for filing the draft and final EIS, the significant issues to be addressed and has developed an alternative to the proposed action. The proposed action is modified to include 3 site specific, non-significant Forest Plan amendments and the decision to be made will include whether or not to approve those amendments. The original NOI stated that a non-significant Forest Plan amendment related to big game habitat capability values as modeled by the HABCAP model may be part of the decision. Further analysis determined that amendments for big game HABCAP values would be necessary in both management areas 5.1 and 5.4. In addition, a third amendment to allow a short term reduction in mature, dense habitat within goshawk post fledging area habitat is included as part of the proposed action. The responsible official was listed as the Hell Canyon District Ranger in the March 1, 2005 NOI. Due to the inclusion of Forest Plan amendments to the proposal, the responsible official will be the Forest Supervisor. The draft and final EISs are expected to be filed in August, 2005 and December, 2005, respectively.

The original NOI listed several preliminary issues. Further analysis determined that there are 3 significant issues to be addressed with this project and they are: (1) The mountain pine beetle epidemic, (2) fuels and fire risks, and (3) wildlife habitat. One alternative to the proposed action has been developed to address public input concerning post-treatment diversity on the project area landscape. This alternative differs from the proposal by deferring approximately 1,300 acres from all proposed treatments. This alternative does not include a Forest Plan amendment to lower the big game HABCAP values in management area 5.1 as discussed above for the proposed action. However, it does include Forest Plan amendments to lower big game HABCAP values in management area 5.4 and to allow for a short term reduction of dense, mature stands in goshawk post-fledging area habitat as in the proposed action.

DATES: Comments concerning this revision should be received in writing by July 29, 2005. Comments submitted by individuals, groups or other agencies in response to previous scoping efforts for this project have been incorporated into the analysis and there is no need to resubmit comments in response to this revised NOI. The draft environmental impact statement is expected to be filed in August 2005 and the final environmental impact statement is expected to be filed in December 2005. Another formal opportunity to comment will be provided following completion of the Draft EIS.

ADDRESSES: Send written comments concerning this revision to Michael D. Lloyd, District Ranger, Black Hills National Forest, Hell Canyon Ranger District, 330 Mount Rushmore Road, Custer, South Dakota 57730. Telephone number (605) 673–4853. Fax number: (605) 673–5461. Electronic comments must be readable in Word, Rich Text or pdf formats and must contain "Bugtown Gulch" in the subject line. Electronic comments may be e-mailed to *comments-rocky-mountain-black-hills-hell-canyon@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Patricia Hudson, District NEPA Coordinator, at (605) 673–4853, Hell Canyon Ranger District, Black Hills National Forest, 330 Mount Rushmore Road, Custer, SD 57730.

SUPPLEMENTARY INFORMATION: Further information about the proposal can be found in the original notice of intent published in the **Federal Register**, Vol. 70, No. 39, pp. 9914–9916, on March 1, 2005.

Responsible Official

The responsible official for this project is Craig Bobzien, Forest Supervisor, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730–7239.

Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action or alternatives at this time and whether to amend the Forest Plan to allow for implementation of this project.

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

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be

waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1985) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

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

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

Dated: July 5, 2005.

Marisue Hilliard,

Acting Forest Supervisor.

[FR Doc. 05–13521 Filed 7–8–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet July 15, 2005, (RAC) in Colvelo, California. Agenda items to be covered include: (1) Approval of minutes, (2) public comment, (3) sub-committees (4) discussion—items of interest (5) next agenda and meeting date.

DATES: The meeting will be held on July 15, 2005, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St. Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Colvelo Ranger District, 78150 Colvelo Road, Covelo, CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by July 13, 2005. Public comment will have the opportunity to address the committee at the meeting.

Dated: July 1, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05–13541 Filed 7–8–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

[Docket No.: 050617160–5160–01]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce.

ACTION: Notice of Amendment of Privacy System of Records: COMMERCE/CENSUS–5, Population and Housing Census Records of the 2000 Census.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (11), the Department of Commerce is issuing notice of intent to amend the system of records under COMMERCE/CENSUS–5, Population and Housing Census Records of the 2000 Census; update administrative information.

DATES: To be considered, written comments must be submitted on or before August 10, 2005. Unless comments are received, the amendments to the system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gerald W. Gates, Chief Privacy Officer, U.S. Census Bureau, Washington, DC 20233, 301–763–2515.

SUPPLEMENTARY INFORMATION: Pursuant to Title 13 U.S.C. Section 141, the U.S. Census Bureau has conducted the 2000 Census. The amendment updates administrative information concerning the locations of the system files, the categories of individuals covered by the system, the categories of records in the system, the purpose of the system of records, retrievability, safeguards, and the disposal of the records in the system in addition to other minor administrative updates. Accordingly, the Population and Housing Census Records of the 1960 and Subsequent Censuses system notice originally published at 45 FR 82105, December 12, 1980, is amended by the addition of the following updates.

The Department of Commerce finds no probable or potential effect of the proposal on the privacy of individuals. Respondent data including personally identifying data are captured as images suitable for computer processing. Images are scheduled for permanent retention. Original data sources are destroyed, according to the disposal procedures for Title 13 ("census confidential") records, after confirmation of successful data capture and data transmission to headquarters. The Individual Census Record File (ICRF) represents a unified record of individual responses, including all names and other written entries provided by the respondent, and all associated address and geographic information for each housing unit or person living in group quarters. The ICRF is scheduled for permanent retention. This notice is not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. Section 553(a)(2). This notice is exempt from review under Executive Order 12866.

COMMERCE/CENSUS–5

SYSTEM NAME:

Insert "Including Preliminary Statistics for the 2010 Decennial Census" after "2000 Census."

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION: *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

After "in 2000." remove "." add ", subsequent Test Censuses, and the 2004 Overseas Enumeration Test. Participation in decennial censuses and test censuses is mandatory."

CATEGORIES OF RECORDS IN THE SYSTEM:

After "All," add "Census 2000"; after "tenure." add "For Census 2000,"; after "care-givers;" add "place of work and journey to work;" After "farm residence);" add "vehicles available;"; After "voluntary." insert the following text: "Test census records may contain the following items: name, address,

telephone number, age, sex relationship, race, Hispanic origin, housing tenure, number of persons in the household, number of persons in the household not permanent residents, and whether residents sometimes live somewhere else. Records for the 2004 Overseas Enumeration Test, which include U.S. citizens living in France, Kuwait, and Mexico, may contain for every person in the household the following items: name, relationship to others in the household, age, sex, race, and Hispanic origin. Additionally, they also may contain citizenship, stateside address, social security number, passport number, and the person's primary activity. Records for the respondent answering for the household also may include foreign address and telephone number for the household residence and the number of persons living in the residence as of April 1, 2004."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

After 13 U.S.C. 141 add "and 193."

PURPOSE(S):

Delete and replace with the following language:

"The Census 2000 records are maintained to undertake methodological evaluations leading to an improved 2010 census, and to undertake linkages with survey and administrative data for statistical projects authorized by the Census Bureau. Also, the records in this system of records are used to provide official census transcripts of the results to the named person(s), their heirs, or legal representatives, as authorized by Title 13, U.S.C., section 8, and described in the system of records notice Commerce/Census-6. These records also are provided to the National Archives and Records Administration as authorized by Title 44, Chapter 33. The purposes of maintaining the records for the Test Censuses are to evaluate methodologies for data collection and coverage for subsequent decennial censuses. The purpose of maintaining the 2004 Overseas Enumeration Test records is to evaluate the feasibility of enumerating American citizens in the 2010 decennial census residing overseas."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

After "Sections" delete "8,"

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: *

RETRIEVABILITY: *

SAFEGUARDS: *

RETENTION AND DISPOSAL:

Add "For Census 2000," before respondent data; after "The ICRF is scheduled for permanent retention." add "Test census data collection, data capture, and data processing records are destroyed when two years old or when no longer needed for program or evaluation purposes, whichever is later.

All individually-identifiable data files for information collected in France, Kuwait, and Mexico will be destroyed within 12 months of the close of data collection."

SYSTEM MANAGER(S) AND ADDRESS: *

NOTIFICATION PROCEDURE: *

RECORDS ACCESS PROCEDURES: *

CONTESTING RECORDS PROCEDURES: *

RECORDS SOURCE CATEGORIES: *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

After "identifiable individual." add "This exemption is made in accordance with the Department's rules which appear in 15 CFR part 4 subpart B."

* Indicates that there are no changes to that paragraph of the notice.

Dated: July 5, 2005.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. 05–13580 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 27 and 28, 2005, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 27

Public Session

1. Opening remarks and introductions.
2. Election of new ISTAC Chair.
3. Update on BIS programs and activities.
4. Department of Energy's uses of High Performance Computers.
5. Ethernet Technology Trends.
6. Nanotechnology Update.
7. Presentation and discussion of industry proposals for the 2006 WA list review.

July 28

Public Session

8. Presentation and discussion of industry proposals for the 2006 WA list review (continuation).
9. A/D Converter Update.

Closed Session

10. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 30, 2005, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5) U.S.C. app. 2 § 10(d), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: July 6, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–13549 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 26, 2005, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session:

1. Opening remarks and introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Presentation of papers and comments by the public.
4. New business.

Closed Session:

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on June 30, 2005, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–4814.

Dated: July 6, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–13550 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–815]

Carbon and Certain Alloy Steel Wire Rod from Indonesia; Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from P.T. Ispat Indo (Ispat Indo), the U.S. Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Indonesia (A–560–815). This administrative review covers imports of subject merchandise from Ispat Indo. The period of review is October 1, 2003, through September 30, 2004.

We preliminarily determine that sales of subject merchandise by Ispat Indo did not make sales of subject merchandise at less than normal value (NV) during the period of review. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate appropriate entries without regard to antidumping duties. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Judy Lao, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3019 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** a notice of the antidumping duty orders on carbon and certain alloy steel wire rod (steel wire rod) from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *See Notice of Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945, (October 29, 2002).

On October 27, 2004, Ispat Indo requested that we conduct an administrative review of its sales of the subject merchandise to the United States. On November 19, 2004, the Department initiated an administrative review of the antidumping duty order on steel wire rod from Indonesia for the period October 1, 2003, through September 30, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 67701 (November 19, 2004).

On December 3, 2004, the Department issued an antidumping duty questionnaire to Ispat Indo. Ispat Indo submitted its response to Section A of the questionnaire (Section A Response) on January 18, 2005, and its response to Sections B and C (Sections B and C Response) on February 15, 2005. Ispat Indo submitted its response to Section D of the questionnaire on February 8, 2005. On February 15, 2005, the Department received comments from petitioners regarding the February 8, 2005, Section D response. On March 1, 2005, the Department issued a request to revise Ispat Indo's Section D submission to report control number specific weight–average cost of production and constructed value information for the full POR. In addition, the Department issued Ispat Indo a supplemental questionnaire for Sections A–C on March 1, 2005. The Department received Ispat Indo's first supplemental questionnaire response on March 22, 2005. On April 1, 2005, the Department received comments from petitioners, and issued a Section D supplemental questionnaire. On April 4, 2005, petitioners submitted comments regarding the March 22, 2005, Section A, B, and C supplemental questionnaire response, and the revised Section D response. On April 14, 2005, the Department issued a second supplemental questionnaire to Ispat Indo. We received Ispat Indo's Section D supplemental questionnaire response on April 15, 2005. Ispat Indo submitted its second supplemental questionnaire response on April 27, 2005. On April

29, 2005, Ispat Indo submitted its complete package of documents and reconciliation worksheets pursuant to the Department's Section A questionnaire and Ispat Indo's January 18, 2005 response to question 1.h. On May 25, 2005, the Department issued its second supplemental Section D questionnaire. We received Ispat Indo's response on June 1, 2005. On June 10, 2005, we issued a third supplemental Section D questionnaire, and received a partial response from Ispat Indo on June 17, 2005. On June 24, 2005, Ispat Indo completed its response to the June 10, 2005, third supplemental Section D questionnaire. In addition, Ispat Indo submitted a response to the Department's verbal request to clarify its home market database, *see*, "Request for Clarification of Ispat Indo's Relationship with Certain Home Market Customers", (Department's Memorandum to the File through Abdelali Elouradia from Angelica Mendoza and Judy Lao), dated June 23, 2005.

Period of Review

The period of review (POR) is October 1, 2003, through September 30, 2004.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under the scope are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[1]

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), we considered all products covered by the "Scope of the Order" section above, which were produced and sold by Ispat Indo in the home market during the POR, to be foreign like product for the purpose of determining appropriate product comparisons to Ispat Indo's U.S. sales of steel wire rod.

We relied on the following eight product characteristics to match U.S. sales of subject merchandise to sales in Indonesia of the foreign like product

[1] Effective January 1, 2004 and January 1, 2005, CBP reclassified certain HTSUS numbers related to the subject merchandise. *See* http://hotdocs.usitc.gov/tariff_chapters_current/toc.html.6

(listed in order of preference): grade, carbon content, surface quality, deoxidization, maximum total residual content, heat treatment, diameter, and coating. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. *See* Appendix V of the Department's antidumping duty questionnaire to Ispat Indo dated December 3, 2004.

Fair Value Comparisons

To determine whether Ispat Indo made sales of steel wire rod to the United States at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to monthly weighted–average NVs.

Export Price

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

In the instant review, Ispat Indo sold subject merchandise to the United States through an affiliated company in Dubai, United Arab Emirates, and this Dubai–based trading company sold the subject merchandise to the first unaffiliated U.S. customer. Ispat Indo reported all of its U.S. sales of subject merchandise as EP transactions. After reviewing the evidence on the record of this review, we have preliminarily determined that Ispat Indo's transactions are classified properly as EP sales because these sales were first sold before the date of importation by Ispat Indo's affiliated Dubai–based trading company to an unaffiliated purchaser in the United States.

Such a determination is consistent with section 772(a) of the Act and the U.S. Court of Appeals for the Federal Circuit's (Court of Appeals') decision in *AK Steel Corp. et al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Court of Appeals examined the definitions of EP and constructed export price (CEP), noting "the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications." *AK Steel*, at 226 F.3d at 1369. The Court of Appeals declared, "the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate," and noted that the phrase "outside the United States" had been added to the 1994 statutory definition of EP. *AK Steel*, at 226 F.3d at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

For these EP sales transactions, we calculated price in conformity with section 772(a) of the Act. We based EP on the packed, delivered duty–paid prices to an unaffiliated purchaser in the United States. We also made deductions from the EP starting price, where appropriate, for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight from the plant/warehouse to the port of exportation, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling and U.S. customs duties.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Ispat Indo's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Pursuant to Section 773(a)(1)(B) of the Act and Section 351.404(b) of the Department's regulations, because Ispat Indo's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determine that sales in the home market provide a viable basis for calculating NV. *See* Ispat Indo's Section A Response at Exhibit A–1. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

As such, we used as NV the prices at which the foreign like product was first sold for consumption in Indonesia, in the usual commercial quantities, in the ordinary course of trade and, to the extent possible, at the same level of trade (LOT) as EP sales, as appropriate.

B. Arm's–Length Test

Ispat Indo reported that during the POR, it made sales in the home market to affiliated and unaffiliated original equipment manufacturers (OEMs). If any sales to affiliated customers in the home market were not made at arm's–length prices, we excluded them from our analysis as we consider such sales to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). To test whether sales to affiliates were made at arm's–length prices, we compared, on a model–specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement expenses, direct selling expenses, and home market packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's–length prices. *See* 19 CFR 351.403(c). Conversely, where the affiliated party did not pass the arm's–length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (*Modification to Affiliated Party Sales*). However, all of Ispat Indo's home market sales to affiliated customers passed the arm's–length test.

C. Cost of Production Analysis

In the most recently completed segment, the Department determined that Ispat Indo made sales in the home market at prices below its cost of production (COP) and, therefore, excluded such sales from its calculation of NV. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Indonesia*, 67 FR 17374, (April 10, 2002).

The Department's affirmative findings of sales–below-cost in the preliminary determination of the less–than-fair–value (LTFV) did not change in the final

determination.[2] Therefore, the Department has reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that Ispat Indo made sales in the home market at prices below the COP for this POR. As a result, in accordance with section 773(b)(1) of the Act, we examined whether Ispat Indo's sales in the home market were made at prices below the COP.

1. Calculation of COP

We compared sales of the foreign like product in the home market with POR model–specific COP. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, interest expenses, and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales–below-cost analysis, we relied on home market sales and COP information provided by Ispat Indo in its questionnaire responses, except where noted below:

a. Ispat Indo purchased a portion of its raw materials from an affiliated supplier. In accordance with Section 773(f)(2), we compared the transfer prices between the affiliated supplier and Ispat Indo to market prices and noted that the transfer prices were higher than the market prices. However, we noted that the total direct material costs reported by Ispat Indo to the Department was based on the transfer prices less the markup charged by its affiliate. Therefore, we increased the reported direct material costs to reflect the cost of raw materials as valued by the full transfer price between Ispat Indo and its affiliated supplier, including the affiliate's markup as recorded in Ispat's normal books and records.

b. We revised the G&A expense ratio to exclude amounts reimbursed by Ispat Indo's insurance company related to losses due to a shipwreck and a fire. For further details regarding these adjustments, *see* the Department's "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results — Ispat Indo" (COP Memorandum), dated July 5, 2005.

2. Test of Home Market Prices

We compared Ispat Indo's weighted–average COPs to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product–specific basis, we compared the COP to home market prices net of any applicable discounts or rebates and movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in (1) substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

3. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below–cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

In the case of Ispat Indo, we did not find an instance where more than 20 percent of a given home market product's sales were at prices less than COP. Therefore, we did not exclude any sales in determining NV.

D. Price–to-Price Comparisons

We based NV on home market prices to unaffiliated and affiliated customers. Home market starting prices were based on packed prices, net of rebates, to affiliated or unaffiliated purchasers in the home market. In Ispat Indo's initial questionnaire response, it stated that home market customers received quantity discounts. After reviewing Ispat Indo's responses to supplemental questionnaires, we preliminary find that the adjustments previously classified as quantity discounts were in fact rebates, as defined in the Department's questionnaire. Therefore, we have preliminarily treated these adjustments as rebates rather than discounts. We made deductions, where appropriate, for inland freight and insurance pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. In accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of our regulations, we adjusted home market starting prices for differences in circumstances of sale, *i.e.*, imputed credit expenses and direct bank charges. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as the export transaction. *See also* section 351.412 of the Department's regulations. The NV LOT is the level of the starting–price sales in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A expenses and profits. For EP sales, the U.S. LOT is also the level of the starting–price sale, which is usually from the exporter to the importer. *See* section 351.412(c)(1) of the Department's regulations. As noted in the "Export Price" section above, we preliminarily find that all of Ispat Indo's direct U.S. sales to unrelated customers are properly classified as EP sales.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT than EP sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

In determining whether separate LOTs existed in the home market for the

[2] We note that this is the second administrative review period. No parties requested a review during the first administrative review period.

respondent, we examine whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

In this review, Ispat Indo stated that it made sales in the home market directly to end users through one channel of distribution. The channel consists of Ispat Indo selling directly to both unaffiliated and affiliated end–users (*i.e.*, OEMs) in the home market. For the home market channel of distribution, Ispat Indo stated that it provided a high degree of assistance for sales forecasting, strategic economic planning, order/input processing, direct sales personnel support, sales/marketing support, market research, and technical assistance. Also, Ispat Indo provided a medium degree of assistance for personnel training/exchange, packing, and inventory maintenance; and a low degree of assistance for rebates. We preliminarily find there to be one LOT for home market sales.In the U.S. market, Ispat Indo also stated that it had one channel of distribution where the respondent sold to end–users (via its foreign–based affiliate) in the U.S. Within the U.S. channel of distribution, Ispat Indo stated that it provided a high degree of assistance for packing, order input/processing, direct sales personnel, sales/marketing support, after–sales services, freight and delivery, and technical assistance. Also, Ispat Indo stated that it has a medium degree of assistance for market research. We preliminarily find there to be one LOT for U.S. sales.

In analyzing Ispat Indo's selling activities for its home market and U.S. market, we determined that essentially the same level of services were provided for both markets. Specifically, for home market sales, the customer directly contacts Ispat Indo and negotiates the material terms of sale. Subsequently, Ispat Indo issues a sales contract to the Indonesian customer, and begins production. Upon shipment of the merchandise to the customer, Ispat Indo issues the invoice to the customer. *See* Ispat Indo's Section A Response at Exhibit A–5. The selling methods in the U.S. market are virtually the same, with the exception that all export sales, including the U.S. sales subject to this review, were made through its foreign–based affiliate. *See* Ispat Indo's Section A Response at A–20. Ispat Indo explained that its foreign–based affiliate handles processing of sales documentation and receipt of payment from the U.S. customer. However, Ispat Indo has direct contact with the U.S. customer, handles all sales negotiations, and direct ships the merchandise from the port of exportation in Indonesia to the U.S. customer. These negotiations are then confirmed by Ispat Indo's foreign–based affiliate via issuance of a sales contract to the U.S. customer. Once a sales contract has been issued to the U.S. customer, Ispat Indo will begin production of the ordered material. *See* Ispat Indo's Section A Response at A–16. Subsequent to shipment of the merchandise, Ispat Indo invoices its foreign–based affiliate, who then in turn issues an invoice to the U.S. customer. The U.S. customer remits payment to the foreign–based affiliate, who then in turn remits payment to Ispat Indo. In light of all the above, we do not consider the selling methods for both markets to represent different LOTs.

Therefore, we have preliminarily determined that the LOT for all EP sales is the same as the LOT for all sales in the home market. Based on our analysis of selling functions and because we find home market and U.S. sales at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Ispat Indo.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act, and section 351.415 of the Department's regulations, based on the exchange rates in effect on the dates of the U.S. sales, as certified by Dow Jones Reuter Business Interactive, LLC (trading as Factiva).

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted–average dumping margin for the period October 1, 2003, through September 30, 2004, to be as follows:

Manufacturer/exporter	Margin (percent)
P.T. Ispat Indo	0.38

The Department will disclose to parties to this proceeding the calculations performed in connection with these preliminary results of review within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal comments and briefs must be limited to issues raised in the case briefs and comments, and may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of the date of publication of this notice. *See* section 351.310(c) of the Department's regulations. Unless otherwise specified, the hearing, if requested, will be held 2 days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any case and rebuttal briefs and comments, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific *ad valorem* rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates (*ad valorem*) against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the company listed above will be the rate established in the final results of this review (except that no deposit will be required if the rate is zero or *de minims*, *i.e.*, less than 0.50 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to 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 original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of

the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will continue to be 4.06 percent, the "all others" rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Indonesia*, 67 FR 55798 (August 30, 2002). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

These preliminary results are issued and in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3658 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to multiple requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on folding metal tables and chairs (FMTCs) from the People's Republic of China (PRC). The period of review (POR) is June 1, 2003, through May 31, 2004. Upon completion of this review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise that were exported by the companies under review and entered during the POR. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482–2336 or Catherine Feig at (202) 482–3962, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2002, the Department published the antidumping duty order on certain FMTCs from the PRC (67 FR 43277). On June 1, 2004, the Department published a notice of opportunity to request an administrative review of this order (69 FR 30873). In accordance with 19 CFR 351.213(b)(1), the following requests were made: (1) on June 28, 2004, Cosco Home and Office Products (Cosco), a domestic interested party, requested that the Department conduct administrative reviews of Feili Furniture Development Ltd. Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively Feili), and New–Tec Integration (Xiamen) Co. Ltd. (New–Tec); (2) on June 28, 2004, Wok and Pan Industry Inc. (Wok and Pan), a Chinese producer and exporter of the merchandise under review, requested that the Department conduct an administrative review of Wok and Pan; (3) on June 29, 2004, Feili requested an administrative review of itself; (4) on June, 30, 2004, Meco Corporation (Meco), a domestic interested party, requested that the Department conduct administrative reviews of Feili, New–Tec, and Dongguan Shichang Metals Factory Ltd. (also known as Dongguang Shichang Metals Factory Co., Maxchief Investments Ltd.) (collectively Dongguan (Shichang)); (5) on June 30, 2004, Shichang and Lifetime, a Chinese exporter of the merchandise under review, requested that the Department conduct administrative reviews of Lifetime Hong Kong Ltd., and Lifetime (Xiamen) Plastic Producers Ltd. (collectively Lifetime), and Dongguan (Shichang).

On July 28, 2004, the Department published a notice of initiation of this administrative review (69 FR 45010) for Feili, New–Tec, Wok and Pan, Dongguan (Shichang), and Lifetime. On September 2, 2004, Lifetime withdrew its request for an administrative review, on September 7, 2004, Meco withdrew its request for an administrative review of Dongguan (Shichang), and on September 8, 2004, Dongguan (Shichang) withdrew its request for an administrative review. On February 15, 2005, the Department extended the due date for the preliminary results of this review to June 30, 2005 (70 FR 7718). On March 22, 2005, the Department published a notice rescinding the review with regard to Lifetime and Dongguan (Shichang) (70 FR 14444) . While Feili submitted timely responses to all of the Department's requests for information in this review, Wok and Pan and New–Tec did not. *See* "Adverse Facts Available" section, below.

Scope of the Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

a. Lawn furniture;
b. Trays commonly referred to as "TV trays";
c. Side tables;
d. Child–sized tables;
e. Portable counter sets consisting of rectangular tables 36" high and matching stools; and
f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28" to 36" wide by 48" to 96" long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross–braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another,

and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross–braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

a. Folding metal chairs with a wooden back or seat, or both;
b. Lawn furniture;
c. Stools;
d. Chairs with arms; and
e. Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.0010, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Separate Rates Determination for Feili

The Department has treated the PRC as a non–market economy (NME) country in all past antidumping duty investigations and administrative reviews. *See, e.g., Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C)(I) of the Tariff Act of 1930, as amended (the Act).

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589.

Based on a review of the responses, we have concluded that both Feili Group (Fujian) and Feili Furniture are owned by Hong Kong corporations and are registered and organized under the corporation and taxation laws of Hong Kong. Both companies operate freely in the PRC as foreign wholly–owned enterprises and, therefore, operate independently of control from central, provincial or local governments in the PRC. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for Feili.

With regard to *de facto* control, Feili reported the following: (1) it sets prices to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) it does not coordinate with other exporters or producers to set the price or determine to which market companies sell subject merchandise; (3) the PRC Chamber of Commerce does not coordinate the export activities of Feili; (4) Feili's general manager has the authority to contractually bind the company to sell subject merchandise; (5) the board of directors appoints the general manager; (6) there is no restriction on its use of export revenues; (7) Feili's shareholders ultimately determine the disposition of profits and Feili has not had a loss in the last two years; and (8) none of the board members or managers is a government official. Additionally, Feili's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Feili's questionnaire responses reveals no other information indicating government control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Feili's export functions and that Feili has met the criteria for the application of separate rates.

Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(I) of the Act.

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 the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these

conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869.

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2), 776(b) and 782(d) of the Act, the use of AFA is appropriate for the preliminary results for New–Tec, Wok and Pan, and the PRC–wide entity.

New–Tec

1. Background

The Department made several requests of New–Tec, asking for information on the samples that it gives to its customers. On August 9, 2004, the Department issued an NME questionnaire to New–Tec. In section C (II), New–Tec was instructed to ". . . prepare a separate computer data file containing each sale made during the POR of the subject merchandise, including sales of further manufactured merchandise." On December 9, 2005, the Department issued a supplemental questionnaire requesting (question 45) New–Tec to further explain what its product codes represent. In response New–Tec stated that "{n}ormally, New–Tec's customer designs a new product and sends the drawings to New–Tec for producing a sample. After making a sample, New–Tec delivers such sample to its customer for confirmation."

On May 19, 2005, the Department issued a fourth supplemental[1] questionnaire to New–Tec, instructing New–Tec, at question two, to describe how it had accounted for its sample sales (*i.e.*, the samples of subject merchandise New–Tec sent to its customer) in both the U.S. sales and factors–of-production (FOP) databases. The Department also asked New–Tec to ". . . please provide all documentation related to your POR sample sales and explain, in detail, how the documentation demonstrates that the sales were of samples."

In its June 7, 2005, response New–Tec stated that it did not report its samples in the U.S. sales file because it pays for all expenses related to the samples and the "delivery of samples is not recorded as sales as New–Tec does not invoice its customer" and that it recorded the expenses related to its samples as selling expenses. It also reported that the material, labor, and energy costs related to the samples were captured in the FOP database. However, New–Tec failed to provide any documentation on these samples, as explicitly requested by the Department.

Despite New–Tec's claims that these samples were free and not recorded as "sales," New–Tec provided no evidence to support this assertion. Therefore, on June 15, 2005, the Department issued a sixth supplemental.[2] Questions one and two again requested specific information about New–Tec's purported samples. The Department instructed New–Tec to provide the total quantity of its POR sample sales by product code and for New–Tec to:

> . . . please provide all documentation related to your POR sample sales and explain, in detail, how the documentation demonstrates that the sales were of samples. This would include, *but is not limited {to}*, general ledger entries, Chinese export forms, U.S. customs forms, and related invoices. Additionally, please state the disposition of the samples (*e.g.*, whether they were returned, destroyed, resold, tested etc.)

In response to the Department's first question, New–Tec refused to provide the total quantity of its POR sample sales. Instead it reiterated what it had stated in its previous response, that it "did not account for samples provided to its customers as sales" because they are free and New–Tec does not invoice the customer for the sales. Additionally, New–Tec stated that the sales are not booked into its revenue account. Despite the Department's requests, New–Tec did not place any evidence on the record to even indicate how many samples it provided during the POR or what products and quantities were provided in those samples.

In response to the Department's second question requesting documentation for the purported samples, New–Tec again failed to provide any of the requested documentation. Instead, New–Tec reiterated part of its answer to the first question, stating that the samples were treated as selling expenses. New–Tec also stated that it was unaware of the disposition of the samples but did not think that they were resold. Moreover, New–Tec claimed that the shipments were made by its "shipper" and that it was unaware of any Chinese export forms or U.S. customs forms associated with these shipments notwithstanding its March 25, 2005, response to the Department's second supplemental questionnaire, where New–Tec demonstrated specific knowledge of the documents required for export. In that response New–Tec stated, at page seven, that it was "required to use Xiamen Municipal Invoice for export declaration purpose pursuant to local customs authority regulations." New–Tec has not demonstrated that it is unable to provide, for the shipment of the samples, the same documentation that it *was* able to provide for its sales for remuneration.

2. Application of Facts Available

As described above, New–Tec failed to respond to the Department's requests for information by the deadlines established or in the form required. The absence of this information has significantly impeded this review because the Department has been unable to determine how many sample sales were made (much less what the details of these sample sales were). New–Tec failed to properly respond to the Department's requests, pursuant to section 782(d) of the Act, when it refused to provide documentation related to its purported samples and failed to provide data on the quantity of its samples within the deadlines established in the questionnaires. New–

[1] On March 11, 2005, and April 20, 2005, the Department issued a second and third supplemental questionnaire. Neither of these had questions pertaining to samples.

[2] On May 27, 2005, the Department issued a fifth supplemental questionnaire which did not have questions pertaining to samples.

Tec's failure to provide the requested information prevented the Department from conducting the analysis necessary to determine the nature of these transactions and whether they should be excluded from the margin calculation.

It is the Department, not the respondents, that makes the legal determination as to whether these transactions should be excluded from the database as samples. In order to do so, the Department must review the documentation pertaining to the samples, including documentation with respect to the quantities and values of the products classified as samples. Because New–Tec failed to provide any of this documentation, the Department has no reliable basis for reaching a decision as to the true transactional nature of the claimed samples. Typically, where the Department has found that there is insufficient evidence to prove that a transaction was a sample, it will include that sale in the sales database. *See, e.g., Antifriction Bearings and Parts Thereof, From France, Germany, Italy, Japan, Singapore and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 69 FR 55574, Issues and Decision Memorandum, at Comment 18 (September 15, 2004). However, by failing to provide even the quantity of its POR samples, New–Tec has given the Department no way to determine the volume of the purported sample transactions and their relevance to any margin calculations. As a result, New–Tec's entire U.S. sales database is unuseable for purposes of these preliminary results. Moreover, because there is no acceptable U.S. sales database to which we can compare New–Tec's FOP information, we are also unable to use that information. Therefore pursuant to section 782(e) of the Act, the Department must disregard all of New–Tec's U.S. sales and FOP data. Because we are basing New–Tec's margin on total facts available, we have also rejected New–Tec's information regarding separate rates, for purposes of the preliminary results, and thus we preliminarily find that separate rates treatment is not warranted.

Finally, we find that the application of section 782(e) of the Act does not overcome New–Tec's failure to respond. *See* sections 782(e)(1), (3), and (4) of the Act. Because the information that New–Tec failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to total facts otherwise available in determining the margin in its preliminary results, pursuant to sections 776(a)(2)(A)-(C) of the Act.

3. Use of Adverse Inferences

We also find that the application of an adverse inference in this review is appropriate, pursuant to section 776(b) of the Act. As discussed above, by refusing to provide any specific information about its purported samples, New–Tec has not acted to the best of its ability. Also, on June 7, 2005, New–Tec stated that it "recorded" expenses related to its samples as selling expenses. However, despite stating that such "records" exist, New–Tec did not provide them to the Department. Thus, New–Tec has failed to cooperate with the Department by not acting to the best of its ability to provide the requested information, and has hampered the Department's ability to evaluate whether or not the alleged sample transactions should be included in New–Tec's U.S. sales database, and if so what the corresponding data should be. Therefore, an adverse inference is warranted under section 776(b) of the Act. *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; *see also Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February13, 2002), and accompanying Issues and Decision Memorandum at Comment 24. Because New–Tec failed to act to the best of its ability, we have made the adverse inference that New–Tec is part of the PRC–wide entity.

4. Request for Substantiating Documentation

It is the Department's practice to review all transactions in which samples are provided to U.S. customers. *See, e.g., Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 60980 (Oct. 14, 2004), and accompanying Issues and Decision Memorandum at Comment 5; and *Honey From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004), and accompanying Issues and Decision Memorandum at Comment 2. Although the NME questionnaire indicated that parties were to report all sales, implying that the provisions of samples should also be included, it did not explicitly reference the reporting of samples. Therefore, the Department sent New–Tec two additional supplemental questionnaires specifically requesting information on New–Tec's sample sales. New–Tec continued to deny the existence of sample "sales," arguing that its purported samples transactions were at zero value and, therefore, do not constitute sales.

Further, the Department recognizes that the reference to "sample sales" in our supplemental questionnaires in this case may have been a potential source of confusion because parties may have understood the term "sales" to refer only to transactions involving remuneration. Therefore, the Department will be amending its NME questionnaire to address this issue. In the future, the questionnaire will specifically request information on "sample transactions" to clarify that the Department requires information on any sample product provided to U.S. customers, regardless of whether the U.S. customer paid for that sample.

Because New–Tec has responded to the rest of the Department's requests for information, and in view of the Department's concern regarding potential for confusion based on the terminology used in our questionnaires, the Department is providing New–Tec with a final opportunity to substantiate its claim that these are in fact sample transactions at zero value by: 1) providing the total POR quantity of samples transactions for each product code and; 2) providing *all* documentation related to its POR sample transactions. Such documentation would include, *but is not limited to*, general ledger entries, records from the workshop providing the samples, Chinese export forms, U.S. customs forms, and related invoices. In addition, New–Tec must explain, in detail, how the documentation demonstrates that the transactions involved samples for which no payment was required, not sales transactions, and why they should not be included in the sales database. Finally, the Department is asking New–Tec to explain why it was able to provide the Xiamen Municipal Invoice for export declaration purposes for its reported sales, but has claimed it is unable to do so for its sample transactions. Due to the unique circumstances of this case, the Department is allowing New–Tec to provide this information to the Department no later than 14 days after receipt of our questionnaire, and will consider New–Tec's response in reaching the final determination.

Wok and Pan

1. Background

Wok and Pan failed to respond to any of the following: the initial questionnaire (August 9, 2004); a letter from the Department to Wok and Pan, specifically requesting a response to the Department's questionnaire (September, 15, 2004); and the Department's request

for information to be considered when valuing the FOPs (September, 30, 2004).

2. Application of Facts Available

After requesting a review, Wok and Pan failed to respond to the Department's questionnaire. Because Wok and Pan has not responded to any of our requests for information, including information regarding separate rates, we preliminarily find that separate rates treatment is not warranted. Consequently, consistent with the statement in our notice of initiation, we find that, because Wok and Pan does not qualify for a separate rate, it is deemed to be part of the PRC–wide entity.

PRC–Wide Entity

1. Application of Facts Available

Because some companies which are part of the PRC–wide entity were reviewed in this segment of the proceeding, the Department determines that the PRC–wide entity has also been reviewed with respect to this POR. Because some companies which are part of the PRC–wide entity failed to respond to one or more of our requests for information, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC–wide entity (including New–Tec and Wok and Pan).

2. Use of Adverse Inferences

In addition, because the PRC–wide entity failed to cooperate by not acting to the best of its ability to comply with our requests for information, it is appropriate, pursuant to section 776(b) of the Act, to use an inference that is adverse to the interests of the PRC–wide entity in selecting from among the facts otherwise available. By doing so, companies that are part of the PRC–wide entity (including New–Tec and Wok and Pan) will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

The Department has assigned the highest rate from any segment of the proceeding as total AFA because the PRC–wide entity (including New–Tec and Wok and Pan) failed to cooperate to the best of its ability. This is in accord with the Department's practice where respondents refuse to cooperate to the best of their ability. *See, e.g., Stainless Steel Wire Rods from India, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29923, 29924 (May 26, 2004).

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as AFA, the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold–Rolled Carbon Steel Flat Products, and Certain Cut–to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1992).

The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) *(Rhone Poulenc); See also NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004)(upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less–than-fair–value (LTFV) investigation); *See also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 2005 Ct. Int'l. Trade 23 *23; Slip Op. 05–22 (February 17, 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 890. *See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *See also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *Rhone Poulenc*, 899 F. 2d at 1190.

Where we must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Due to New–Tec's and Wok and Pan's failure to cooperate, we have preliminarily assigned the PRC–wide entity, of which they are deemed to be a part, an AFA rate of 70.71 percent, the PRC–wide rate calculated in the investigation. *See Amended Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the PRC, (FMTC Investigation)* 67 FR 34898, (May 16, 2002).

The Department preliminarily determines that this information is the most appropriate, from the available sources, to effectuate the purposes of AFA. The Department's reliance on secondary information to determine an AFA rate is subject to the requirement to corroborate. See section 776(c) of the Act and the "Corroboration of Secondary Information" section below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. The

Department has determined that to have probative value information must be reliable and relevant. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and, *Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The reliability of the AFA rate was determined in the first administrative review of this case. *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results and Partial Rescission of the First Antidumping Duty Administrative Review*, 69 FR 75913, (December 20, 2004). The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. *See e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307–41308 (July 11, 2003). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information contained in the LTFV investigation is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997), which ruled that the Department will not use a margin that has been judicially invalidated.

To assess the relevancy of the rate used, the Department compared the margin calculations of Feili in this administrative review with PRC–wide entity margin from the LTFV investigation and used in the first administrative review of this case. The Department found that the margin of 70.71 percent was within the range of the highest margins calculated on the record of this administrative review. *See* memorandum to the file from Marin Weaver and Cathy Feig, International Trade Compliance Analysts, through Charles Riggle, Program Manager, Folding Metal Tables and Chairs from the PRC: Corroboration of the PRC–wide Adverse Facts–Available Rate, dated June 30, 2005. Because the record of this administrative review contains margins within the range of 70.71 percent, we determine that the rate from LTFV investigation continues to be relevant for use in this administrative review.

As the LTFV investigation margin is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the LTFV investigation margin is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity (including New–Tec and Wok and Pan), as AFA. Accordingly, we determine that the highest rate from any segment of this administrative proceeding, 70.71 percent, meets the corroboration criteria established in section 776(c) of the Act that secondary information have probative value.

Because these are the preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for the PRC–wide entity. *See Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

Export Price

Because Feili sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) and use of a constructed–export-price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the FOB price to unaffiliated purchasers for Feili. From this price, we deducted amounts for foreign inland freight and brokerage and handling pursuant to section 772(c)(2)(A) of the Act. We valued these deductions using surrogate values. We selected India as the primary surrogate country for the reasons explained in the "Normal Value" section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value (NV) using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home–market prices, third–country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country FOP prices to determine NV, section 773(c)(4) of the Act requires that the Department use values from a market–economy (surrogate) country that is at a level of economic development comparable to that of the PRC and is a significant producer of comparable merchandise. We have determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are market–economy countries at a comparable level of economic development to that of the PRC. (For a further discussion of our surrogate selection, see the September 28, 2004, memorandum entitled Request for a List of Surrogate Countries, which is available in the Department's Central Records Unit (CRU), room B099 of the main Commerce building). In addition, looking at United Nations export statistics, we found that India exported 4,551,694 kilograms of comparable merchandise (*i.e.*, FMTCs based on HTS numbers 9401.71, 9401.79, 9403.20, 9403.70) valued at USD 6,731,202. *See http://unstats.un.org/unsd/comtrade.* Therefore, India is a significant producer of comparable merchandise. Additionally, we are able to access Indian data that are contemporaneous

with this POR. As in the investigation and the previous review of this order, we have chosen India as the primary surrogate country and are using Indian prices to value the FOP.

We selected, where possible, publicly available values from India that were average non–export values, representative of a range of prices within the POR or most contemporaneous with the POR, product–specific, and tax–exclusive. Also, where we have relied upon import values, we have excluded imports from NME countries as well as from South Korea, Thailand, and Indonesia. The Department has found that South Korea, Thailand, and Indonesia maintain broadly available, non–industry-specific export subsidies. The existence of these subsidies provides sufficient reason to believe or suspect that export prices from these countries may be subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (Feb. 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1. Our practice of excluding subsidized prices has been upheld in *China National Machinery Import and Export Corporation v. United States*, 293 F. Supp. 2d 1334, 1136 (CIT 2003).

Material Inputs

- To value hydrochloric acid used in the production of FMTCs, we used per–kilogram import values obtained from *Chemical Weekly*. We adjusted this value for taxes and to account for freight costs incurred between the supplier and each respondent, respectively.
- Where Feili had usable market–economy purchases that represented a meaningful portion of total purchases of each respective input (*e.g.*, cold–rolled steel, polypropylene plastic resin, powder coating, and cartons), we valued these inputs with their respective per–kilogram purchase prices. Where applicable we also adjusted these values to account for freight costs incurred between the supplier and respondent.
- To value all other material inputs and carbon dioxide used in the production of FMTCs, we used per–kilogram import values obtained from the *Monthly Statistics of the Foreign Trade of India* (MSFTI), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from *World Trade Atlas* (WTA).[3] We also adjusted these values to account for freight costs incurred between the supplier and respondent.
- To value diesel oil, we used a per–kilogram value obtained from Bharat Petroleum for December 2003. *See* Memorandum to File: Factor Values Used for the Preliminary Results of the 2003–2004 Administrative Review" (Factors Memorandum) (June 30, 2005). We also made adjustments to account for freight costs incurred between the supplier and respondent.
- To value electricity, we used the 2000 electricity price data from *International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (First Quarter 2003)*, available at http://www.eia.doe.gov/emeu/international/elecprii.html.
- To value water, we used the Revised Maharashtra Industrial Development Corporation (MIDC) water rates for June 1, 2003, available at http://www.midcindia.com/water_supply.
- For labor, we used the regression–based wage rate for the PRC in "Expected Wages of Selected NME Countries," available at *http://ia.ita.doc.gov/wages/index.html*.
- For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from Godrej and Boyce Manufacturing Co. Ltd (2003–2004). From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.
- For packing materials, we used the per–kilogram values obtained from the MSFTI and made adjustments to account for freight costs incurred between the PRC supplier and respondent.
- To value foreign brokerage and handling, we used information reported in the *Final Determination of Sales at Less Than Fair Value; Certain Hot–Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (Oct. 3, 2001).
- To value truck freight, we used the freight rates published by Indian Freight Exchange available at http:/ /www.infreight.com.

Where necessary, we adjusted the surrogate values to reflect inflation/deflation using the Indian Wholesale Price Index (WPI) as published on the Reserve Bank of India (RBI) website, available at www.rbi.org.in. For a complete description of the factor values we used, *see* the Factors Memorandum, a public version of which is available in the Public File of the CRU.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Feili	7.02
PRC–Wide (including New–Tec and Wok and Pan)	70.71

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities. Further, we would appreciate it if parties submitting written comments would provide an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise. We have calculated each importer's duty–assessment rate based on the ratio of the total amount of antidumping duties calculated for the

[3] *Available* at http://www.gtis.com/wta.htm.

examined sales to the total quantity of sales examined. Where the assessment rate is above *de minimis*, the importer–specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results for all shipments of FMTCs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for Feili, which has a separate rate, the cash deposit rate will be the company–specific rate established in the final results of the review; (2) the cash deposit rates for any other companies, that have separate rates established in the investigation or first administrative review of this case, but were not reviewed in this proceeding, will not change; (3) for all other PRC exporters, the cash deposit rate will be the PRC rate, 70.71 percent, which is the "All Other PRC Manufacturers, Producers and Exporters" rate from the *Notice of Final Determination of Sales of Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (Apr. 24, 2002); and (4) for non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

This determination is issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: June 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3653 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Initiation of New Shipper Reviews

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

EFFECTIVE DATE: July 11, 2005.

SUMMARY: The Department of Commerce (the "Department") has determined that three requests for new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"), received in May 2005, meet the statutory and regulatory requirements for initiation. The period of review ("POR") of these new shipper reviews is November 1, 2004, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ryan A. Douglas or Brian Ledgerwood at (202) 482–1277 and (202) 482–3836, respectively, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the PRC was published on November 16, 1994. On May 17, May 26, and May 31, 2005, we received requests for new shipper reviews from Shandong Chengshun Farm Produce Trading Company, Ltd. ("Shandong Chengshun"); Xi'an XiongLi Foodstuff Co., Ltd. ("Xian XiongLi"); and Shenzhen Fanhui Import and Export Co., Ltd. ("Fanhui"), respectively.

Fanhui certified that it grew and exported the garlic on which it based its request for a new shipper review. Shandong Chengshun and Xian XiongLi certified that they exported, but did not grow, the fresh garlic on which they based their requests for a new shipper review. Specifically, Shandong Chengshun certified that Jinxiang Chengsen Agricultural Trade Company, Ltd. ("CATC") grew the fresh garlic it exported and Xian XiongLi certified that Jinxiang Tianshan Foodstuff Co., Ltd. ("JTFC") grew the fresh garlic it exported.

Initiation of New Shipper Reviews.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Shandong Chengshun, Fanhui, and Xian XiongLi certified that they did not export fresh garlic to the United States during the period of investigation ("POI"). In addition, pursuant to 19 CFR 351.214(b)(2)(ii)(B), CATC and JTFC, the growers of the garlic exported by Shandong Chengshun and Xian XiongLi, respectively, provided certification that they did not export fresh garlic to the United States during the POI. Pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), each of the three exporters, Shandong Chengshun, Fanhui, and Xian XiongLi, certified that, since the initiation of the investigation, they have never been affiliated with any exporter or grower who exported fresh garlic to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), each of the above–mentioned companies also certified that their export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, the exporters submitted documentation establishing the following: (1) the date on which they first shipped fresh garlic for export to the United States and the date on which the fresh garlic was first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment and the volume of subsequent shipments; and (3) the date of their first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating three new shipper reviews for shipments of fresh garlic from the PRC:

1) grown by CATC and exported by Shandong Chengshun;
2) grown and exported by Fanhui; and
3) grown by JTFC and exported by Xian XiongLi.

The POR is November 1, 2004, through April 30, 2005. See 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

Because Fanhui has certified that it grew and exported the fresh garlic on which it based its request for a new shipper review, we will instruct U.S. Customs and Border Protection (CBP) to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of fresh garlic both grown and exported by Fanhui until the completion of the new shipper reviews, pursuant to section 751(a)(2)(B)(iii) of the Act. With respect

to Shandong Chengshun and Xian XiongLi, they have certified that they exported, but did not grow, the fresh garlic on which they based their requests for new shipper reviews. Therefore, until completion of the new shipper reviews, we will instruct CBP to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for entries of fresh garlic grown by CATC and exported by Shandong Chengshun or fresh garlic grown by JTFC and exported by Xian XiongLi.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–13502 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products From Thailand

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

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–0193.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''the Department'') received timely requests for administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand, with respect to Sahaviriya Steel Industries Public Company Limited (''SSI'') on November 30, 2004 from both SSI and domestic producer Nucor Corporation. Also on November 30, 2004, the Department received a request for administrative review of the same order for SSI, Nakornthai Strip Mill Public Co., Ltd., and G Steel Public Company Limited (formerly Siam Strip Mill Public Co., Ltd.) from United States Steel Corporation. On December 27, 2004, the Department published a notice of initiation of this administrative review for the period of November 1, 2003, through October 31, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 77181 (December 27, 2004).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity of analyzing SSI's sales data of its multiple affiliates, its cost calculations and the control number reporting methodology for various products, it is not practicable to complete this review by the current deadline of August 2, 2005. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until November 30, 2005, which is 365 days after the last day of the anniversary month of the date of publication of the order. The final results continue to be due 120 days after the publication of the preliminary results, in accordance with section 351.213 (h) of the Department's regulations.

This notice is issued and published in accordance to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–13499 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803, A–201–834, A–421–811, A–401–808]

Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC), the Department is issuing antidumping duty orders on purified carboxymethylcellulose (CMC) from Finland, Mexico, the Netherlands and Sweden. On June 30, 2005, the ITC notified the Department of its affirmative determination of injury to a U.S. industry. *See* letter from the ITC to the Secretary of Commerce, Notification of Final Affirmative Determination of Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden (Investigation Nos. 731–TA–1084–1087 (Final)), dated June 30, 2005. *See also Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, USITC Publication 3787, June 30, 2005.

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, Robert James, or Abdelali Elouaradia at (202) 482–6312, (202) 482–1374, or (202) 482–0649, respectively, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The final determinations in these investigations were published on May 17, 2005. See *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005); *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Mexico*, 70 FR 28280 (May 17, 2005); *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands*, 70 FR 28275 (May 17, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden*, 70 FR 28278 (May 17, 2005).

Scope of the Orders

The merchandise covered by these orders is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Antidumping Duty Orders

On June 30, 2005, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the ITC notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less–than-fair–value imports of purified CMC from Finland, Mexico, the Netherlands and Sweden.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of purified CMC from Finland, Mexico, the Netherlands and Sweden. These antidumping duties will be assessed on (1) all entries of purified CMC from Finland, Mexico, the Netherlands and Sweden entered, or withdrawn from warehouse, for consumption on or after December 27, 2004, the date on which the Department published its notices of preliminary determinations in the **Federal Register**[1], and before June 25, 2005, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation; and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Entries of purified CMC from Finland, Mexico, the Netherlands and Sweden made between June 25, 2005, and the day preceding the date of publication of the ITC's notice of final determination in the **Federal Register** are not liable for the assessment of antidumping duties.

CBP officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted–average antidumping duty margins as noted below. The "all others" rate applies to all manufacturers and exporters of subject merchandise not specifically listed. The weighted–average dumping margins are as follows:

Country	Manufacturer/Exporter	Margin
Finland	Noviant OY	6.65%
	All Others	6.65%
Mexico	Quimica Amtex	12.61%
	All Others	12.61%
Netherlands	Noviant B.V.	14.88%
	Akzo Nobel	13.39%
	All Others	14.57%
Sweden	Noviant AB	25.29%
	All Others	25.29%

Pursuant to section 736(a) of the Act, this notice constitutes the antidumping duty orders with respect to purified CMC from Finland, Mexico, the Netherlands and Sweden. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: June 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–13500 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Mexico*, 69 FR 77201 (December 27, 2004); *Notice of Preliminary Determination of Sales at Less Thon Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From the Netherlands*, 69 FR 77205 (December 27, 2004); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Sweden*, 69 FR 77213, (December 27, 2004).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part

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

SUMMARY: In response to requests from respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) and from petitioners Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy

Piping Products, Inc., and Taylor Forge Stainless, Inc., (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel butt–weld pipe fittings from Taiwan. Petitioners requested that the Department conduct the administrative review for Ta Chen, Liang Feng Stainless Steel Fitting Co., Ltd. (Liang Feng), Tru–Flow Industrial Co., Ltd. (Tru–Flow), and PFP Taiwan Co., Ltd. (PFP).

With regard to Ta Chen, we preliminarily determine that sales have been made below normal value (NV). Although Tru–Flow certified to the Department that it had no sales, entries or shipments to the United States during the period of review (POR), the Department found information indicating that there were entries of subject merchandise manufactured by Tru–Flow. Because Tru–Flow subsequently did not respond to section A of the Department's requests for information, we are preliminarily applying facts available with adverse inference to determine Tru–Flow's margin. Liang Feng and PFP certified that they had no sales or shipments of subject merchandise to the United States during the POR, and requested exclusion from answering the Department's questionnaire. Based upon Liang Feng's and PFP's certified statements and on information from U.S. Customs and Border Protection (CBP) indicating that these companies had no shipments to the United States of the subject merchandise during the POR, we hereby give notice that we intend to rescind the review regarding these companies. For a full discussion of the intent to rescind with respect to Liang Feng and PFP, see the "Notice of Intent to Rescind in Part" section of this notice.

If these preliminary results of review of Ta Chen's sales are adopted in the final results, we will instruct CBP to assess antidumping duties on appropriate entries based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0405 or (202) 482–8221, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt–weld pipe fittings from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt–Weld Pipe and Tube Fittings from Taiwan*, 58 FR 33250 (June 16, 1993). On June 1, 2004, the Department published a notice of opportunity to request administrative review of stainless steel butt–weld pipe fittings from Taiwan for the period June 1, 2003, through May 31, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 30873 (June 1, 2004).

In accordance with 19 CFR 351.213(b)(2), on June 2, 2004, Ta Chen requested that we conduct an administrative review of its sales of the subject merchandise. On June 22, 2004, petitioners requested an antidumping duty administrative review for the following companies: Ta Chen, Liang Feng, Tru–Flow, and PFP (collectively, respondents). On July 28, 2004, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 45010 (July 28, 2004).

On August 4, 2004, the Department issued its antidumping duty questionnaire to respondents. On August 23, 2004, pursuant to 19 CFR 351.213(j)(1), petitioners asked that the Department conduct a duty absorption inquiry in this review. On September 9, 2004, three of the respondents, Liang Feng, Tru–Flow, and PFP, requested exclusion from answering the Department's questionnaire, certifying that they had no sales, entries or shipments of subject merchandise to the United States during the POR. Also, on September 9, 2004, Ta Chen submitted its response to section A of the Department's questionnaire. On September 30, 2004, Ta Chen submitted its responses to sections B, C and D under the one-day lag rule. On October 1, 2004, Ta Chen submitted a final version of its sections B, C, and D response, noting that certain changes had been made to section C. Since the one-day lag rule only allows for changes to bracketing information, the new section C information was considered untimely. As a result, in accordance with 19 CFR 351.302(d), the Department rejected Ta Chen's section B, C, and D responses, and requested that Ta Chen resubmit its submission without the new information in section C. Ta Chen resubmitted its section B, C and D responses on October 7, 2004. The Department issued a supplemental section A questionnaire on October 8, 2004, a supplemental section D questionnaire on January 25, 2005, a supplemental A, B and C questionnaire on February 2, 2005, and a supplemental A through D questionnaire on April 13, 2005. Ta Chen submitted its responses to these questionnaires on October 26, 2004, February 22, 2005, March 1, 2005, and April 27, 2005. Petitioners submitted deficiency comments on Ta Chen's section A response on September 22, 2004, its section B through D response on October 15, 2004, and its supplemental section A response on December 21, 2004, and on June 1, 2005.

On May 31, 2005, the Department sent out a duty absorption questionnaire to both Ta Chen and Tru–Flow. On June 10, 2005, Ta Chen submitted its response and separate comments in response to petitioners' June 1, 2005, letter on affiliation. The Department did not receive a response from Tru–Flow.

Information received from CBP indicated that there were entries of subject merchandise during the POR that were manufactured by Tru–Flow. Therefore, the Department issued a letter to Tru–Flow on February 24, 2005, asking the company to answer questions regarding its claim of no sales, entries or shipments of subject merchandise to the United States during the POR. On March 7, 2005, Tru–Flow submitted its response to the Department's questions and on March 14, 2005, petitioners submitted comments regarding Tru–Flow's response. On March 16, 2005, the Department asked Tru–Flow for additional information, and on March 23, 2005, Tru–Flow submitted its response. Upon the Department's request, on March 30, 2005, Tru–Flow submitted revised versions of both its March 7 and March 23, 2005, responses to remove improper designations of public information as proprietary. On March 24, 2005, the Department informed Tru–Flow that the company would be required to submit a full response to section A of the Department's antidumping questionnaire by April 14, 2005. On April 1, 2005, petitioners submitted further comments regarding Tru–Flow's responses to the Department's

questions. Tru–Flow neither responded to the section A questionnaire nor requested an extension of time for filing its response. On June 6, 2005, the Department telephoned counsel for Tru–Flow and requested that they contact their client and place a statement on the record regarding their intention to respond. No reply was received. *See Memorandum to the File: Administrative Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan — Phone Conversations with Tru–Flow and U.S. importer* (June 7, 2005). Accordingly, for these preliminary results, we are basing Tru–Flow's margin on facts available with an adverse inference, pursuant to section 776(b) of Tariff Act of 1930, as amended (the Act). Further discussion on this issue is provided below in the "Facts Available" section.

On May 12, 2005, the Department sent a letter to the U.S. importer of the merchandise produced by Tru–Flow. The importer responded on May 16, 2005. The Department sent a letter with supplemental questions on May 26, 2005, and received the importer's reply on May 31, 2005. On June 7, 2005, the Department spoke with a representative for the importer, asking the company to resubmit its responses with proper bracketing. On June 8, 2005, the correctly bracketed information was submitted to the Department. Further discussion of the importer's responses is provided below in the "Reimbursement of Antidumping Duties" section.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for conducting an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On February 24, 2005, the Department extended the time limit for the preliminary results of this administrative review by 120 days, to not later than June 30, 2005. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan*, 70 FR 9045 (Feb. 24, 2005).

Notice of Intent to Rescind Review in Part

Pursuant to 19 C.F.R. 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that there were no entries, exports, or sales of the subject merchandise during the POR. *See e.g., Stainless Steel Plate in Coils from Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (Feb. 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (Apr. 10, 2001).

On September 9, 2004, Liang Feng, Tru–Flow, and PFP each submitted letters on the record stating that they had no U.S. sales or shipments of the subject merchandise during the POR. To confirm their statements, on January 12, 2005, the Department conducted a CBP data inquiry and determined that there were no entries of subject merchandise during the POR manufactured by Liang Feng or PFP. Therefore, pursuant to 19 C.F.R. 351.213(d)(3), the Department preliminarily intends to rescind this review as to Liang Feng and PFP. Conversely, the Department's inquiry revealed that subject merchandise manufactured by Tru–Flow entered into the United States during the POR. Because of this evidence and Tru–Flow's refusal to respond to the section A questionnaire, the Department is preliminarily rejecting Tru–Flow's request for exclusion from this administrative review.

Period of Review

The POR for this administrative review is June 1, 2003, through May 31, 2004.

Scope of the Order

The products covered by the order are certain stainless steel butt–weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt–weld pipe fittings (pipe fittings) are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) corrosion of the piping system will occúr if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: elbows, tees, reducers, stub ends, and caps. The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from the order. The pipe fittings subject to the order are currently classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Duty Absorption

On August 23, 2004, petitioners asked that the Department conduct a duty absorption inquiry in this review pursuant to 19 CFR 351.213(j)(1). The Department's regulation provides that "during any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211, or determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer." As part of the period covered by this administrative review falls between the third and fourth anniversary of the sunset review determination published on January 28, 2000, the Department sent duty absorption questionnaires to Ta Chen and Tru–Flow. These questionnaires requested evidence demonstrating that their unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries during this POR. In its June 10, 2005, response to the Department's questionnaire, Ta Chen stated that "the unaffiliated purchasers will ultimately pay the anti–dumping duties assessed on entries." However, the only evidence it provided as support for this claim was the gross profit margin on its U.S. sales. Tru–Flow did not respond to the Department's request for duty absorption information.

In determining whether antidumping duties have been absorbed by a respondent during the POR, we presume that the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an enforceable agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial*

Rescission of Antidumping Duty Administrative Review, 69 FR 48212, 48216 (August 9, 2004); *Stainless Steel Sheet and Strip in Coils From France: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47892, 47899 (August 6, 2004). Ta Chen did not provide any evidence on the record, such as an enforceable agreement with an unaffiliated customer, showing that unaffiliated purchasers will pay the full duty ultimately assessed on the subject merchandise. Because Ta Chen failed to provide us with objective evidence that duty absorption did not occur, we preliminarily find that antidumping duties have been absorbed by Ta Chen on U.S. sales made through its affiliated importer, TCI. Tru–Flow did not respond to our inquiry, even though we advised in our letter that failure to respond might result in the application of facts available. We, therefore, preliminarily find as facts available with an adverse inference that Tru–Flow has absorbed antidumping duties.

Affiliation

On September 22, 2004, petitioners submitted deficiency comments on Ta Chen's section A response, claiming that Ta Chen had not reported all of its affiliations. On December 21, 2004, petitioners filed deficiency comments on Ta Chen's supplemental section A response, and placed on the record of this proceeding information from the previous administrative review relating to Ta Chen's alleged affiliations. Petitioners allege that Ta Chen was affiliated during the POR with numerous U.S. companies and one multinational company (PFP) involved in the trading, distribution, and/or production of specialty steel products. Petitioners claim that Ta Chen has been an uncooperative respondent because petitioners believe that Ta Chen should have provided more information about these alleged affiliates. Therefore, petitioners request that the Department assign an antidumping margin of 76.20 percent to Ta Chen as adverse facts available (AFA). *See* Petitioners' Deficiency Comments, at 45 (Dec. 21, 2004); *see also* Petitioners' Comments, at 11 (June 1, 2005).

Ta Chen denies that it is currently affiliated with these entities, and that they had any involvement with the subject merchandise or foreign like product during the POR. In addition, the Department's analysis of Ta Chen's sales information did not reveal any sales of subject merchandise to any of these entities, nor did any of them supply Ta Chen with major inputs for manufacturing subject merchandise during the POR. In response to petitioners' June 1, 2005 submission, Ta Chen stated that it had "actively and cooperatively responded to all Department questionnaires with detailed information and has even provided detailed responses to petitioner allegations, however baseless, unsupported, redundant, or sensational." Ta Chen's Response to Petitioners' June 1 Comments, at 2 (June 10, 2005).

The Department thoroughly analyzed petitioners' affiliation allegations during the previous administrative review. *See Memorandum for Jeffrey May, Deputy Assistant Secretary, from Joseph Welton, Analyst, Ta Chen Affiliations Memorandum: Stainless Steel Butt–Weld Pipe Fittings from Taiwan 2002–2003 Review* (June 29, 2004), placed on the record in this review by petitioners. Despite having previously examined this issue, the Department has reexamined the issue of affiliations based on current public information, including state corporate records, and proprietary and public information placed by the parties on the record of this review. *See Memorandum for Richard O. Weible, Director, from Helen M. Kramer, Team Leader, and Kristin A. Najdi, Case Analyst, Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Petitioners' Allegations Regarding Ta Chen Affiliations* (June 30, 2005). Our findings indicate that the companies alleged to be affiliated to Ta Chen are either defunct, commercially inactive, or clearly not affiliated to Ta Chen. Although it may be argued that one company may have been subject to Ta Chen's control, there is no evidence that any of these alleged affiliates were either purchasers of subject merchandise or suppliers of major inputs for its production during the current POR. There is also no record information that any of these alleged affiliates could have had any effect on Ta Chen's production, pricing, or cost of the subject merchandise or foreign like product. Pursuant to 19 CFR 351.102(b) of the Department's regulations, we preliminarily find that Ta Chen did not control these companies during the POR, and therefore is not affiliated with them.

Furthermore, the record does not support petitioners' contention that Ta Chen has been uncooperative in this review by not fully responding to the Department's questions related to affiliation. We note that Ta Chen timely responded to the Department's requests for supplemental information regarding the affiliation issues raised by petitioners. Ta Chen provided detailed information about the companies that the Department had analyzed in the previous administrative review. Ta Chen also declined to provide information about certain other companies that the Department concluded in the previous administrative review had no connection to the subject merchandise or foreign like product, and which Ta Chen denies are otherwise affiliated.

Facts Available

On February 24, 2005, the Department asked Tru–Flow to comment on customs entry documents obtained from CBP that indicate Tru–Flow had prior knowledge that certain subject merchandise produced by Tru–Flow was destined for the United States. Among the documents was a mill certificate prepared by Tru–Flow, indicating the merchandise would be sold to a U.S. customer. On March 7, 2005, Tru–Flow submitted documentation pertaining to additional U.S. sales that Tru–Flow claimed were made without its knowledge by its sales agent, Censor International Corporation (Censor). On March 14, 2005, petitioners submitted comments in response to Tru–Flow's March 7, 2005, submission, alleging that Tru–Flow and Censor are affiliated parties based on public marketing materials obtained from Internet websites and the description of Censor as Tru–Flow's "office" on the back cover of Tru–Flow's products catalog. In its March 23, 2005, submission, Tru–Flow claims that third–party Internet websites incorrectly identified Tru–Flow and Censor as having the same President and that the description of Censor as Tru–Flow's "office" on Tru–Flow's product catalog is an incorrect translation of "agent" from Mandarin Chinese.

In order to further examine this issue, on March 24, 2005, the Department requested that Tru–Flow submit a full response to section A of the Department's questionnaire by April 14, 2005. On March 30, 2005, at the Department's request, Tru–Flow resubmitted its March 7 and March 23, 2005, submissions in order to correct improper bracketing of public information. However, Tru–Flow did not file a response to Section A or to the Department's duty absorption inquiry.

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts

otherwise available in reaching the applicable determination. Sections 782(d) and (e) of the Act do not apply in this case because Tru–Flow failed to respond to the Department's request for information. Since Tru–Flow did not provide the Department with any information pertaining to its affiliations, by not responding to section A of the questionnaire, we are using facts otherwise available to find that Tru–Flow and Censor are affiliated. In addition, we are basing Tru–Flow's dumping margin on facts available, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

Application of Adverse Inferences for Facts Available

In applying facts otherwise available, 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, e.g., Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 70 FR 1870 (Jan. 11, 2005), and Accompanying Issues and Decision Memorandum, at cmt. 1 ("*Stainless Steel Butt–Weld Pipe Fittings From Taiwan Final Results*"); *Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002); *Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122, 34123–24 (June 18, 2004). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, at 870 (1994) (SAA). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

Tru–Flow failed to respond to section A of the questionnaire and to the Department's duty absorption inquiry. The Department's questionnaire guidelines provided Tru–Flow with information regarding the consequences of failure to respond adequately to the questionnaire. The Department also contacted Tru–Flow's counsel on June 6, 2005, asking Tru–Flow to place a statement on the record clarifying whether or not it intended to submit a response. *See Memorandum to The File, from Kristin Najdi, Analyst, Administrative Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Phone Conversations with Tru–Flow and U.S. Importer* (June 7, 2005). Despite these attempts to notify Tru–Flow of its responsibility to respond to the questionnaire, Tru–Flow has not complied. This constitutes a failure on the part of Tru–Flow to cooperate to the best of its ability to comply with a request for information by the Department, within the meaning of section 776 of the Act. Therefore, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where a respondent failed to respond to the antidumping questionnaires).

An adverse inference may include reliance on information derived from the petition. Because Tru–Flow did not respond to our requests for information, we are applying AFA to find that Tru–Flow and Censor are affiliated parties, based upon information provided by petitioners and upon documentation from CBP indicating that Tru–Flow had knowledge that its subject merchandise was destined for the United States. Specifically, CBP had provided sales documentation that clearly contradicts Tru–Flow's claim of no knowledge of the U.S. sales, including a mill certificate prepared by Tru–Flow indicating the name of the U.S. customer. Also, as AFA, we are basing Tru–Flow's margin on the highest rate in the petition, 76.20 percent, the same rate assigned to Tru–Flow since the original less–than-fair–value (LTFV) investigation. This rate was based on a Taiwanese producer's price quote for one product delivered c.i.f. to a U.S. main port, adjusted for movement expenses, compared to the constructed value (CV) of that product. This was determined by using petitioners' proprietary data on factor of production usage and input costs in Taiwan derived from a separate investigation.

Section 776(c) of the Act requires the Department to corroborate secondary information to the extent practicable from independent sources that are reasonably at its disposal. In order to corroborate the U. S. price used in the petition, the Department compared it with Ta Chen's reported prices for the identical product net of foreign inland freight, ocean freight, marine insurance and brokerage charges. We found that the petition net U.S. price fell within the range of Ta Chen's U.S. prices net of movement expenses to a U.S. port during the POR, and was slightly higher than the average. Therefore, we consider petitioners' U.S. price to be corroborated. *See Memorandum to The File, Through Abdelali Elouaradia, Program Manager, from Helen M. Kramer, Team Leader, and Kristin A. Najdi, Analyst, Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Corroboration of the Adverse Facts Available Margin* (June 30, 2005). As the data used in the petition to determine NV were based on proprietary information not on the record in this review, information to corroborate the NV calculation was not reasonably available. However, the Department corroborated this information prior to initiating the LTFV investigation. *See Concurrence Memorandum: Initiation of Antidumping Duty Investigations of Certain Stainless Steel Butt–Weld Pipe Fittings from the Republic of Korea and Taiwan* (June 4, 1992).

Reimbursement of Antidumping Duties

Petitioners allege that Tru–Flow paid the antidumping duties for its U.S. sales on behalf of its U.S. customers, and ask the Department to double the total AFA rate for Tru–Flow's subject merchandise to 152.40 percent. *See* Petitioners' Comments (Apr. 1, 2005) at 2, 25–27; Petitioners' Comments (Apr. 26, 2005) at 1, 5; and Petitioners' Comments (June 1, 2005) at 1, 22–25. In addition, petitioners ask that the Department also apply this rate to Ta Chen's U.S. sales of merchandise that was tolled by Tru–Flow during the POR.

For at least one sale during the period, Censor sold Tru–Flow's merchandise to an unaffiliated exporter, who then sold this merchandise to an unaffiliated U.S. importer. As discussed above in the "Facts Available" section, the Department has determined that Tru–Flow is affiliated with Censor and they had knowledge that this merchandise would be sold to the United States. Therefore, this is considered to be Tru–Flow's sale.

Tru–Flow provided substantial evidence on the record to demonstrate that Censor reimbursed the antidumping duties. Tru–Flow provided a written statement from its General Manager explaining that Censor, "paid the adverse inference dumping rate requested by the US Customs Service." Tru–Flow Quest. Resp., at 60 (Mar. 30, 2005). As supporting evidence for this statement, Tru–Flow provided the CBP bill issued to the U.S. importer for

duties owed on this shipment of Tru–Flow's merchandise. *Id.* at 62. Tru–Flow also provided documentation of the wire transfer for Censor's payment to the unaffiliated exporter of the exact amount of the antidumping duties billed by CBP for this sale. *Id.* at 59.

The Department then contacted the U.S. importer, on May 12, 2005, and requested documentation pertaining to the sale in question. The Department asked the U.S. importer to provide the sales documentation and proof of payment to the unaffiliated exporter for this sale, as well as proof of payment to CBP for the antidumping duties. Finally, the Department asked the U.S. importer to provide the date that it had received a reimbursement for payment of these antidumping duties from Censor or the unaffiliated exporter and to provide the corresponding documentation for this payment. The U.S. importer responded to the Department's first two questions, but failed to respond to the third question regarding its receipt of the reimbursement of the antidumping duties. The importer provided the proof of payment to the unaffiliated exporter for this shipment and proof of payment to CBP for the antidumping duties owed on the shipment. The importer also provided the requested sales documents and provided the certification of non–reimbursement, pursuant to 19 C.F.R 351.402(f)(2), that it had submitted when the entry in question was made. This certification stated that the importer did not enter into any agreement or understanding for the payment or refund of all or any part of the antidumping duties assessed upon the subject merchandise.

The Department has explained that it will interpret the reimbursement regulation to take "into account situations in which reimbursement occurs indirectly, *i.e.*, through someone acting on behalf of the exporter, because such an interpretation more effectively accomplishes the purposes of the regulation." *See, Porcelain–on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 26934, 26936–37 (May 18, 1999). The Department went on to explain that a "more literal and restrictive interpretation could seriously undermine the effectiveness of the regulation by making it possible to avoid its application merely by acting through third parties." *Id.* Based on this understanding of the regulation's application and the Department's determination that Censor is Tru–Flow's affiliated sales agent, the Department finds that the U.S. importer was reimbursed for antidumping duties by the exporter or producer pursuant to 19 CFR 351.402(f)(1)(i)(B).

Tru–Flow, the producer, stated that Censor, its affiliated sales agent, paid the antidumping duties, and provided documentation showing payment by Censor in an amount identical to the duties paid to an unaffiliated third party who exported the merchandise to the United States. While the U.S. customer was the party that actually made the payment to CBP, the Department concludes from Tru–Flow's statement and documentation of Censor's payment that the U.S. importer was reimbursed by Tru–Flow/Censor through the unaffiliated exporter. Because the exact amount owed for the antidumping duties was remitted to the unaffiliated exporter, the Department infers that the payment was then provided by the unaffiliated exporter to the U.S. importer. Finally, because Censor is Tru–Flow's affiliated sales agent, we find that Censor acted on behalf of Tru–Flow, such that the reimbursement may be attributed to Tru–Flow. *Id.*

The U.S. importer's certification of non–reimbursement is outweighed by Tru–Flow's statements and the payment by Censor. In addition, the Department notes that the U.S. importer's certification was filed when the entry occurred, which was a year prior to when Censor "paid the adverse inference dumping rate requested by the US Customs Service." Tru–Flow Quest. Resp., at 60 (Mar. 30, 2005). In addition, the U.S. importer failed to respond to the Department's request for information regarding the reimbursement, neither denying nor admitting to the reimbursement. See Importer's Resp. (May 16, 2005). Because Tru–Flow stopped responding to the Department's requests for information, we are unable to obtain the additional documentation showing the payment from the unaffiliated U.S. exporter to the U.S. importer. Therefore, we preliminarily find that Tru–Flow reimbursed the U.S. importer for the antidumping duties.

19 CFR 351.402(f)(1)(i)(B) states that the Department will deduct the amount of any antidumping duty that the exporter or producer "reimbursed to the importer" from the export price (EP) or the CEP. *See Cold–Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 48465, 48470–71 (Sept. 13, 1996); upheld by *Hoogovens Staal BV v. United States*, 24 CIT 242, 93 F. Supp. 2d 1303 (Apr. 12, 2000). However, since the Department is unable to calculate a margin for Tru–Flow due to the company's unresponsiveness, and is instead applying facts available with an adverse inference, we are doubling the AFA rate. *See* 19 CFR 351.402(f); *see also Porcelain–on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 26934, 26944 (May 18, 1999).

The Department declines to apply the reimbursement provision to Ta Chen's sales that were tolled by Tru–Flow. As is explained in further detail below in the "Product Comparisons" section, we deemed these tolled sales to be Ta Chen's sales and not Tru–Flow's sales.

Product Comparisons

For the purpose of determining appropriate product comparisons to pipe fittings sold in the United States, we considered all pipe fittings covered by the scope that were sold by Ta Chen in the home market during the POR to be "foreign like products," in accordance with section 771(16) of the Act. Where there were no contemporaneous sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics reported by Ta Chen, as follows: specification, seam, grade, size and schedule.

The record shows that Ta Chen both purchased from, and entered into tolling arrangements with, unaffiliated Taiwanese manufacturers of subject merchandise, including Tru–Flow. The record does not indicate that these manufacturers had knowledge that the subject merchandise would be exported to the United States. Moreover, all subcontracted or purchased fittings are marked with Ta Chen's brand name, and Ta Chen labels itself as the producer. *See* Ta Chen's Section A Resp., at 1–2, 18–19, and Exh. 24–25 (Sept. 9, 2004); Ta Chen's Supp. Section A Resp., at 6, and Exh. 9–A and 9–B (Oct. 26, 2004); and Ta Chen's Supp. Sections A–D Resp., at 2 and Exh. A–D (Apr. 27, 2005).

We have preliminarily determined that Ta Chen is the sole exporter of the subject merchandise under review. It is inappropriate to exclude sales of subject merchandise produced by unaffiliated manufacturers from Ta Chen's U.S. sales database because record evidence shows that those unaffiliated manufacturers had no knowledge that the subject merchandise would be sold to the United States. *See also* 19 CFR 351.401(h).

However, section 771(16)(A) of the Act defines "foreign like product" to be "[t]he subject merchandise and other merchandise which is identical in physical characteristics with, and was

produced in the same country by the same person as, that merchandise." Thus, consistent with the Department's past practice in reviews under this order, for products that Ta Chen has identified with certainty that it purchased from a particular unaffiliated producer and resold in the U.S. market, we have restricted the matching of products to identical products purchased by Ta Chen from the same unaffiliated producer and resold in the home market.

Date of Sale

The Department's regulations state that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If the Department can establish "a different date [that] better reflects the date on which the exporter or producer establishes the material terms of sale," the Department may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale in both the home market and the U.S. market. *See* Ta Chen's Section A Resp., at 12 (Sept. 9, 2004); and Ta Chen's Sections B and C Resp., at B–10 and C–9 (Oct. 7, 2004). Moreover, Ta Chen did not indicate any industry practice which would warrant the use of a date other than invoice date in determining date of sale.

Accordingly, as we have no information demonstrating that another date is more appropriate, we preliminarily based the date of sale on the invoice date recorded in the ordinary course of business, in accordance with 19 CFR 351.401(i). For constructed export price (CEP) sales, we used the invoice date for sales to the first unaffiliated buyer.

Fair Value Comparisons

To determine whether sales of subject merchandise by Ta Chen to the United States were made at prices below NV, we compared, where appropriate, CEP to NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted–average NV of the foreign like product.

Constructed Export Price

Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. . . ." Consistent with recent past reviews, pursuant to section 772(b) of the Act, we calculated the price of Ta Chen's sales based on CEP because the sale to the first unaffiliated U.S. customer was made by Ta Chen's U.S. affiliate, Ta Chen International (CA) Corp. (TCI). *See Analysis Memorandum for the Preliminary Results of Administrative Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Ta Chen Stainless Pipe Co., Ltd.* (June 30, 2005) (Analysis Memo). Ta Chen has two channels of distribution for U.S. sales: 1) Ta Chen ships the merchandise to TCI for inventory in warehouses and subsequent resale to unaffiliated buyers (stock sales), and 2) Ta Chen ships the merchandise directly to TCI's U.S. customer ("indent" sales). The Department finds that both stock and indent sales qualify as CEP sales because the original sales contract is between TCI and the U.S. customer. In addition, TCI handles all communication with the U.S. customer, from customer order to receipt of payment, and incurs the risk of non–payment. In addition, TCI handles customer complaints concerning issues such as product quality, specifications, delivery, and product returns. TCI is also responsible for the ocean freight for all U.S. sales and all selling efforts to the U.S. customer. *See* Ta Chen's Section A Resp., at 8–9 (Sept. 9, 2004).

We calculated CEP based on ex–warehouse or delivered prices to unaffiliated purchasers in the United States and, where appropriate, we deducted discounts. In accordance with section 772(d)(1) of the Act, the Department deducted direct and indirect selling expenses, including inventory carrying costs incurred by TCI for stock sales, related to commercial activity in the United States. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, Taiwan harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. Finally, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

Normal Value

1. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. See Ta Chen's Section A Resp., at 2 (Sept. 9, 2004).

2. Cost of Production Analysis

Because we disregarded sales below the cost of production (COP) in the prior administrative review, we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. *See Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 70 FR 1870, 1871 (Jan. 11, 2005). Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus indirect selling expenses and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses.

For these preliminary results, the Department adjusted Ta Chen's net financial expense by calculating a revised financial expense ratio and multiplying the revised ratio by the total cost of manufacture for each control number (CONNUM) provided in the Section D database. *See Memorandum To Neal Halper, Director, Office of Accounting, from Joseph Welton, Case Accountant, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Ta Chen,"* (June 30, 2005). We made no other adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weighted–average COP to home market sales of the foreign like product, as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities, and were not at prices that permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We

compared the COP to home market prices on a product–specific basis. There were no deductions from price, as Ta Chen did not grant any discounts or rebates, and did not incur movement expenses.

C. Results of COP Test

In accordance with section 773(b)(1) of the Act, when less than 20 percent of Ta Chen's sales of a given product (CONNUM) were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in substantial quantities, as defined by section 773(b)(2)(C) of the Act. When 20 percent or more of Ta Chen's sales of a given product (CONNUM) during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) and 773(b)(2)(C) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we appropriately disregarded below–cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Price–to-Price Comparisons

As there were sales at prices above the COP for all product comparisons, we based NV on prices to home market customers. We deducted credit expenses and added interest revenue. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Finally, in accordance with section 773(a)(6) of the Act, we also deducted home market packing costs and added U.S. packing costs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting–price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, where possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales for which we are unable to quantify an LOT adjustment, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–61733 (Nov. 19, 1997).

Ta Chen reported that its two channels of distribution in the home market, to trading companies and to end–users, comprised one LOT. We examined the selling functions and related expenses, and found that Ta Chen's level of selling functions to its home market customers for inventory maintenance, technical services, packing, after–sales services, freight and delivery arrangements, sales processes, some research and development (R&D), and customer service, did not vary significantly by channel of distribution. *See* Ta Chen's Section A Resp., at 7 (Sept. 9, 2004); *see also* Ta Chen's Section A Supp. Resp., at 1–2 (Oct. 26, 2004). Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution constitute one LOT in the comparison market.

For CEP sales, the LOT is determined by the selling functions the seller performs for sales to its U.S. affiliate. Because Ta Chen reported that all of its sales to the United States are CEP sales made through TCI, *i.e.*, through one channel of distribution, Ta Chen is claiming that there is only one LOT in the U.S. market for its sales. We examined the selling functions and related expenses, and found that Ta Chen's selling functions for sales to TCI consist of accepting orders from TCI, packing for shipment to the United States, and incurring expenses for inland freight to the port of embarcation, containerization, brokerage and handling, marine insurance, and harbor improvement tax. Ta Chen performs these functions regardless of whether shipments are going to TCI or directly to the unaffiliated customer. Therefore, Ta Chen's U.S. sales constitute a single LOT.

The Department compared the selling functions Ta Chen provided in the home market LOT with the selling functions provided in the U.S. LOT. In the home market LOT, Ta Chen provides significant selling functions related to the sales process, R&D, technical services, and after–sales services it does not provide for sales to TCI. Therefore, we find that the LOT in the home market is more advanced than the LOT of the CEP sales. However, since we have preliminarily determined that there is only one LOT in the home market, we are unable to calculate a LOT adjustment. Ta Chen has requested a CEP offset. Because we have preliminarily determined that NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, and we are unable to quantify a LOT adjustment pursuant to section 773(a)(7)(A) of the Act, for these preliminary results we have applied a CEP offset to the NV–CEP comparisons, in accordance with section 773(a)(7)(B) of the Act.

Currency Conversion

For purposes of the preliminary results, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the weighted–average dumping margins for the period June 1, 2003, through May 31, 2004, to be as follows:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen Stainless Pipe Co., Ltd	2.02
Tru–Flow Industrial Co., Ltd.	152.40

The Department will disclose calculations performed for these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments are limited to issues raised in such briefs or comments and may be filed no later

than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. *See* 19 CFR 351.309(c). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Antidumping duties for the rescinded companies shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 51.01 percent, which is the "all others" rate established in the LTFV investigation. These deposit requirements, when imposed, 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 preliminary reminder to importers of their responsibility under 19 C.F.R. 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–13501 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Stainless Steel Butt-Weld Pipe Fittings From Korea; Notice of Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On March 7, 2005, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping order covering stainless steel butt-weld pipe fittings from Korea. *See Stainless Steel Butt-Weld Pipe Fittings from Korea; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 10982 (March 7, 2005) (*Preliminary Results*). The merchandise covered by this order is stainless steel butt-weld pipe fittings as described in the "Scope of the Order" section of this notice. The period of review (POR) is February 1, 2003, through January 31, 2004. We invited parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Heaney, or Robert James at (202) 482–4475, or (202) 482–0649, respectively, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2005, the Department published the preliminary results of the 2003–2004 antidumping duty administrative review of stainless steel butt-weld pipe fittings from Korea. *See Preliminary Results.* The review covers Sungkwang Bend Company (SKBC), and the period February 1, 2003, through January 31, 2004. In the *Preliminary Results*, we invited parties to comment. SKBC submitted a case brief on April 6, 2005. Petitioner submitted no comments, and no party filed rebuttal comments.

Scope of the Order

The products covered by this order are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this order are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case brief submitted in this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated July 5, 2005, which is hereby adopted by this notice. A list of the issues which SKBC has raised and to which we have responded, all of which are in the 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 this public memorandum which is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations. The changes are listed below:

- We have added billing adjustments to the Net U.S. Price.
- We have revised the model-match program to distinguish between fittings with fractional size and wall thickness measurements (*e.g.*, ½ inch or 1½ inches).
- We have revised the model-match program to ensure that U.S. sales are matched to the most contemporaneous home market sale.
- We have removed the deduction for home market inventory carrying costs from our calculation of U.S. price.

All programming changes are discussed in the relevant sections of the Decision Memorandum, accessible in B–099 of the main Department of Commerce building and on the Web at *http://www.ia.ita.doc.gov*.

Final Results of the Review

We determine the following percentage weighted-average margin exists for the period February 1, 2003 through June 30, 2004:

Manufacturer/exporter	Weighted average margin (percent)
SKBC	0.81

Liquidation

The Department shall determine, and U.S. Customs and Border Protection (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer-specific assessment rates. To calculate these rates, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the appropriate assessment rate against the entered Customs values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel butt-weld pipe fittings from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930 as amended (the Act): (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 21.2 percent. This rate is the "All Others" rate from the amended final determination in the LTFV investigation. *See Stainless Steel Butt-Weld Pipe Fittings From Korea: Notice of Final Determination of Sales at Less Than Fair Value*, 58 FR 11029, (February 23, 1993).

These deposit requirements shall remain in effect until the publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing 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 or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (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 or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 5, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Addition of Billing Adjustments to U.S. Price.
2. Revisions to the Model Match Program, Use of the Concordance Submitted by SKBC.
3. Inventory Carrying Costs.

[FR Doc. E5–3655 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part

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

SUMMARY: The Department of Commerce ("the Department") is conducting the seventeenth administrative review of the antidumping duty order on tapered

roller bearings and parts thereof, finished or unfinished, ("TRBs") from the People's Republic of China ("PRC") covering the period June 1, 2003, through May 31, 2004. We have preliminarily determined that sales have been made below normal value. Further, we have preliminarily determined to apply an adverse facts available ("AFA") rate to all sales and entries of the Yantai Timken Company's ("Yantai Timken's") subject merchandise during the period of review ("POR"). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR, for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–0414, respectively.

Background

On June 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC for the period June 1, 2003, through May 31, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 69 FR 30873. On June 30, 2004, The Timken Company ("the Petitioner") requested that the Department conduct an administrative review of the antidumping duty order covering TRBs from the PRC for entries of subject merchandise produced and exported by China National Machinery Import & Export Corporation ("CMC"), Chin Jun Industrial Ltd. ("Chin Jun"), Luoyang Bearing Corporation (Group) ("LYC"), Peer Bearing Company—Changshan ("CPZ"), Shanghai United Bearing Co., Ltd ("Shanghai United"), Weihai Machinery Holding (Group) Company, Ltd. ("Weihai Machinery"), Zhejiang Changshan Bearing (Group) Co., Ltd. ("Changshan Bearing"), Zhejiang Changshan Change Bearing Co. ("ZCCBC"), and Zhejiang Machinery Import & Export Corp ("ZMC"). Also on June 30, 2004, Yantai Timken requested an administrative review of entries of subject merchandise produced by Yantai Timken. On July 28, 2004, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of TRBs from the PRC for the period June 1, 2003, through May 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 45010 (*"Initiation Notice"*). On August 5, 2004, the Department issued antidumping duty questionnaires to all of the above respondents.

On September 8, 2004, CPZ submitted its Section A response. On September 28, 2004, CPZ submitted its Sections C and D responses. On October 22, 2004, the Petitioner withdrew its request for an administrative review of sales and entries of subject merchandise produced and exported by CPZ. On January 28, 2005, the Department published a notice of partial rescission, which rescinded the administrative review for CPZ. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China: Notification of Partial Rescission of the Antidumping Duty Administrative Review*, 70 FR 5966 (January 28, 2005). On February 4, 2005, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until May 1, 2005. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China*, 70 FR 5967 (February 4, 2005). Additionally, on April 5, 2005, the Department published a notice in the **Federal Register** further extending the time limit for the preliminary results of review until June 30, 2005. *See Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China*, 70 FR 17233 (April 5, 2005).

Yantai Timken

On August 5, 2004, the Department issued its antidumping questionnaire to Yantai Timken. Yantai Timken submitted its Section A questionnaire response on August 26, 2004, and its Sections C and D responses on October 4, 2004. The Department issued a Section A–D supplemental questionnaire to Yantai Timken on December 22, 2004, to which Yantai Timken responded on January 12, 2005. The Department issued a second supplemental questionnaire to Yantai Timken on February 15, 2005, to which Yantai Timken responded on March 15, 2005. We issued a third supplemental questionnaire on April 6, 2005. Yantai Timken responded on April 13, 2005. On April 18, 2005, Yantai Timken provided revised proprietary versions of its August 26, 2004, October 4, 2004, January 12, 2005, March 1, 2005 and March 4, 2005 submissions in response to the Department's third supplemental questionnaire response. On April 15, 2005, the Department issued its fourth supplemental questionnaire. Yantai Timken provided its fourth supplemental questionnaire response on April 20, 2005. The Department issued its fifth supplemental questionnaire on April 21, 2005 concerning the quantity and value of sales during the past three years as a result of Yantai Timken's request for revocation. Yantai Timken responded on April 25, 2005. On April 21, 2005, the Department also issued its sixth supplemental questionnaire to Yantai Timken. Yantai Timken provided its sixth supplemental questionnaire response on May 5, 2005.

LYC

On August 5, 2004, the Department issued its antidumping questionnaire to LYC. LYC submitted its Section A questionnaire response on September 8, 2004, and its Sections C and D responses on October 4, 2004. The Department issued a Section A–D supplemental questionnaire to LYC on December 22, 2004, to which LYC responded on January 12, 2005. The Department issued a second supplemental questionnaire to LYC on February 7, 2005, to which LYC responded on March 7, 2005. On March 11, 2005, LYC submitted sales and factors of production ("FOP") reconciliations. We issued a third supplemental questionnaire on May 4, 2005. LYC responded on May 16, 2005. On June 8, 2005, the Department issued its fourth supplemental questionnaire. LYC submitted its fourth supplemental questionnaire response on June 15, 2005. On June 15, 2005, we issued a fifth supplemental questionnaire to LYC. LYC provided its fifth supplemental questionnaire response on June 21, 2005.

CMC

On August 5, 2004, the Department issued its antidumping questionnaire to CMC. CMC submitted its Section A questionnaire response on September 1, 2004, and its Sections C and D responses on October 4, 2004. The Department issued a Section A supplemental questionnaire to CMC on

October 18, 2004, to which CMC responded on November 1, 2004. The Department issued a Section A through D supplemental questionnaire to CMC on December 17, 2004. CMC provided its response on January 10, 2005. We issued a second supplemental questionnaire on February 1, 2005. CMC responded on February 22, 2005. On May 24, 2005, the Department issued its third supplemental questionnaire. CMC provided its third supplemental questionnaire response on June 6, 2005.

Other Respondents

On August 5, 2004, the Department issued an antidumping duty questionnaire to Chin Jun, Shanghai United, Weihai Machinery, Changshan Bearing, ZCCBC, and ZMC. On September 9, 2004, ZMC submitted a letter stating that it had no U.S. sales of subject merchandise nor shipments of subject merchandise to the United States during the POR. On October 15, 2004, and December 3, 2004, respectively, Weihai Machinery and Chin Jun submitted letters stating that they had no U.S. sales of subject merchandise nor shipments of subject merchandise to the United States during the POR.

On September 24, 2004, we contacted counsel for ZCCBC to determine whether ZCCBC received Department's questionnaire. *See* memorandum to the file from Jim Nunno, Senior Analyst, *Telephone Conversation with Counsel for Respondent, Zhejiang Changshan Change Bearing Co., ("ZCCBC") ("ZCCBC Memorandun")*, dated September 29, 2004. Counsel explained that it forwarded the Department's questionnaire to ZCCBC, but did not receive a confirmation that the company had received the questionnaire. *See ZCCBC Memorandum*. On October 5, 2004, the Department issued a second letter and questionnaire to the government of the PRC, requesting its assistance in transmitting our questionnaire to Chin Jun, Shanghai United, Weihai Machinery, Changshan Bearing, and ZCCBC. *See* letter to Mr. Liu Danyang, Director of the Bureau of Fair Trade for Imports and Exports, dated October 5, 2004. On October 6, 2004, in response to our question whether ZCCBC received our questionnaire, counsel for ZCCBC explained that it no longer represents ZCCBC in this administrative review, and did not confirm whether ZCCBC received the Department's questionnaire. *See Telephone Conversation with Counsel for Respondent, Zhejiang Changshan Change Bearing Co., ("ZCCBC") ("Second ZCCBC Memorandum")*. On October 25, 2004, Federal Express reported that it was unable to deliver our October 5, 2004 questionnaire. See memorandum to the file from Katharine Huang, Case Analyst, *Package to the Chinese Ministry of Commerce Was Returned, Seventeenth Administrative Review of Tapered Roller Bearings From the People's Republic of China*, dated December 20, 2004. Thus, Shanghai United, Changshan Bearing, and ZCCBC did not respond to our August 5, 2004 questionnaire, October 5, 2004 follow-up questionnaire or our other attempts to determine whether they received the August 5, 2004 questionnaire.

Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explains this practice in the preamble to the Department's regulations. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27317 (May 19, 1997) ("Preamble"); *see also Stainless Steel Plate in Coils From Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001). To confirm ZMC's, Weihai Machinery's, and Chin Jun's respective claims that each had no U.S. sales of subject merchandise nor shipments of subject merchandise to the United States during the POR, the Department conducted a Customs inquiry. *See* memorandum to the file from Laurel LaCivita, *Tapered Roller Bearings and Parts, Thereof from the People's Republic of China, No Shipment Inquiry for Chin Jun Industrial Ltd., Weihai Machinery Holding (Group) Company, Ltd., and Zhejiang Machinery Import & Export Corporation*, dated June 29, 2005. We have received no evidence that Chin Jun, Weihai Machinery or ZMC had any shipments to the U.S. of subject merchandise during the period of review. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department preliminarily intends to rescind this review as to ZMC, Weihai Machinery, and Chin Jun. The Department may take additional steps to confirm that these companies had no sales, shipments or entries of subject merchandise to the United States during the POR.

Therefore, for this administrative review, the Department will review only those sales of subject merchandise to the United States made by Yantai Timken, LYC, and CMC.

Period of Review

The POR is June 1, 2003 through May 31, 2004.

Scope of Order

Merchandise covered by this order is TRBs from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Verification of Responses

As provided in section 782(i) of the Tariff Act of 1930, as amended ("the Act"), we verified information provided by Yantai Timken. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. The Department conducted the sales and FOP verification at Yantai Timken's facilities in Yantai, Shandong Province from April 25, 2005, to April 29, 2005. Our verification results are outlined in the verification report for Yantai Timken. For further details, *see Verification of Sales and Factors of Production Reported by the Yantai Timken Company in the Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts, Thereof from the People's Republic of China*, dated June 30, 2005 (*"Yantai Timken Verification Report"*). In addition, the Department conducted a constructed export price ("CEP") sales verification at the facilities of Yantai Timken's parent company, Timken, in Canton, Ohio from May 16, 2005 through May 19, 2005. *See Verification of the Constructed Export Sales Reported by The Timken Company in the Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts, Thereof from the People's Republic of China*, dated

June 30, 2005 (*"Timken CEP Verification Report"*).

Surrogate Value Information

On November 17, 2004, the Petitioner submitted comments on the appropriate surrogate values ("SV") to be applied to the FOPs in this review. On November 17, 2004, Yantai Timken also submitted surrogate value data and comments with respect to one of its proprietary inputs into the production process of TRBs. On December 8, 2004, the Department requested interested parties to submit comments on surrogate country selection or comments on significant production in potential surrogate countries. On December 29, 2004, Yantai Timken provided comments on the surrogate country selection.

On April 8, 2005, the Department issued a surrogate value questionnaire establishing April 15, 2005, as the final date by which parties may provide comments on surrogate values for consideration in the Department's preliminary results of review. Yantai Timken and Timken provided comments on April 15, 2005. No other party to the proceeding provided comments on surrogate values during the course of this review.

Nonmarket-Economy-Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the *"Normal Value"* section below and in the memorandum to the file from Eugene Degnan, Case Analyst, through Wendy Frankel and Robert Bolling, *Preliminary Results of Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Factors of Production Valuation Memorandum for the Preliminary Results of Review*, dated June 30, 2005 (*"Factor Valuation Memorandum"*).

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen to Laurie Parkhill: Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, ("TRBs") from the People's Republic of China (PRC): Request for a List of Surrogate Countries ("Policy Memo")*, dated November 22, 2004. Customarily, we select an appropriate surrogate country from the Policy Memo based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. *See* Memorandum from Salim Bhabhrawala through Robert Bolling to Wendy Frankel: *Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Selection of a Surrogate Country*, dated March 29, 2005 (*"Surrogate Country Memorandum"*).

The Department used India as the primary surrogate country, and, accordingly, has calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. *See Surrogate Country Memorandum* and *Factor Valuation Memorandum*. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of the preliminary results of review.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

We have considered whether each reviewed company based in the PRC is eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997), and *Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995).

To establish whether a firm is sufficiently independent from government-control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, (May 2, 1994) (*"Silicon Carbide"*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).

LYC and CMC each provided company-specific separate-rates information and stated that each met the standards for the assignment of separate

rates. ZMC, Weihai Machinery and Chin Jun did not submit any information to establish their entitlement to a separate rate. Consequently, the Department analyzed whether LYC and CMC should receive a separate rate.

However, for Yantai Timken, we have preliminarily determined to apply AFA, and thus find that Yantai Timken did not demonstrate its eligibility for a separate rate, and have preliminarily determined that it is part of the PRC-wide entity. As noted below, as AFA, and as the PRC-wide rate, the Department is assigning the rate of 60.95 percent, the highest rate determined in any previous segment of this proceeding.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991).

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has preliminarily determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

LYC

LYC placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, LYC reported that it does not have any relationship with the central, provincial, or local governments with respect to ownership, internal management, and daily business operations. *See* LYC's September 8, 2004 Section A questionnaire response ("LY AQR") at 2. LYC submitted a copy of its business license and stated it is renewed annually as long as the company submits its annual financial statements and profit/loss statements to the appropriate State Administration of Industry and Commerce office and no activities prohibited by Article 30 of the Administrative Regulations have occurred. LYC reported that the subject merchandise did not appear on any government list regarding export provisions or export licensing, and the subject merchandise is not subject to export quotas or export control licenses imposed by the PRC government. *See* LY AQR at 5. LYC reported that it may engage in business activities within the scope of its business license. LYC explained that the license imposes no other limitations on LYC, nor grants any entitlements to the company by its license. Furthermore, LYC stated that the China Chamber of Commerce of Machinery and Electronic Exporters (the "Chamber"), a non-governmental association, does not interfere with LYC's export activities. *See* LY AQR at 6–7. LYC submitted a copy of the Trade Law of the People's Republic of China to demonstrate that there is no centralized control over its export activities. Through the questionnaire responses, we examined each of the related laws and LYC's business license and preliminarily determine that they demonstrate the absence of *de jure* control over the export activities and evidence in favor of the absence of government control associated with LYC's business license.

In support of an absence of *de facto* control, LYC reported the following: (1) During the POR, LYC explained that it sold the subject merchandise in the United States either directly to its unaffiliated U.S. customers or through its affiliated company, LYC America. The prices are not subject to review by, or guidance from, any other entity, including any governmental organization; (2) LYC explained that its sales transactions are not subject to the review or approval of any organization outside the company; (3) LYC explained that its Board of Directors appoints the general manager and deputy general managers. LYC reported that the general manager is responsible for selecting other management personnel, and that it is not required to notify any government authorities of the identities of its management personnel; and (4) LYC's profits can be used for any lawful purpose. *See* LY AQR at 8. LYC explained that its decisions regarding profit distribution are made by LYC's management. Additionally, LYC stated that it is not required to sell any of its foreign currency earnings to the government and is allowed to freely convert all foreign currency earnings on sales of the merchandise under review to the United States into renminbi for domestic use in China at the prevailing market rates of any bank. See LY AQR at 9.

The evidence placed on the record of this administrative review by LYC demonstrates an absence of government control, both in law and in fact, with respect to LYC's exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company-specific rate to LYC, the exporter which shipped the subject merchandise to the United States during the POR.

CMC

CMC placed on the record statements and documents to demonstrate absence of de jure control. In its questionnaire responses, CMC reported that it is not administratively subject to any national, provincial or local government agencies. *See* CMC's September 1, 2004 Section A response ("CMC AQR") at A–2. CMC submitted a copy of its business license and stated it must be renewed annually with the Administration of Industry and Commerce. *See* CMC AQR at A–4 and exhibit A–3. CMC reported that the subject merchandise did not appear on any government list regarding export provisions or export licensing in effect during the POR. CMC reported that its business license provides for a broad range of business activities and does not constrain or limit its activities with respect to the sale of the subject merchandise. Furthermore, CMC stated that The China Chamber of Commerce of Machinery and Electronic Exporters does not coordinate or interfere with CMC's export activities. CMC submitted a copy of the Foreign Trade Law of the PRC and excerpts from the "PRC

Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises (1992)," to demonstrate that there is no centralized control over its export activities. *See* CMC AQR at A–2 and exhibit A–2. Through questionnaire responses, we examined each of the related laws and CMC's business license and preliminarily determine that they demonstrate the absence of de jure control over the export activities and evidence in favor of the absence of government control associated with CMC's business license.

In support of an absence of de facto control, CMC reported the following: (1) CMC sets the prices of the subject merchandise exported to the United States by direct arm's-length negotiations with its customers, and the prices are not subject to review by or guidance from any governmental organization; (2) CMC's sales transactions are not subject to the review or approval of any organization outside the company; (3) CMC is not required to notify any government authorities of its management selection; and (4) CMC is free to spend its export revenues and its profit can be used for any lawful purpose. *See* CMC AQR at A–7.

The evidence placed on the record of this administrative review by CMC demonstrates an absence of government control, both in law and in fact, with respect to CMC's exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company-specific rate to CMC, the exporter which shipped the subject merchandise to the United States during the POR.

Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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 the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869.

Yantai Timken

The Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to Yantai Timken. As the Department finds that Yantai Timken withheld information, failed to provide information requested by the Department in a timely manner and in the form required, significantly impeded the proceeding, and provided unverifiable information, pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act, the Department is resorting to the facts otherwise available.

During the CEP verification, Timken failed to substantiate the preponderance of its reported adjustments to U.S. price. Specifically, Timken did not provide sub-ledgers and other source documents to tie reported expenses such as marine insurance, warehousing expenses, commissions, rebates or SG&A expenses to its audited financial statements. *See Timken CEP Verification Report* at 6, 7, 14, 16, 18, 20, and 22. Further, Timken could not demonstrate at verification that the expenses it reported in its Section C response for warehousing, SG&A, marine insurance, international freight commissions and certain rebates represent the total value of these expenses applicable to the subject merchandise during the POR. *See Timken CEP Verification Report* at 2, 14, 25, 20, and 22. In addition, Timken, despite providing six supplemental questionnaire responses during the course of this proceeding, further stated at verification that it based its distributor warehousing expenses, U.S. inland freight, commissions and certain rebates reported in the Section C response on either preliminary or hypothetical data. *See Timken CEP Verification Report* at 2, 3, 20, and 21. For example, at verification, Timken claimed that it reported certain rebates based on the maximum amount that a customer could earn, rather than on the actual rebated earned, and then could not substantiate the an actual rebate amount at verification. At no time prior to verification, did Timken identify the preliminary or hypothetical nature of this data. *See Timken CEP Verification Report* at 17, 18, and 20.

Additionally, at the FOP verification in China we determined that Yantai Timken misreported its factor consumption rates for electricity and gas, provided erroneous translations of its primary source documents for those items, and failed to provide the distance from the supplier to the factory for its packing materials. *See Yantai Timken*

Verification Report at 2, 17–10 and 20–22.

The Department, in accordance with its standard practice, provided its verification outlines to Yantai Timken and to Timken seven days prior to the commencement of each verification. *See* the verification outlines of April 18, 2005 and May 6, 2005. In addition, at the beginning of the Yantai Timken verification on April 25, 2005, we informed Yantai Timken that we would trace the same pre-selected and surprise sales at the CEP verification. *See* the *Timken CEP Verification Report* at 1. Thus, Timken had 20 days advance notice concerning the specific sales to be examined at verification. Consequently, Yantai Timken and Timken each had sufficient time to prepare their documents for a complete verification by the Department.

The purpose of providing a verification outline to respondents is to give them sufficient notice about the types of source documents that the Department seeks to examine during verification, and to afford them sufficient time to compile source documents and prepare them as verification exhibits. At no time prior to verification did Timken or Yantai Timken contact the Department with questions concerning verification procedures, documents required for verification, or the verification outline. Further, they did not indicate at any time prior to verification that they were experiencing difficulties in supplying information requested in the verification outline. Thus, subsections 782(c)(1) and (2) of the Act do not apply in this instance.

Section 782(d) stipulates that if the Department determines that a response to a request for information does not comply with that request, it "shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title." Because Timken did not advise the Department of the preliminary nature of the information with respect to commissions, rebates, distributor warehousing and U.S. inland freight provided in its questionnaire response and six supplemental questionnaire responses, the Department did not have sufficient information to determine that a deficiency existed before verification. As such, section 782(d) is not applicable in this instance. Moreover, by providing preliminary rather then actual data, Timken did not provide essential information within the established deadlines or in a manner requested by the Department. This, in turn, inhibited the Department from asking meaningful questions concerning the information, significantly impeding the proceeding.

In addition, as stated above, Timken failed to provide sub-ledgers or other supporting documents to substantiate its reported values for ocean freight, marine insurance, warehousing expenses, commissions, rebates and SG&A expenses, despite clear statements in each of the verification outlines that such documents were required. Due to Timken's failure to provide the requisite requested documents that would tie Yantai Timken's reported data to its audited financial statements, the Department was not able to verify the accuracy of the information submitted in Yantai Timken's questionnaire responses or rely on the reported information to calculate accurate margins.

Further, Timken could not demonstrate the completeness and accuracy of its reported indirect selling expenses and U.S. warehousing expenses. It failed to demonstrate that the reported marine insurance and ocean freight expenses represent the total value of expenses applicable to the subject merchandise during the POR and could not trace commissions and rebates to the audited financial statements. Further, the documents presented during the FOP verification contradicted the information on the record concerning Yantai Timken's reported electricity and gas consumption. Therefore, the Department was unable to verify a significant portion of the selling expenses reported in the United States and some of the FOPs reported in China against Timken's and Yantai Timken's normal books and records.

As a result, of the items discussed above, we preliminarily determine that Timken withheld information requested by the Department, failed to provide such information by the deadlines for submission and in a form or manner requested by the Department significantly impeded the proceeding, and provided information that could not be verified. Thus, we preliminarily determine that the use of facts otherwise available is warranted pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act.

The Department also finds that Yantai Timken failed to act to the best of its ability in supplying the Department with the requested information. As the United States Court of Appeals for the Federal Circuit ("Federal Circuit") has stated,

> while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires the importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) Take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.

Nippon Steel Corp. v. *United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). This is the third time that the Department has reviewed Yantai Timken's sales of subject merchandise in the United States, and the second time that it verified Yantai Timken's FOPs in the PRC and its U.S. sales at Timken's U.S. offices. Therefore, Timken is fully aware of the rules and regulations that apply to the import activities it has undertaken.

Yantai Timken failed to cooperate by not acting to the best of its ability to comply with a request for information by submitting its questionnaire response and six supplemental questionnaire responses based on preliminary data for distributor warehousing expenses, U.S. inland freight to the customer, and potential commissions and rebate amounts. Timken, throughout the proceeding, did not examine thoroughly investigate its own records to ensure that it was providing the Department with complete and accurate data. Additionally, Timken failed to cooperate to the best of its ability when it failed to provide documentation at verification such as, subsidiary ledgers for sales, accounts receivable, accounts payable or any other documentation that would substantiate its reported expenses such as ocean freight, marine insurance, warehousing expenses, commissions, rebates or SG&A expenses and tie these figures to its audited financial statements. Timken did not take steps to keep and maintain adequate books and records documenting information that a reasonable respondent should anticipate being called upon to produce. Therefore, based on Timken's and Yantai Timken's lack of cooperation in the preparation of their questionnaire responses and verification documents, we preliminarily determine that Yantai Timken and Timken failed to cooperate

to the best of their ability with the Department's request for information.

As a result of Timken's failure to substantiate the preponderance of its reported adjustments to U.S. price, and to tie its reported expenses to the audited financial statements, the unverified information remains so inaccurate and so pervasive that we are not able to use Yantai Timken's questionnaire responses to calculate an accurate antidumping duty margin in this review. Therefore, we preliminarily determine that the application of total AFA is warranted for Yantai Timken, pursuant to Section 776(a) and (b) of the Act.

Shanghai United, Changshan Bearing, and ZCCBC

Shanghai United, Changshan Bearing, and ZCCBC did not respond to our August 5, 2004, questionnaire. In addition, Shanghai United, Changshan Bearing, and ZCCBC did not respond to the Department's October 5, 2004 follow-up questionnaire, nor did they respond to any of our other attempts to determine whether they received the questionnaire through their attorneys. *See ZCCBC Memorandum* and *Second ZCCBC Memorandum*. In the Initiation Notice, the Department stated that if one of the companies that we initiated a review for does not qualify for a separate rate, all other exporters of tapered roller bearings from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part. *See Initiation Notice*, at fn. 3. Shanghai United, Changshan Bearing, and ZCCBC did not submit any information to establish their eligibility for a separate rate, *See Separate Rates* section above, we find they are deemed to be part of the PRC-Wide entity. Therefore, we determine that it is necessary to review the single PRC entity, including Shanghai United, Changshan Bearing, and ZCCBC, in this proceeding.

PRC-Wide Entity

The PRC entity did not fully comply with the Department's request for information. Pursuant to section 776(a)(1) of the Act, as necessary information is not available on the record of this proceeding, the Department must resort to the facts otherwise available.

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997)

As stated above, the PRC-wide entity did not respond to our requests for information, therefore, pursuant to section 776(b) of the Act, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, we will, in selecting from among the facts otherwise available, use adverse inferences.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as AFA, the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1992).

The Court of International Trade ("CIT") and the Federal Circuit have consistently upheld the Department's practice. *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990) ("Rhone Poulenc"); *NSK Ltd.* v. *United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004)(upholding a 73.55% total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); *See also Kompass Food Trading Int'l* v. *United States*, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States*, 2005 Ct. Int'l. Trade 23 *23; Slip Op. 05–22 (February 17, 2005) (upholding a 223.01% total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 890. *See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *See also D&L Supply Co.* v. *United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *Rhone Poulenc*, 899 F. 2d at 1190.

Consistent with the Department's practice and the purposes of section 776(b) of the Act, as AFA, we are assigning to exports of the subject merchandise produced by Yantai Timken the PRC-wide entity the rate of 60.95% which is the highest rate calculated in any segment of the proceeding. This rate was calculated for Premier Bearing and Equipment Ltd. ("Premier") in the final results of redetermination on remand from the CIT for the seventh administrative review of TRBs covering the POR of June 1, 1993, to May 31, 1994. *Peer Bearing Co.* v. *United States*, Slip op. 02–53 (CIT 2002); as upheld by the Federal Circuit in 78 Fed. Appx. 718 (Fed. Cir. 2003); *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the PRC: Amended Final Results of Antidumping Duty Administrative Review*, 67 Fed. Reg. 79902, (Dec. 31, 2002) ("*TRBs Amended Final*"), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the PRC: Amended Final Results of Antidumping Duty Administrative Review*, 69 FR 10423

(March 5, 2004) ("*TRBs Amended Final 2*"). The Department preliminarily determines that this information is the most appropriate, from the available sources, to effectuate the purposes of AFA. The Department's reliance on secondary information to determine an AFA rate is subject to the requirement to corroborate. *See* section 776(c) of the Act and the "*Corroboration of Secondary Information*" section below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. The Department has determined that to have probative value information must be reliable and relevant. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 Fed. Reg. 57391, 57392 (Nov. 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and, *Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The reliability of the AFA rate was determined by the calculation of the margin for Premier, pursuant the final results of redetermination on remand from the CIT, for the seventh administrative review of TRBs (covering the period June 1, 1993 to May 31, 1994). *See TRBs Amended Final* and *TRBs Amended Final 2*. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. *See e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307–41308 (July 11, 2003). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information contained in the 1993–1994 review is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) which ruled that the Department will not use a margin that has been judicially invalidated.

To assess the relevancy of the rate used, the Department compared the margin calculations of LYC and CMC in this administrative review with Premier's margins from the 1993–1994 review. The Department found that the margin of 60.95 percent was within the range of the highest margins calculated on the record of this administrative review. *See* memorandum to the file from Laurel LaCivita, Senior Case Analyst, through Robert Bolling, Program Manager and Wendy Frankel, Office Director, AD/CVD Enforcement NME/Office 8, *17th Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished ("TRBs") from the People's Republic of China ("PRC"): Corroboration of the PRC-Wide Adverse Facts-Available Rate*, dated June 30, 2005. Because the record of this administrative review contains margins within the range of 60.95 percent, we determine that the rate from the 1993–1994 review continues to be relevant for use in this administrative review.

As the 1993–1994 margin is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the 1993–1994 margin is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC-wide entity including Shanghai United, Changshan Bearing, Yantai Timken, and ZCCBC, as AFA. Accordingly, we determine that the highest rate from any segment of this administrative proceeding, 60.95 percent, meets the corroboration criteria established in section 776(c) that secondary information have probative value.

Because this is a preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for the PRC-wide entity. *See Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

Partial Adverse Facts Available

We have preliminarily determined that the use of a partial facts available with adverse inferences is warranted for LYC's steel consumption rate for certain control numbers for the purpose of determining normal value. LYC did not report factor values for steel consumption for certain control numbers produced in China and sold to the United States during the POR, despite the Department's repeated requests for this information in its February 7, 2005 second supplemental questionnaire and its May 4, 2005 third supplemental questionnaire. Because LYC did not submit the required factor values for its steel consumption rate on the record, pursuant to section 776(a)(1) of the Act, we must resort to the facts otherwise available to determine the value of the steel inputs for these sales. The Department also finds that, pursuant to section 776(b) of the Act, LYC did not act to the best of its ability when it did not provide any information for the consumption rate of the steel inputs used to produce these control numbers, thus, an adverse inference is warranted. As AFA for these control numbers, we applied the highest factor usage rate for steel inputs for similar subject merchandise reported by LYC in its FOP database. *See* the proprietary discussion of this issue in the memorandum from Eugene Degnan, Case Analyst, through Robert Bolling, Program Manager, to the file, *Preliminary Results of Review of*

Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Program Analysis for the Preliminary Results of Review: LYC Bearing Corporation (Group) ("LYC"), dated June 30, 2005, ("*LYC Prelim Analysis Memorandum*").

Additionally, we have determined to apply partial AFA with regard to LYC's inventory carrying costs in the United States. Because LYC failed to report the actual time in inventory for certain CEP sales, we calculated LYC's inventory carrying costs using the time between the first day of the POR and the date of sale as the time in inventory. *See LYC Prelim Analysis Memorandum.*

Date of Sale

19 CFR 351.401 (i) states that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." 19 CFR 351.401 (i); *See also Allied Tube and Conduit Corp.* v. *United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001).

CMC

After examining the questionnaire responses and the sales documentation that CMC placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for CMC. We made this determination based on record evidence which demonstrates that CMC's invoices establish the material terms of sale to the extent required by our regulations. Thus, the record evidence does not rebut the presumption that invoice date is the proper date of sale. *See Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002).

LYC

After examining the sales documentation placed on the record by LYC, we preliminarily determine that shipment date is the most appropriate date of sale for LYC's export price ("EP") sales. We made this determination based on statements on the record that LYC's shipment date, which is subsequent to the invoice date, establishes the material terms of sale to the extent required by our regulations. For LYC's CEP sales, LYC established that the terms of sale do not change after the issuance of the invoice. Thus, we preliminarily determine that invoice date is the most appropriate date of sale. *See Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002).

Normal Value Comparisons

To determine whether sales of TRBs to the United States by LYC and CMC were made at less than NV, we compared EP or CEP to NV, as described in the "Export Price," "*Constructed Export Price*" and "*Normal Value*" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for certain of LYC's and CMC's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d). In accordance with section 772(b) of the Act, we used CEP for certain of LYC's and CMC's sales because they sold subject merchandise to their affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers.

We compared NV to individual EP and CEP transactions, in accordance with section 777A(d)(2) of the Act.

LYC

For LYC's EP sales, we based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses. Movement expenses included expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight and marine insurance. *See LYC Prelim Analysis Memorandum.*

For LYC's CEP sales, we based the CEP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(d)(1) of the Act, we made deductions from the starting price for movement expenses. Movement expenses included expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. duty, and inland freight from the warehouse to the unaffiliated U.S. customer. In accordance with section 772(d)(1) of the Act, the Department additionally deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 773(a) of the Act, we calculated LYC's credit expenses and inventory carrying costs based on the Federal Reserve short-term rate. Finally, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. *See LYC Prelim Analysis Memorandum.*

CMC

We calculated EP for CMC based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sale price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, and where applicable ocean freight and marine insurance. No other adjustments to EP were reported or claimed.

We calculated CEP for CMC based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sale price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight, marine insurance, U.S. Customs duty, where applicable U.S. inland freight from port to the warehouse and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 773(a) of the Act, we calculated CMC's credit expenses and inventory carrying costs based on the Federal Reserve short-term

rate. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. *See* memorandum from Hua Lu, Case Analyst, through Robert Bolling, Program Manager, to the file, *Preliminary Results of Review of the Order on Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Program Analysis for the Preliminary Results of Review*, dated June 30, 2005.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) The merchandise is exported from a non-market economy country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies.

FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, by-products, and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value FOPs, but when a producer sources an input from a market economy and pays for it in market-economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *See also Lasko Metal Products* v. *United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994). LYC and CMC each reported that a significant portion of at least one of their raw material inputs were sourced from market-economy countries and paid for in market-economy currencies. *See* LYC's October 4, 2004 Section D response at page D–35 and CMC's October 4, 2004 Section D response at page D–5. *See Factor Valuation Memorandum* for a listing of these raw material inputs. Pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by respondents for inputs purchased from a market-economy supplier and paid for in a market-economy currency, except when prices may have been distorted by subsidies.

With regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries are subsidized. *See Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Administrative Review*, 61 FR 66255 (December 17, 1996), at Comment 1; *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004); and, *China National Machinery Import & Export Corporation* v. *United States*, 293 F. Supp. 2d 1334 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004). We are also guided by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, *See Factor Valuation Memorandum*.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the World Trade Atlas® online ("Indian Import Statistics"), which were published by the Directorate General of Commercial Intelligence and Statistics ("DGCI&S"), Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POR. *See Factor Valuation Memorandum*. Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund.

To value electricity, we used values from the International Energy Agency ("IEA") to calculate a surrogate value in India for 2000, adjusted for inflation. The Petitioner was the only interested party to submit information or comments regarding surrogate values for electricity on the record. However, the submitted value was less contemporaneous than the 2000 value reported by the IEA, which has been used in previous cases. *See Automotive Replacement Glass Windshields From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 24373, 24381 (May 9, 2005); and, *Amended Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China*, 70 FR 15838 (March 29, 2005). Further, the Department was unable to find a more contemporaneous surrogate value than the 2000 value reported by the IEA. Therefore, we used the International Energy Agency 2000 Indian price for electricity to the POR, as adjusted for inflation.

For direct labor, indirect labor, SG&A labor, crate building labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2004, *http://ia.ita.doc.gov/wages/02wages/02wages.html*. The source of these wage rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2002, ILO, (Geneva: 2002), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1996 to 2002. Because this regression-based

wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent.

To value factory overhead, depreciation, SG&A, interest expenses and profit, we used the 2003 audited financial statements for two Indian producers of tapered roller bearings, SKF Bearings India Ltd., and Timken India Limited. *See Factor Valuation Memorandum* for a full discussion of the calculation of these ratios from the Indian Companies' financial statements.

LYC

In order to demonstrate that prices paid to market-economy sellers for some portion of a given input are representative of prices paid overall for that input, the amounts purchased from the market-economy supplier must be meaningful. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997). Where the quantity of the input purchased from market-economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market-economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. LYC's reported information demonstrates that the quantity of steel purchased from a market economy source used to produce cups and cones is significant. *See* LYC's October 4, 2004 Section D response at page D–9. Therefore, we used the actual price LYC paid for this steel in our calculations.

LYC reported that it sourced the steel that it used to produce cages from recovered scrap generated in the production of non-subject merchandise. Therefore, we used Indian Import Statistics for the POR to value this input. LYC reported that it also recovered scrap steel from the production of cups, cones, rollers and cages for resale. We offset LYC's cost of production by the amount of scrap that LYC reported that it sold. We were unable to find a surrogate value for steel scrap for cups, cones and rollers contemporaneous with the POR. Therefore, we used the Indian Import Statistics for scrap from a previous period to the POR for our calculations, adjusted for inflation, and converted it to U.S. dollars on the date of the U.S. sale. *See Factor Valuation Memorandum* for a complete discussion of scrap valuation.

To value water, we used the Revised Maharashtra Industrial Development Corporation ("MIDC.") water rates for June 1, 2003, available at *http://www.midcindia.com/water_supply*. *See Factor Valuation Memorandum*.

For the input that LYC described as phosphate acid, we used the Indian Import Statistics for phosphoric acid, since LYC did not provide any chemical specifications for this input, and phosphate acid does not correspond to a known chemical. We were unable to find a contemporaneous surrogate value for this input. Therefore, we adjusted the Indian Import Statistics adjusted for inflation and converted it to U.S. dollars. *See Factor Valuation Memorandum*.

For nylon cages, rubber seals and purchased distance rings, we used Indian Import Statistics contemporaneous with the POR for other ball bearing/roller bearing parts as the best information available because we were unable to find more accurate sources of public information concerning these inputs and none of the interested parties to the proceeding placed any surrogate value information for these inputs on the record of this review. *See Factor Valuation Memorandum*.

Finally, we used Indian Import Statistics to value material inputs for packing which, for LYC, are inner cartons, outer cartons, wooden pallets and steel strips. We used Indian Import Statistics data for the POR for wooden pallets and steel strips. *See Factor Valuation Memorandum*. We valued inner cartons and outer cartons using the Indian Import Statistics for corrugated paper during the POR as provided by the Petitioner in this review, because LYC did not provide any technical specifications for these inputs. *See Factor Valuation Memorandum*.

CMC

In order to demonstrate that prices paid to market-economy sellers for some portion of a given input are representative of prices paid overall for that input, the amounts purchased from the market-economy supplier must be meaningful. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997). Where the quantity of the input purchased from market-economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market-economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. CMC's reported information demonstrates that the quantity of steel purchased from market economy suppliers and used to produce cups and cones is significant. *See* CMC's October 4, 2004 Section D response at page D–9. Therefore, we used the actual price paid that CMC paid for the steel used to produce cups and cones in our calculations.

CMC reported that it sourced the steel that it used to produce cages and rollers within the PRC. Therefore, we used Indian Import Statistics to value each of these inputs. CMC reported that it recovered scrap steel from the production of cups, cones, rollers and cages for resale. We offset CMC's normal value by the amount of scrap that CMC reported that sold. We were unable to find a surrogate value for steel scrap for cups, cones and rollers contemporaneous with the POR. Therefore, we used the Indian Import Statistics for scrap from a previous period adjusted for inflation in our calculations. *See Factor Valuation Memorandum* for a complete discussion of scrap valuation.

Finally, we used Indian Import Statistics to value material inputs for packing which, for CMC, are plastic film, plastic bags, plastic sleeves, large plastic bags, cardboard box, paper pallets, and steel strips. We used Indian Import Statistics data for the POR for packing materials. *See Factor Valuation Memorandum*. The surrogate values for labor, electricity, water, overhead, SG&A, and profit were applied in the same manner as explained above for LYC.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Weighted-Average Dumping Margins

The weighted-average dumping margins are as follows:

TRBs From the PRC

Manufacturer/exporter	Weighted-average margin
LYC	0.20
CMC	1.42
The PRC-wide Entity**	60.95

**Including Shanghai United, Changshan Bearing, Yantai Timken, and ZCCBC.

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.

See 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication of this notice. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. 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 these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR. Additionally, the Department will instruct CBP to assess antidumping duties for these rescinded companies (*i.e.*, ZMC, Weihai Machinery, and Chin Jun) at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except where 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 investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "PRC-wide" rate of 60.95 percent.

Notification to Importers

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

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: June 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–13503 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designation under the Textile and Apparel Commercial Availability Provisions of the United States Caribbean Basin Trade Partnership Act (CBTPA)

July 5, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Designation.

EFFECTIVE DATE: July 11, 2005.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100 percent cotton, 4-thread twill weave and herringbone twill weave, flannel fabrics, of yarn-dyed, ring spun, and plied yarns, of the specifications detailed below, classified in subheadings 5209.43.0050 and 5209.49.0090 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in men's and boys' woven cotton shirts, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The CITA hereby designates men's and boys' woven cotton shirts, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries from such fabrics, as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics in the referenced apparel articles are wholly formed in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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 (CBERA), as added by Section 211(a) of the CBTPA; Presidential Proclamation 7351 of October 2, 2000; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On March 9, 2005, the Chairman of CITA received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of B*W*A, alleging that certain 100 percent cotton, 4-thread twill weave and herringbone twill weave, flannel fabrics, of yarn-dyed, ring spun, and plied yarns, of the specifications detailed below, classified in HTSUS subheadings 5209.43.0050 and 5209.49.0090, for use in men's and boys' woven cotton shirts, cannot be supplied by the domestic industry in commercial quantities in a

timely manner. It requested quota- and duty-free treatment under the CBTPA for men's and boys' woven cotton shirts that are both cut and sewn or otherwise assembled in one or more CBTPA beneficiary countries from such fabrics. On March 15, 2005, CITA requested public comment on the petition. See Request for Public Comment on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA), 70 FR 12654, (March 15, 2005). On March 31, 2005, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On March 31, 2005, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On April 14, 2005, the U.S. International Trade Commission provided advice on the petition.

Based on the information and advice received and its understanding of the industry, CITA determined that the fabrics set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On May 4, 2005, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and the advice obtained. A period of 60 calendar days since this report was submitted has expired.

CITA hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, men's and boys' woven cotton shirts, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from certain 100 percent cotton, 4-thread twill weave and herringbone twill weave, flannel fabrics, of yarn-dyed, ring spun, and plied yarns, of the specifications detailed below, classified in HTSUS subheadings 5209.43.0050 and 5209.49.0090, not formed in the United States. The referenced apparel articles are eligible provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 211(b)(2)(A)(vii) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

Specifications:

Fiber Content:	100% Cotton
Weight:	301 - 303 g/m2
Width:	142 - 145 centimeters
Thread Count:	25 - 26 warp ends per centimeter; 23 - 24 filling picks per centimeter; total: 48 - 50 threads per square centimeter
Yarn Number:	35/2 - 36/2 metric warp and filling, ring spun; overall average yarn number 32 - 34 metric
Weave:	4-thread twill; Herringbone twill
Finish:	Of two or more yams of different colors in the warp and filling; napped on both sides

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–3654 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designation under the Textile and Apparel Commercial Availability Provisions of the United States Caribbean Basin Trade Partnership Act (CBTPA)

July 5, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Designation.

EFFECTIVE DATE: July 11, 2005.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100 percent cotton, double faced irregular sateen weave, flannel fabrics, of yarn-dyed, single yarns, of the specifications detailed below, classified in subheading 5209.59.0025 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in woven cotton shirts and blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The CITA hereby designates woven cotton shirts and blouses, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries from such fabrics, as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics in the referenced apparel articles are wholly formed in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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 (CBERA), as added by Section 211(a) of the CBTPA; Presidential Proclamation 7351 of October 2, 2000; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On March 9, 2005, the Chairman of CITA received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of B*W*A, alleging that certain 100 percent cotton, double faced irregular sateen weave, flannel fabrics, of yarn-dyed, single yarns, of the specifications detailed below, classified in HTSUS subheading 5209.59.0025, for use in woven cotton shirts and blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested quota- and duty-free treatment under the CBTPA for woven cotton shirts and blouses that are

both cut and sewn or otherwise assembled in one or more CBTPA beneficiary countries from such fabrics. On March 15, 2005, CITA requested public comment on the petition. See Request for Public Comment on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA), 70 FR 12655 (March 15, 2005). On March 31, 2005, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On March 31, 2005, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On April 14, 2005, the U.S. International Trade Commission provided advice on the petition.

Based on the information and advice received and its understanding of the industry, CITA determined that the fabrics set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On May 4, 2005, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and the advice obtained. A period of 60 calendar days since this report was submitted has expired.

CITA hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, woven cotton shirts and blouses, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from certain 100 percent cotton, double faced irregular sateen weave, flannel fabrics, of yarn-dyed, single yarns, of the specifications detailed below, classified in HTSUS subheading 5209.59.0025, not formed in the United States. The referenced apparel articles are eligible provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 211(b)(2)(A)(vii) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

Specifications:

Fiber Content:	100% Cotton
Weight:	325 - 327 g/m2
Width:	148 - 152 centimeters
Thread Count:	33 - 35 warp ends per centimeter; 57 - 59 filling picks per centimeter; total: 90 - 94 threads per square centimeter
Yarn Number:	50 -52 metric warp; 23 - 25 metric filling; overall average yarn number 28 - 30 metric
Weave:	Double faced irregular 1 x 3 sateen
Finish:	Printed on one side on yarns of different colors; napped on both sides; sanforized

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding. published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–3656 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designation under the Textile and Apparel Commercial Availability Provisions of the United States Caribbean Basin Trade Partnership Act (CBTPA)

July 5, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Designation.

EFFECTIVE DATE: July 11, 2005.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100 percent cotton, 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), for use in men's and boys' woven cotton shirts, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The CITA hereby designates men's and boys' woven cotton shirts, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries from such fabrics, as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics in the referenced apparel articles are wholly formed in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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 (CBERA), as added by Section 211(a) of the CBTPA; Presidential Proclamation 7351 of October 2, 2000; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit to shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On March 3, 2005, the Chairman of CITA received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of B*W*A, alleging that certain 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified in HTSUS subheading 5208.43.0000, for use in men's and boys' woven cotton shirts, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested quota- and duty-free treatment under the CBTPA for men's and boys' woven cotton shirts that are both cut and sewn or otherwise assembled in one or more CBTPA beneficiary countries from such fabrics. On March 9, 2005, CITA requested

public comment on the petition. See Request for Public Comment on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA), 70 FR 11622, (March 9, 2005). On March 25, 2005, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On March 25, 2005, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On April 14, 2005, the U.S. International Trade Commission provided advice on the petition.

Based on the information and advice received and its understanding of the industry, CITA determined that the fabrics set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On May 2, 2005, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and the advice obtained. A period of 60 calendar days since this report was submitted has expired.

CITA hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, men's and boys' woven cotton shirts, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from certain 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified in HTSUS subheading 5208.43.0000, not formed in the United States. The referenced apparel articles are eligible provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 211(b)(2)(A)(vii) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

Specifications:

Fiber Content:	100% Cotton
Weight:	136 - 140 g/m2
Width:	148 - 150 centimeters
Thread Count:	38 - 40 warp ends per centimeter; 28 - 30 filling picks per centimeter; total: 66 - 70 threads per square centimeter
Yarn Number:	48 - 52 metric warp and filling, ring spun, combed; average yarn number 48 - 50 metric
Weave:	4-thread twill
Finish:	Of two or more and up to eight yarns of different colors; napped on both sides

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–3660 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0055]

Federal Acquisition Regulation; Submission for OMB Review; Freight Classification Description

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 (9000–0055).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning freight classification description. A request for public comments was published in the **Federal Register** at 70 FR 24008, May 6, 2005. No comments were received.

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 August 10, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The information is used to determine the proper freight rate for the supplies.

B. Annual Reporting Burden

Respondents: 2,640.

Responses Per Respondent: 3.

Annual Responses: 7,920.

Hours Per Response: .167.

Total Burden Hours: 1,323.

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. 9000–0055, Freight Classification Description, in all correspondence.

Dated: July 5, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–13525 Filed 7–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0067]

Federal Acquisition Regulation; Submission for OMB Review; Incentive Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning incentive contracts. A request for public comments was published at 70 FR 22651, May 2, 2005. No comments were received. 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 August 10, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jerry Zaffos, Contract Policy Division, GSA (202) 208–6091.

SUPPLEMENTARY INFORMATION:

A. Purpose

Incentive contracts are normally used when a firm fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor, such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for which final prices have not been established, is needed to negotiate the final prices of incentive-related items and services.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

B. Annual Reporting Burden

Respondents: 3,000.

Responses Per Respondent: 1.

Annual Responses: 3,000.

Hours Per Response: 1.

Total Burden Hours: 3,000.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain copies 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. 9000–0067, Incentive Contracts, in all correspondence.

Dated: June 10, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–13526 Filed 7–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 11–21 July 2005.

Time(s) of Meeting: 0800–1700, 11–15 July 2005, Report Writing; 0800–1700, 18–21 July 2005, Report Writing.

Place: The Beckman Center, Irvine, CA.

1. *Agenda:* The Army Science Board FY05 Summer Studies, Modularity and Best Practices are holding a Report Writing Session both 11–15 and 18–21 July 2005. The session will be held at The Beckman Center, Irvine, CA. The sessions will begin at 0800 hrs on the 11th and will end at approximately 1700 hrs on the 15th, and then again from the 18th to the 21st of July. For further information regarding the ASB Modularity study, please contact Mr. Ivan Martinez at (703) 704–2501 or e-mail *ivan.martinez@nvl.army.mil*. For further information regarding the Best Practices study, please contact MAJ Harry Buhl at (865) 574–8798 or e-mail *buhlha@ornl.gov*.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 05–13564 Filed 7–8–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 9, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 5, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: 2006 Field Test for the 2007 National Household Education Surveys Program (NHES:2007).

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,476.

Burden Hours: 483.

Abstract: NHES:2005 is a survey of households using random-digit-dialing and computer-assisted telephone interviewing. Three topical surveys are to be conducted in NHES:2007: School Readiness (SR), Parent and Family Involvement in Education (PFI), and Adult Education for Work-Related Reasons (AEWR). The surveys' results will support cross-sectional analyses and the analyses of changes over time.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2812. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–13517 Filed 7–8–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 05–12–LNG, 05–28–NG, 05–30–NG, 05–29–NG, 05–31–NG, 05–33–NG, 05–32–NG, 05–39–NG, 05–38–NG, and 05–37–NG]

Office of Fossil Energy; Orders Granting and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2005, it issued Orders granting and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 24, 2005.

R.F. Corbin,

Manager, Natural Gas Regulation, Office of Natural Gas Regulatory Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS DOE/FE AUTHORITY

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
2077	5–10–05	Statoil Natural Gas LLC, 05–12–LNG			ERRATA: Ordering paragraph A, the term was inadvertently stated as June 1, 2005, through March 31, 2007. Authority amended to state term as June 1, 2005, through May 31, 2007.
2089	5–12–05	Keyspan-Ravenswood, LLC, 05–28–NG	44 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2005, and extending through May 31, 2007.
2090	5–20–05	Encana Marketing (USA) Inc., 05–29–NG ..	500 Bcf		Import and export a combined total of natural gas and LNG from and to Canada and Mexico and import LNG from various international sources, beginning on June 30, 2005, and extending through June 29, 2007.

APPENDIX.—ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS DOE/FE AUTHORITY—Continued

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
2091	5–20–05	Terasen Gas Inc., 05–30–NG	25 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on May 1, 2005, and extending through April 30, 2007.
2092	5–26–05	PPM Energy, Inc., 05–31–NG	300 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2005, and extending through June 30, 2007.
2093	5–27–05	Duke Energy Marketing America, LLC, 05–33–LNG.	900 Bcf		Import and export a combined total of natural gas, including LNG from and to Canada and Mexico, and LNG from various other sources beginning on June 30, 2005, and extending through June 29, 2007.
2094	5–27–05	Sithe/Independence Power Partners, L.P., 05–32–NG.	60 Bcf		Import natural gas from Canada, beginning on July 1, 2005 and extending through June 30, 2007.
2095	5–27–05	MeadWestvaco Corporation, 05–39–NG	60 Bcf		Import natural gas from Canada, beginning on March 10, 2005, and extending through March 9, 2007.
2096	5–31–05	New Page Corporation, 05–38–NG	60 Bcf		Import natural gas from Canada, beginning on June 1, 2005, and extending through May 31, 2007.
2097	5–31–05	AltaGas Marketing (U.S.) Inc., 05–37–NG ..	30 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 10, 2005, and extending through July 9, 2007.

[FR Doc. 05–13542 Filed 7–8–05; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension with revisions under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by August 10, 2005. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to John Asalone, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*John_A._Asalone@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kara Norman. To ensure timely receipt of any comments sent to EIA, submission by FAX (202–287–1705) or e-mail (*kara.norman@eia.doe.gov*) is recommended. Kara Norman's mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Kara Norman may be contacted by telephone at (202) 287–1902.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form OE–417, "Electric Emergency Incident and Disturbance Report".

2. Office of Electricity Delivery and Energy Reliability/OE.

3. OMB Number 1901–0288.

4. Revision and three-year approval requested.

5. Mandatory.

6. Form OE–417 collects information on electric emergency incidents and disturbances for DOE's use in fulfilling its overall national security and other energy management responsibilities. The information will also be used by DOE for analytical purposes. All electric utilities, including those that operate Control Area Operator functions and Reliability Authority functions, will be required to supply information when an incident or disturbance meets a reporting threshold.

Since the pre-survey consultation notice was published, the program will request respondents to report outages that affect 50,000 customers or more. This was a revision based on public

comments that claimed a reduction to report outages that affect 25,000 customers or more would be too burdensome.

7. Business or other for-profit; State, local or tribal government.

8. 4,322 hours.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, June 21, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. 05–13543 Filed 7–8–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Eg05–74–000]

West Texas Renewables Limited Partnership; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

July 1, 2005.

Take notice that on June 15, 2005, West Texas Renewables (Westex) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Westex states that it owns a wind generation facility with a maximum output of 6.6 MW located in Howard County, Texas.

Any person desiring to intervene or to protest in the above proceeding 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is 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 docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 11, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3626 Filed 7–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 1, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–3039–001.

Applicants: Exeter Energy Ltd Partnership.

Description: Exeter Energy Limited Partnership, in compliance with the Commission's order issued 5/25/05 (111 FERC ¶ 61,239 (2005)), submits its market power analysis, tariff revisions.

Filed Date: 06/27/2005.

Accession Number: 20050629–0224.

Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER04–902–002.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Company, pursuant to the Commission's letter order issued 4/26/2005 in Docket Nos. ER04–902–000 and 001, submits its FERC Rate Schedule 126 formatted in compliance with Order 614.

Filed Date: 06/27/2005.

Accession Number: 20050629–0230.

Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER98–4336–013.

Applicants: Spokane Energy, LLC.

Description: Spokane Energy LLC submits an amendment to its pending filings to adopt the pro forma language enunciated in the rehearing order of Order 652.

Filed Date: 06/27/2005.

Accession Number: 20050629–0007.

Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER00–1814–006.

Applicants: Avista Turbine Power, Inc.

Description: Avista Turbine Power Inc submits an amendment to its pending rate schedule, to adopt the pro forma language in the Commission's recent order on rehearing of Order 652.

Filed Date: 06/27/2005.

Accession Number: 20050629–0006.

Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER99–1435–011.

Applicants: Avista Corporation.

Description: Avista Corporation submits an amendment to its pending rate schedule, to adopt the pro forma language contained in the Commission's recent order on rehearing of Order 652.

Filed Date: 06/27/2005.

Accession Number: 20050629–0008.

Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER96–2408–023.

Applicants: Avista Energy Inc.

Description: Avista Energy, Inc submits an Amendment to its pending rate schedule filing to adopt the pro forma language enunciated in the Commission's recent order on rehearing of Order 652.

Filed Date: 06/27/2005.

Accession Number: 20050629–0005.

Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–1020–001.

Applicants: WASP Energy LLC.

Description: WASP Energy, LLC submits petition for acceptance of initial rate schedule 1, waivers and blanket authority.

Filed Date: 06/27/2005.

Accession Number: 20050628–0062.

Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–1146–000

Applicants: Shiloh I Wind Project LLC.

Description: Shiloh I Wind Project, LLC submits its initial rate schedule, a request for the granting of authorizations & blanket authority & for waiver of certain requirements.

Filed Date: 06/27/2005.
Accession Number: 20050628–0224.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–1147–000.
Applicants: Archer Daniels Midland Company.
Description: Archer Daniels Midland Company submits a notice of cancellation of its Power Purchase Agreement with Central Illinois Light Company, now known as AmerenCILCO.
Filed Date: 06/27/2005.
Accession Number: 20050628–0226.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–1148–000.
Applicants: Aquila, Inc.
Description: Aquila, Inc. submits the Incremental Energy Agreement between Aquila, Inc. d/b/a Aquila Networks, WPK and the City of Russell, Kansas.
Filed Date: 06/27/2005.
Accession Number: 20050629–0218.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–1149–000.
Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Company submits an executed service agreement for network integration transmission service and an executed network operating agreement between SCE&G and Central Electric Power Cooperative, Inc.
Filed Date: 06/27/2005.
Accession Number: 20050629–0219.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–1150–000.
Applicants: Duke Energy Corporation.
Description: Duke Electric Transmission submits an executed and revised network integration transmission service agreement with New Horizon Electric Cooperation, Inc.
Filed Date: 06/27/2005.
Accession Number: 20050629–0220.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–1151–000; *ER05–226–002*
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits a revised Interchange and Interconnection Agreement between Grand River Dam Authority, Public Service Company of Oklahoma and SPP that is currently pending before FERC to correct typographical errors in the originally filed agreement and to add a new delivery and metering point at Honey Creek .
Filed Date: 06/27/2005.
Accession Number: 20050629–0240.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER05–723–002.
Applicants: TransCanada Power (Castleton) LLC.
Description: TransCanada Power, LLC, pursuant to the Commission's order issued 5/26/05 (111 FERC ¶ 61,264 (2005)), submits a revised tariff with a provision relating to change in status reporting requirements.
Filed Date: 06/27/2005.
Accession Number: 20050629–0225.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Docket Numbers: ER99–2369–002.
Applicants: Alliance For Cooperative Energy Services Power Marketing, LLC.
Description: Alliance For Cooperative Energy Services Power Marketing, LLC, pursuant to the Commission's order issued 5/26/05 (111 FERC ¶ 61,295 (2005)), submits its triennial updated market power analysis and revisions to its market-based rate schedule.
Filed Date: 06/27/2005.
Accession Number: 20050629–0223.
Comment Date: 5 p.m. eastern time on Monday, July 18, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3625 Filed 7–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–98–000, et al.]

PSEG Energy Waterford LLC, et al.; Electric Rate and Corporate Filings

June 30, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Energy Waterford LLC, American Electric Power Service Corporation, Columbus Southern Power Company

[Docket No. EC05–98–000]

On June 24, 2005, PSEG Energy Waterford LLC, American Electric Power Service Corporation and Columbus Southern Power Company submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby PSEG Waterford Energy LLC is transferring to Columbus Southern Power Service Corporation, a nominal 820 MW natural gas-fired generating plant and related interconnection facilities in Waterford Township, Ohio, and an interconnection agreement relating to the generating plant.

Comment Date: 5 p.m. eastern time on July 15, 2005.

2. Northbrook New York, LLC, NEO Corporation, Omega Energy II, LLC, EIF Northbrook LLC

[Docket No. EC05–99–000]

Take notice that on June 27, 2005, Northbrook New York, LLC (Northbrook), NEO Corporation (NEO), Omega Energy II LLC (Omega), EIF Northbrook LLC (EIF) (collectively, Applicants) tendered for filing an application requesting all necessary authorization under section 203 of the Federal Power Act to permit EIF to acquire all the membership interests in Northbrook held by NEO and Omega. Applicants seek privileged treatment for Exhibit I to the Application.

Comment Date: 5 p.m. eastern time on July 18, 2005.

3. Tenaska Power Fund, L.P., TPF Subsidiary, Calpine Philadelphia, Inc., Calpine Leasing, Inc., Calpine Cogeneration Corporation, Calpine Power Company

[Docket No. EC05–100–000]

Take notice that on June 28, 2005, Tenaska Power Fund, L.P. (Power Fund), TPF Subsidiary (TPF Sub), Calpine Philadelphia, Inc. (CPI), Calpine Leasing, Inc. (CLI), Calpine Cogeneration Corporation (Calpine Cogeneration), and Calpine Power Company (Calpine Power) (collectively, Applicants) tendered for filing with the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application requesting that the Commission approve Power Fund's acquisition of CLI and CPI, which would give Power Fund indirect ownership and control of approximately 23 MW of electric generating facilities located in Philadelphia, Pennsylvania. Applicants request confidential treatment of certain parts of the Application.

Applicants state that a copy of the filing was served on the Pennsylvania Public Utility Commission.

Comment Date: 5 p.m. eastern time on July 19, 2005.

4. San Juan Mesa Wind Project, LLC

[Docket No. EG05–76–000]

Take notice on June 28, 2005, San Juan Mesa Wind Project, LLC (San Juan Mesa) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

San Juan Mesa states that a copy of the application has been served on the U.S. Securities and Exchange Commission and the New Mexico Public Regulation Commission.

Comment Date: 5 p.m. eastern time on July 19, 2005.

Standard Paragraph

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 (19 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 protests to the Federal Energy Regulatory Commission, 888 First Street, 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 to review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3627 Filed 7–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 5, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–1737–007; ER02–24–006; ER01–468–004; ER00–3621–005; ER00–3620–004; ER00–3619–004; ER00–3746–007; ER02–22–005; ER99–1695–006; ER02–23–007; ER99–1432–007; ER02–26–005; ER96–2869–009; ER02–25–005.

Applicants: Virginia Electric & Power Company; Armstrong Limited Partnership, LLLP; Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; Dominion Nuclear Marketing I, Inc.; Dominion Nuclear Marketing II, Inc.; Dominion Nuclear Marketing III, L.L.C.; Dresden Energy, LLC; Elwood Energy LLC; Fairless Energy, LLC; Kincaid Generation, L.L.C.; Pleasants Energy, LLC; State Line Energy, L.L.C.; Troy Energy, LLC.

Description: Dominion Resources Services, on behalf of Virginia Electric and Power Company and the Dominion Companies, submits revised market-based tariffs in compliance with the Commission's 5/25/05 order, 111 FERC ¶ 61,241 (2005).

Filed Date: 06/24/2005.

Accession Number: 20050701–0025.

Comment Date: 5 pm Eastern Time on Friday, July 15, 2005.

Docket Numbers: ER02–1084–002.

Applicants: Alcan Power Marketing, Inc.

Description: Alcan Power Marketing, Inc. submits its updated market power analysis.

Filed Date: 06/27/2005.

Accession Number: 20050705–0080.

Comment Date: 5 pm Eastern Time on Monday, July 18, 2005.

Docket Numbers: ER02–1747–002.

Applicants: PPL Shoreham Energy, LLC.

Description: PPL Shoreham Energy, LLC submits its triennial market-based rate update.

Filed Date: 06/28/2005, as supplemented on 06/29/2005.

Accession Number: 20050701–0026.

Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER02–1749–002.

Applicants: PPL Edgewood Energy, LLC.

Description: PPL Edgewood Energy LLC submits a triennial market-based rate update.

Filed Date: 06/28/2005.

Accession Number: 20050629–0237.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER03–956–004.
Applicants: Duke Energy Marketing America, LLC.
Description: Duke Energy Marketing America, LLC submits revisions to its market-based rate tariff, designated as FERC Gas Tariff, Original Volume 1, to include the changes in status reporting requirement.
Filed Date: 06/28/2005.
Accession Number: 20050629–0217.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER04–947–003; QF85–311–005.
Applicants: POSDEF Power Company, LP.
Description: Notice of change of status and motion to withdraw qualifying status of Acme POSDEF Partners, LP.
Filed Date: 06/02/2005.
Accession Number: 20050609–0109.
Comment Date: 5 pm Eastern Time on Tuesday, July 12, 2005.

Docket Numbers: ER05–1152–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Co, dba Dominion Virginia Power submits an amended Generator Interconnection and Operating Agreement with Fauquier Landfill Gas, LLC.
Filed Date: 06/28/2005.
Accession Number: 20050629–0241.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–1154–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6, and to certain existing transmission contracts to reflect a change to its Reliability Services rates.
Filed Date: 06/28/2005.
Accession Number: 20050629–0277.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–1155–000.
Applicants: American Electric Power Services Corporation.
Description: American Electric Power Service Corporation, as agent for AEP Texas North Company, submits an executed amendment to the Interconnection Agreement between AEP Texas North Company and Texas-New Mexico Power Company.
Filed Date: 06/28/2005.
Accession Number: 20050629–0245.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–1156–000.
Applicants: Illinois Power Company and Union Electric Company
Description: Ameren Services Company, as agent on behalf of Illinois Power Company and Union Electric Company, submits a notice of termination of AmerenIP–AmerenUE Facility Use Agreement, Rate Schedule Nos. 112 and 117, and AmerenIP–AmerenUE Emergency Interchange Agreement, Rate Schedule Nos. 10 and 56.
Filed Date: 06/28/2005.
Accession Number: 20050629–0243.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–1157–000.
Applicants: Commonwealth Atlantic Limited Partnership.
Description: Virginia Electric and Power Company submits a notice of termination of Commonwealth Atlantic Limited Partnership's (CALP) Power Purchase and Operating Agreement between CALP and Dominion Virginia Power.
Filed Date: 06/28/2005.
Accession Number: 20050629–0242.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–1159–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits its Metering Service Agreement with Wisconsin Public Power Inc. to be effective 4/1/05.
Filed Date: 06/28/2005.
Accession Number: 20050629–0236.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–1160–000.
Applicants: Texas—New Mexico Power Company.
Description: Texas—New Mexico Power Company submits a Notice of Cancellation of Market Based Rate Authority.
Filed Date: 06/28/2005.
Accession Number: 20050701–0015.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–641–001.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company (FPL) submits a fully executed Revised and Restated Agreement for Interconnection with Bio-Energy Partners as an amendment to FPL's 2/24/05 filing in Docket No. ER05–641–000.
Filed Date: 06/28/2005.
Accession Number: 20050701–0014.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–685–001.
Applicants: Pittsfield Generating Company, L.P.
Description: Refund Report of Pittsfield Generating Company pursuant to the Commission's order issued 4/14/2005, 111 FERC ¶ 61,033 (2005).
Filed Date: 06/28/2005.
Accession Number: 20050628–5036.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–725–002.
Applicants: Deephaven RV Sub Fund Ltd.
Description: Deephaven RV Sub Fund Ltd submits a revised market-based rate tariff in compliance with FERC's 5/26/05 Letter Order in Docket Nos. ER05–725–000 and 001.
Filed Date: 06/27/2005.
Accession Number: 20050701–0008.
Comment Date: 5 pm Eastern Time on Monday, July 18, 2005.

Docket Numbers: ER05–850–001, ER05–851–001 and ER05–852–001.
Applicants: Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; Cinergy Capital & Trading, Inc.
Description: Brownsville Power I, LLC, Caledonia Power I, L.L.C. and Cinergy Capital & Trading, Inc. submit revised market-based rate tariffs in compliance with the Commission's 6/16/05 order, 111 FERC ¶ 61,398 (2005).
Filed Date: 06/28/2005.
Accession Number: 20050701–0111.
Comment Date: 5 pm Eastern Time on Tuesday, July 19, 2005.

Docket Numbers: ER05–888–001, ER05–889–002; ER05–890–001; ER05–891–001; ER05–892–001; ER05–893–003.
Applicants: Dominion Energy Brayton Point, LLC; Dominion Energy Kewaunee, Inc.; Dominion Energy Manchester Street, Inc.; Dominion Energy New England, Inc.; Dominion Energy Salem Harbor, LLC; Dominion Retail, Inc.
Description: Dominion Energy Brayton Point, LLC, Dominion Energy Kewaunee, Inc., Dominion Energy Manchester Street, Inc., Dominion Energy New England, Inc., Dominion Energy Salem Harbor, LLC and Dominion Retail, Inc. submit proposed changes to their market-based rates to incorporate the changes in status reporting requirement adopted in Order 652.
Filed Date: 06/24/2005.
Accession Number: 20050701–0011.
Comment Date: 5 pm Eastern Time on Friday, July 15, 2005.

Docket Numbers: ER97–3428–008.
Applicants: Tri-Valley Corporation.
Description: Tri-Valley Corporation reports that they are inactive & have never had any operations.

Filed Date: 06/22/2005.

Accession Number: 20050705–0082.

Comment Date: 5 pm Eastern Time on Wednesday, July 13, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3628 Filed 7–8–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0037; FRL–7724–7]

Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting, via teleconference, of the Endocrine Disruptor Methods Validation Advisory Committe (EDMVAC) on August 2, 2005, in Washington, DC. This meeting, as with all EDMVAC meetings, is open to the public. Due to limited phone lines, we encourage all local participants to join us at RESOLVE. Seating will be on a first-come basis. The purpose of the meeting is to receive advice and input from the EDMVAC on the 15–Day Intact Adult Male Assay.

DATES: The teleconference meeting will be held on Tuesday, August 2, 2005, from noon to 2 p.m. eastern daylight time.

Requests to participate in the meeting must be received by EPA on or before July 25, 2005. To ensure proper receipt by EPA, it is imperative that you identify docket identification (ID) number OPPT–2005–0037 in the subject line on the first page of your request.

Individuals requiring special accommodations at the meeting, including wheelchair access, should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting.

ADDRESSES: The teleconference meeting will originate at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC 20037.

Requests to participate in the meeting may be submitted by e-mail, telephone, fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Comments may be submitted electronically, by fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jane Smith, Designated Federal Official (DFO), Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides and Toxic Substances (OPPTS), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8482; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with, or import pesticide chemicals and other substances. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170), 21 U.S.C. 346a(p), and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0037. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other related information. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0282.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A meeting agenda, a list of EDMVAC members and information from previous EDMVS and EDMVAC meetings are available electronically, from the EPA Internet Home Page at *http://www.epa.gov/scipoly/oscpendo/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

C. How Can I Request to Participate in the Meeting or Submit Comments?

You may submit a request to participate in the meeting through e-mail, telephone, fax, or hand delivery/courier. We would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, we cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before July 25, 2005. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2005–0037 in the subject line on the first page of your request.

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on the topic of this meeting. The EDMVAC will have a period available during the meeting for public comment. It is the policy of the EDMVAC to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVAC expects that public statements presented at its meeting will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

1. *Electronically.* If you submit an electronic request to participate in the meeting or comments as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your request or comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the request or comment and allows EPA to contact you in case EPA cannot read your request or comment due to technical difficulties or needs further information on the substance of your request or comment. EPA's policy is that EPA will not edit your request or comment, and any identifying or contact information provided in the body of a request or comment will be included as part of the request or comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your request or comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your request or comment.

i. *EPA Docket.* You may use EPA's electronic public docket*http://www.epa.gov/edocket/*, and follow the online instructions for submitting materials. Once in the system, select "search," and then key in docket ID number OPPT–2005–0037. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your request.

ii. *E-mail.* Requests to participate in the meeting or comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0037. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail request directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the request that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM by hand delivery, courier, or package service, such as Federal Express, to the person listed under **FOR FURTHER INFORMATION CONTACT**. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. Do not submit any disk or CD ROM through the mail. Disks and CD ROMs risk being destroyed when handled as Federal Government mail.

2. *Telephone or fax.* Telephone or fax your request to participate in the meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0037. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

II. Background

In 1996, through enactment of FQPA, which amended the FFDCA, Congress directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans or such other endocrine effects. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of FACA, to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier 1 screens) and tests (Tier 2 tests) for determining whether a chemical substance may have an effect similar to that produced by naturally occurring hormones. EPA adopted almost all of EDSTAC's recommendations in the program that it developed, the Endocrine Disruptor Screening Program (EDSP), to carry out Congress' directive.

EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM). EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocrine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA chartered the Endocrine Disruptor Methods Validation Subcommmittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). The EDMVS convened nine meetings between October 2001 and December 2003. In 2003, NACEPT recommended EDMVS become an Agency level 1 FACA Committee due to the complexity of the recommendations. The EDMVAC was chartered in 2004. The EDMVAC provides independent advice and counsel to the Agency on scientific and technical issues related to validation of the EDSP Tier 1 screens and Tier 2 tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate. EDMVAC and previous

EDMVS meeting information and corresponding docket numbers are available electronically, from the EPA Internet Home Page at *http://www.epa.gov/scipoly/oscpendo/*. You may also go to the EPA Docket at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting materials.

III. Meeting Objective for the August 2, 2005 Teleconference Meeting

The objective for the August 2, 2005 teleconference meeting (docket ID number OPPT–2005–0037) is to discuss the 15–Day Intact Adult Male Assay.

A list of the EDMVAC members and meeting materials are available at *http://www.epa.gov/scipoly/oscpendo/* and in the public docket.

List of Subjects

Environmental protection, Endocrine disruptors, Hazardous substances, Health, Safety.

Dated: June 30, 2005.

Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–13563 Filed 7–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0038; FRL–7725–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of Notices of Commencement to manufacture those chemicals. This status report, which covers the period from June 9, 2005 to June 20, 2005, consists of the PMNs and TME, both pending or expired, and the Notices of Commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket identification (ID) number OPPT–2005–0038 and the specific PMN number or TME number, must be received on or before August 10, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2005–0038. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties, or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2005–0038. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0038 and PMN number or TME number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0038, and PMN number or TME number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN, or an application for a TME, and to publish periodic status reports on the chemicals under review, and the receipt of Notices of Commencement to manufacture those chemicals. This status report, which

covers the period from June 9, 2005 to June 20, 2005, consists of the PMNs and TME, both pending or expired, and the Notices of Commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TME, both pending or expired, and the Notices of Commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 06/09/05 TO 06/20/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0592	06/10/05	09/07/05	CBI	(G) Coating resin	(G) Benzyl acrylate polymer with substituted propanediol triacrylate
P–05–0593	06/10/05	09/07/05	Petroferm Inc.	(S) Additive for personal care; hard surface cleaning additive	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl group-terminated, diethers with polyethylene glycol monoacrylate, polymers with acrylic acid and n,n,n-trimethyl-2-[(1-oxo-2-propenyl)oxy]ethanaminium chloride, disodium (disulfite)-andperoxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt-initiated
P–05–0594	06/10/05	09/07/05	Petroferm Inc.	(S) Additive for personal care; hard surface cleaning additive	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl group-terminated, diethers with polyethylene glycol monoacrylate, polymers with acrylic acid and n,n,n-trimethyl-2-[(1-oxo-2-propenyl)oxy]ethanaminium chloride, sodium salts, disodium (disulfite)- and peroxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt-initiated
P–05–0595	06/10/05	09/07/05	Petroferm Inc.	(S) Additive for personal care; hard surface cleaning additive	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl group-terminated, diethers with polyethylene glycol monoacrylate, polymers with acrylic acid and n,n,n-trimethyl-2-[(1-oxo-2-propenyl)oxy]ethanaminium chloride, potassium salts, disodium(disulfite)- and peroxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt-initiated
P–05–0596	06/10/05	09/07/05	Petroferm Inc.	(S) Additive for personal care; hard surface cleaning additive	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl group-terminated, diethers with polyethylene glycol monoacrylate, polymers with acrylic acid and n,n,n-trimethyl-2-[(1-oxo-2-propenyl)oxy]ethanaminium chloride, ammonium salts, disodium(disulfite)- and peroxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt-initiated
P–05–0597	06/10/05	09/07/05	Petroferm Inc.	(S) Additive for personal care; hard surface cleaning additive	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl group-terminated, diethers with polyethylene glycol monoacrylate, polymers with acrylic acid and n,n,n-trimethyl-2-[(1-oxo-2-propenyl)oxy]ethanaminium chloride, disodium (disulfite)-andperoxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt-initiated, compounds with triethanolamine

I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 06/09/05 TO 06/20/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0598	06/10/05	09/07/05	Petroferm Inc.	(S) Additive for personal care; hard surface cleaning additive	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl group-terminated, diethers with polyethylene glycol monoacrylate, polymers with acrylic acid and n,n,n-trimethyl-2-[(1-oxo-2-propenyl)oxy]ethanaminium chloride, disodium (disulfite)-andperoxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt-initiated, compounds with 2-amino-2-methyl-1-propanol
P–05–0599	06/09/05	09/06/05	CBI	(G) Additive for coating compositions	(G) Substituted heteropolycycliciminium, 2-[2-[2-chloro-3-[(substituted heteropolycyclic)ethylidene]-1-cyclohexen]-1-yl]ethenyl]-, iodide
P–05–0600	06/13/05	09/10/05	Eastman Kodak Company	(G) Contained use in an article	(G) Sulfato cycohexene aliphatic sulfo substituted imidazole napthyl salt
P–05–0601	06/13/05	09/10/05	PPG Industries, Inc.	(G) Component of an automotive primer	(G) Ethoxylated bis (hydroxysubstituted) alkane
P–05–0602	06/13/05	09/10/05	PPG Industries, Inc.	(G) Component of an automotive primer	(G) Ethoxylated bis (hydroxysubstituted) alkane
P–05–0603	06/13/05	09/10/05	PPG Industries, Inc.	(G) Component of an automotive primer	(G) Ethoxylated bis (hydroxysubstituted) alkane
P–05–0604	06/13/05	09/10/05	American ingredients Company	(S) Emulsifier in food products; industrial process-aid and lubricant	(S) Fatty aids, c16-18, reaction products with disodium carbonate and lactic acid
P–05–0605	06/13/05	09/11/05	American Ingredients Company	(S) Emulsifier in food products; industrial process-aid and lubricant	(S) Fatty aids, c16-18 and c18-unsaturated, reaction products with lactic acid and monosodium lactate
P–05–0606	06/15/05	09/12/05	CBI	(G) Component of acrylic adhesives.	(S) Poly(oxy-1,2-ethanediyl), .alpha.,.alpha.'-[[(4-methylphenyl)imino]di-2,1-ethanediyl]bis[.omega.-hydroxy-
P–05–0607	06/15/05	09/12/05	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–05–0608	06/15/05	09/12/05	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–05–0609	06/15/05	09/12/05	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–05–0610	06/15/05	09/12/05	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–05–0611	06/15/05	09/12/05	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–05–0612	06/15/05	09/12/05	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–05–0613	06/15/05	09/12/05	CBI	(G) Color developer	(G) Bisphenol s mono ester
P–05–0614	06/16/05	09/13/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) 1-octanethiol, manufacture. of, distn. residues, high-boiling fraction
P–05–0615	06/16/05	09/13/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) 1-octanethiol, manufacture. of, distn. residues, low-boiling fraction
P–05–0616	06/16/05	09/13/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) Thiols, c8-10-tertiary, c9-rich, manufacture. of, distn. residues
P–05–0617	06/16/05	09/13/05	CBI	(G) Surfactant	(G) Benzoic acid (substituted)-, alkyl vegetable oil derivitives
P–05–0618	06/17/05	09/14/05	Altair Nanomaterials, Inc.	(G) Recreational water treatment	(S) Lanthanum carbonate oxide (la2(co3)2o)
P–05–0619	06/17/05	09/14/05	CBI	(S) Solubilized dye for coloring cellulosic fibers	(G) Disulfurous acid, disodium salt, reaction products with aniline, substituted anilines, sulfur, and sodium hydroxide
P–05–0620	06/17/05	09/14/05	CBI	(G) Open non-dispersive (hardener)	(G) Cycloaliphatic polyuretdione
P–05–0621	06/17/05	09/14/05	CBI	(S) Solubilized dye for coloring cellulosic fibers	(G) Carbonic acid disodium salt, reaction products with aniline, substituted anilines, sulfur, sodium hydroxide, sodium metabisulfite, and triethanolamine

I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 06/09/05 TO 06/20/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0622	06/20/05	09/17/05	PPG Industries, Inc.	(G) Electrodeposited coating	(G) Octadecanoic acid, 12-hydroxy-, ion(1-), salts with acrylate-glycidyl methacrylate-hydroxyalkyl acrylate-me methacrylate-styrene polymer-2,2'-thiobis[ethanol] reaction products lactates (salts)
P–05–0623	06/20/05	09/17/05	CBI	(G) Dyestuff for inkjet printer	(G) Substituted naphthalene sulfonic acid
P–05–0624	06/20/05	09/17/05	CBI	(G) Dyestuff for inkjet printer	(G) Substituted naphthalene sulfonic acid
P–05–0625	06/20/05	09/17/05	CBI	(G) Contained use in energy production.	(G) Anthracenediol salt

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TME received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 06/09/05 TO 06/20/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–05–0004	06/20/05	08/03/05	PPG Industries, Inc.	(G) Electrodeposited coating	(G) Octadecanoic acid, 12-hydroxy-, ion(1-), salts with acrylate-glycidyl methacrylate-hydroxyalkyl acrylate-me methacrylate-styrene polymer-2,2'-thiobis[ethanol] reaction products lactates (salts)

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 18 NOTICES OF COMMENCEMENT FROM: 06/09/05 TO 06/20/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0019	06/17/05	06/02/05	(G) Aliphatic, hydroxyl-bearing polyester polyurethane resin
P–03–0850	06/14/05	06/07/05	(G) Aqueous polyurethane dispersion
P–05–0001	06/17/05	05/31/05	(G) Polyamine mannich base
P–05–0045	06/15/05	05/19/05	(G) Hydroxy functional polyacrylate resin
P–05–0223	06/17/05	05/31/05	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), potassium salt
P–05–0224	06/17/05	05/31/05	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), calcium potassium salt
P–05–0245	06/17/05	05/27/05	(G) Alkyl acrylic-methacrylic-vinylic copolymer
P–05–0273	06/15/05	05/25/05	(G) Alkanolactone, polymer with substituted 2h-pyran-2-one, 2-(2-butoxyethoxy)ethyl ester, phosphate
P–05–0306	06/14/05	05/31/05	(G) Mixed fatty acids and diacids polymer with polyol
P–05–0309	06/08/05	05/23/05	(S) 1,3-butanediol, 3-methyl-
P–05–0371	06/17/05	06/08/05	(G) Acrylic polymer
P–05–0381	06/17/05	06/09/05	(G) Phosphonated polyamine
P–05–0382	06/17/05	06/09/05	(G) Phosphonated polyamine
P–05–0383	06/17/05	06/09/05	(G) Phosphonated polyamine
P–05–0384	06/17/05	06/03/05	(G) Polyamine phosphate salt
P–05–0385	06/17/05	06/03/05	(G) Polyamine hydrochloride salt
P–95–1566	06/09/05	05/25/05	(G) Amine functional epoxy resin salted with an organic acid
P–99–1114	06/14/05	05/24/05	(G) Polyester resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

June 29, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–13560 Filed 7–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7935–9]

Public Water System Supervision Program Revision for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the State of North Dakota has revised its Public Water System Supervision (PWSS) Primacy Program by adopting federal regulations for the Arsenic Rule and Long Term 1 Enhanced Surface Water Treatment Rule, which correspond to 40 CFR Parts 141 and 142. The EPA has completed its review of these revisions in accordance with SDWA, and proposes to approve North Dakota's primacy revisions for the above stated Rules.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to request a public hearing on this determination by August 10, 2005. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective August 10, 2005. If a hearing is granted, then this determination shall not become effective until such time following the hearing, as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing shall be addressed to: Robert E. Roberts, Regional Administrator, c/o Anthony DeLoach (8P–W–MS), U.S. EPA, Region 8, 999 18th St., Suite 300, Denver, CO 80202–2466.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Municipal Systems Unit, 999 18th St. (4th Floor), Denver. CO 80202–2466; (2) Department of Environment and Natural Resources (DENR), Drinking Water Program, 1200 Missouri Avenue, Bismarck, ND 58502–5520.

FOR FURTHER INFORMATION CONTACT: Anthony DeLoach at 303–312–6070.

SUPPLEMENTARY INFORMATION: EPA approved North Dakota's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of SDWA, 42 U.S.C. 300g–2, and 40 CFR Part 142. DENR administers North Dakota's PWSS program.

A. Why Are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How Does Today's Action Affect Indian Country in North Dakota?

North Dakota is not authorized to carry out its PWSS program in "Indian country". This includes lands within the exterior boundaries of the Fort Berthold, Fort Totten, Standing Rock and Turtle Mountain Indian Reservations; any land held in trust by the United States for an Indian tribe, and any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing.

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing, and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: July 1, 2005.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 05–13556 Filed 7–8–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Monday, July 18, 2005, 9 a.m. eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes.
2. FEPA Designations for Springfield, Illinois Department of Community Relations & Reading, Pennsylvania Human Relations Commission.
3. Certification of Eight FEP Agencies.
4. Competitive 8(a) Contract for Headquarters Support Services.
5. BNA Subscriptions Renewal.
6. Novell, Software Licensing Maintenance Agreement.
7. Contract for Processing the 2005 EEO–4 Survey.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Office on (202) 663–4070.

Dated: This notice issued July 7, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05–13702 Filed 7–7–05; 3:18 pm]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 14, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- June 9, 2005 (Open and Closed)

B. New Business—Regulations

- Investments, Liquidity, and Divestiture—Final Rule

Closed Session*

- 2004 Audit of the FCS Building Association

Dated: July 7, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8).

[FR Doc. 05–13637 Filed 7–7–05; 12:28 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–63–B (Auction No. 63); DA 05–1908]

Auction of Multichannel Video Distribution and Data Service Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document extends the comment and reply comment date to allow the public additional time to comment on reserve prices or minimum opening bids and other auction procedures for Auction No. 63.

DATES: Comments are due on or before July 13, 2005 and reply comments are due on or before July 20, 2005.

ADDRESSES: The Wireless Telecommunications Bureau requires that all comments and reply comments must be sent by electronic mail to the following address: *auction63@fcc.gov*. For further filing instructions see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brian Carter at (202) 418–0660.

SUPPLEMENTARY INFORMATION: On June 9, 2005, the Commission released the *Auction No. 63 Comment Public Notice*, announcing the auction of 22 Multichannel Video Distribution and Data Service licenses and seeking comments on minimum opening bids and proposed auction procedures. Comments were due on or before June 26, 2005, and reply comments were due on or before July 6, 2005. By this document, the Wireless Telecommunications Bureau extends the deadline for comments to July 13, 2005, and the deadline for reply comments to July 20, 2005.

The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 63 Comments and the name of the commenting party. Parties who file by paper must file an original and four copies of each filing and should be addressed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. Filings may also be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions Spectrum and Access Division, WTB.

[FR Doc. 05–13636 Filed 7–8–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, July 13, 2005. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF THE MEETING: *Data Reporting Requirements for the Call Report System.* Through the Call Report System, the Federal Home Loan Banks electronically submit to the Finance Board financial, business line, compliance, and other operating information on a monthly and quarterly basis. The Board of Directors will consider a resolution adopting the requirements for these periodic call reports.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION OF THE MEETING: *Periodic Update of Examination Program Development and Supervisory Findings.*

CONTACT FOR FURTHER INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov*.

By the Federal Housing Finance Board.

Dated: July 6, 2005.

John P. Kennedy,

General Counsel.

[FR Doc. 05–13607 Filed 7–6–05; 4:57 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 July 25, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. H.T. Clark I Family (Limited Partnership) and Harold T. Clark, Jr. (general partner), both of Utica, New York; to acquire voting shares of Adirondack Bancorp, Utica, New York, and thereby indirectly acquire voting shares of Adirondack Bank, Utica, New York.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Charles Hardcastle, Bowling Green, Kentucky; to acquire voting shares of Citizens First Corporation, Bowling Green, Kentucky and thereby indirectly acquire Citizens First Bank, Inc., Bowling Green, Kentucky.

Board of Governors of the Federal Reserve System, July 5, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–13519 Filed 7–8–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Kirksville Bancorp, Inc., Kirksville, Missouri; to become a bank holding company by acquiring 100 percent of American Trust Bank, Kirksville, Missouri (in formation).

2. Security Associated Holding Corporation, Hot Springs, Arkansas; to become a bank holding company by acquiring 100 percent of The Stephens Security Bank, Stephens, Arkansas.

Board of Governors of the Federal Reserve System, July 5, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–13518 Filed 7–8–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0541]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Exports: Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Exports: Notification and Recordkeeping Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 2005 (70 FR 18030), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0482. The approval expires on June 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: July 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–13510 Filed 7–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0534]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Over-the-Counter Human Drugs; Labeling Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Over-the-Counter Human Drugs; Labeling Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 2005 (70 FR 15864), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0340. The approval expires on June 30, 2008. A copy of the supporting statement for this information collection is available on

the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: July 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–13583 Filed 7–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Chief Information Officer

Submission for Review; Notice of Emergency Reinstatement of Solicitation of Proposal Information for Award of Public Contracts

AGENCY: Office of the Chief Information Officer, DHS.

ACTION: Notice of emergency reinstatement.

SUMMARY: The Department of Homeland Security (DHS) is requesting OMB's approval to reinstate Information Collection Request (ICR) 1600–0005 (Solicitation of Proposal Information for Award of Public Contracts) which expired June 30, 2005. This ICR is necessary for businesses and individuals seeking contracting opportunities with DHS.

DATES: Send your comments by August 10, 2005. A comment to OMB is most effective if OMB receives it within 30-days of publication.

ADDRESSES: Written comments and/or suggestions contained in this notice should be directed to the Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503; telephone 202–395–7316 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Requests for copies of the forms and instructions should be directed to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528; (202) 692–4211 (this is not a toll free number). Direct e-mail to *acquisition@dhs.gov*, and reference the information collection Solicitation of Proposal Information for Award of Public Contracts.

SUPPLEMENTARY INFORMATION:

Analysis

Agency: Department of Homeland Security, Office of the Chief Information Officer.

Title: Solicitation of Proposal Information for Award of Public Contracts.

OMB Control Number: 1600–0005.

Frequency: On Occasion.

Affected Public: Businesses and individuals seeking contracting opportunities with the DHS.

Estimated Number of Respondents: 7342 respondents.

Estimated Time Per Respondent: 14 hours.

Total Burden Hours: 102,788.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintaining): None.

Description: Comments in response to this reinstatement request will be summarized and included in the request for OMB approval.

Ronald T. Hewitt,

Acting, Chief Information Officer.

[FR Doc. 05–13675 Filed 7–7–05; 2:23 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Chief Information Officer

Submission for Review; Notice of Emergency Reinstatement of Post Contract Award Information

AGENCY: Office of the Chief Information Officer, DHS.

ACTION: Notice of emergency reinstatement.

SUMMARY: The Department of Homeland Security (DHS) is requesting OMB's approval to reinstate Information Collection Request (ICR) 1600–0003 (Post Contract Award Information) which expired June 30, 2005. This ICR is necessary for businesses and individuals seeking contracting opportunities with DHS.

DATES: Send your comments by August 10, 2005. A comment to OMB is most effective if OMB receives it within 30-days of publication.

ADDRESSES: Written comments and/or suggestions contained in this notice should be directed to the Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503; telephone (202) 395–7316 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Requests for copies of this ICR, with supporting documentation, may be directed to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg 410 (RDS), Washington, DC 20528; telephone (202) 692–4211 (this is not a toll free number). Direct e-mail to *acquisition@dhs.gov*, and reference the information collection for post-award documents.

SUPPLEMENTARY INFORMATION:

Analysis

Agency: Department of Homeland Security, Office of the Chief Information Officer.

Title: Post-Contract Award Information.

OMB Control Number: 1600–0003.

Frequency: On Occasion.

Affected Public: Businesses and individuals seeking contracting opportunities with the DHS.

Estimated Number of Respondents: 5626 respondents.

Estimated Time Per Respondent: 14 hours.

Total Burden Hours: 78,764.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintaining): None.

Description: Comments in response to this reinstatement request will be summarized and included in the request for OMB approval.

Ronald T. Hewitt,

Acting, Chief Information Officer.

[FR Doc. 05–13676 Filed 7–7–05; 2:23 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21722]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number: 1625–0089

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR is for 1625–0089, The National Recreational Boating Survey. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it as described below.

DATES: Comments must reach the Coast Guard on or before September 9, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2005–21722]

more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone 202–267–2326, or fax 202–267–4814, for questions on these documents; or telephone Ms. Andrea M. Jenkins, Program Manager, Docket Operations, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: *Public participation and request for comments.* We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*; they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's "Privacy Act Policy" below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2005–21722], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Information Collection Request

Title: The National Recreational Boating Survey.

OMB Control Number: 1625–0089.

Summary: The mission of the U.S. Coast Guard's National Recreational Boating Safety (RBS) Program is to minimize the loss of life, personal injury, property damage, and environmental impact associated with the use of recreational boats. The National Recreational Boating Survey information collection enables the Coast Guard to better identify safety priorities, coordinate and focus research efforts, and encourage consistency in the information that is collected as well as methods of analysis that are employed. Working with our State partners, collecting this type of information from boaters across the nation is essential in our efforts to implement effective accident prevention strategies.

Need: The National Recreational Boating Survey is needed as a means for the Coast Guard to: (1) Collect reliable and consistent data for use in developing valid safety performance measures, (2) collect information in regard to the changing demographics of boaters, the numbers of boats and type of boating activity essential for national RBS program direction and policy, and (3) better define and measure the effectiveness of RBS program activities in reducing the number of boating accidents.

Respondents: Recreational boaters.

Frequency: Every two to three years.

Burden Estimate: The estimated burden remains the same, 11,458 hours a year.

Dated: July 1, 2005.

Nathaniel S. Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–13575 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of U.S. Customs and Border Protection

19 CFR Part 177

Notice of Issuance of Final Determination Concerning Multi-Line Telephone Sets

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain multi-line telephone sets to be offered to the United States Government under an undesignated government procurement contract. The final determination found that, based upon the facts presented, the country of origin of the Avaya Partner multi-line telephone set is Mexico.

DATES: The final determination was issued on July 1, 2005. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Caldwell, Special Classification and Marking Branch, Office of Regulations and Rulings (202) 572–8872.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 1, 2005, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain multi-line telephone sets to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ 563236. This final determination was issued at the request of Avaya, Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that, based upon the facts presented, the assembly in Mexico of parts of various origins to create Avaya Partner multi-line telephone sets substantially transformed certain imported parts into a product of Mexico.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 6, 2005.

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings Attachment.

BILLING CODE 4820–02–P

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

HQ 563236

July 6, 2005
MAR-2-05 RR:CR:SM 563236 EAC

CATEGORY: Marking

Mr. Dean L. Grayson
Corporate Counsel
Avaya, Inc.
1212 New York Avenue, Suite 1212
Washington, DC 20005

RE: U.S. Government Procurement; Final Determination; country of origin of multi-line telephone sets; substantial transformation; 19 CFR Part 177

Dear Mr. Grayson:

This is in response to your letter dated March 15, 2005, requesting a final determination on behalf of Avaya Inc. (hereinafter "Avaya"), pursuant to subpart B of Part 177, Customs Regulations (19 CFR 177.21 et seq.). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2411 et seq.), U.S. Customs and Border Protection ("CBP") issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of multi-line telephone sets marketed under the name "Partner", which Avaya is considering selling to the U.S. Government. We note that Avaya is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

The Partner multi-line telephone sets are assembled from approximately 36 constituent components (consisting of individual parts and more complex subassemblies) at an Avaya facility in Monterrey, Mexico. Some of the parts utilized in the assembly process have been identified as plastic upper housings, plastic lower housings, plastic mechanical levers known as a "plungers", wire spring assemblies, keypad assemblies that contain no electronics, backlights, liquid crystal displays ("LCD's"), other parts used to make LCD display assemblies, printed circuit assemblies, jacks, speaker assemblies, microphone assemblies, handsets and stands.

You state that some of the parts from which the telephones are assembled are manufactured within Mexico and that others are imported into Mexico from countries such as Malaysia, China, and the United States. Among the components imported into Mexico are printed circuit assemblies which are assembled in Malaysia during a process that requires approximately 8 minutes and involves more than 250 components. Among the components manufactured within Mexico are the handsets, LCD assemblies, microphone assemblies and stands. We are informed that, prior to assembly, none of the component parts is capable of performing any useful function or performing the function of a telephone (*i.e.*, for converting voice to a transmittable digital/analog signal, and in reverse, converting a digital/analog signal to sound that resembles the voice or tones transmitted from the other end of the telephone line) and that neither the printed circuit assemblies, LED displays, or audio amplifiers within the handsets can function without being assembled into the telephone sets.

The Partner multi-line telephone sets are assembled by skilled workers in approximately 20 minutes. The assembly process involves a number of quality control measures, including a quality audit which is performed after the telephone sets have been packaged. Pertinent parts of the assembly process, as set forth in an attachment to the above-referenced letter of March 15, 2005, are as follows:

1. The imported and Mexican parts are received, logged into the system, assigned bar codes if the parts are significant (i.e., the housing, the printed circuit assembly) and placed into bins at the appropriate assembly station.

2. The telephone set's upper housing is visually inspected to determine whether it is defective.

3. The upper housing is cleaned.

4. The plunger is assembled into the telephone set's upper housing.

5. The spring assembly is assembled into the upper housing.

6. The keypad assembly is assembled into the upper housing.

7. The LCD display assembly is assembled from component parts that include a liquid crystal display, a backlight and LCD upper and lower housing components.

8. The LCD display assembly is assembled into the telephone set's upper housing.

9. The printed circuit assembly is assembled into the telephone set's upper housing.

10. The printed circuit assembly is connected to the keypad assembly that was previously assembled into the upper housing.

11. The printed circuit assembly is connected to the LCD display assembly that was previously assembled into the upper housing.

12. The jack is connected to the upper housing. The jack is used to connect the telephone to the handset.

13. The speaker assembly, which is the hearing function of the telephone, is assembled into the upper housing.

14. The speaker assembly is soldered to the printed circuit assembly that was previously assembled into the upper housing.

15. The microphone assembly is assembled from component parts.

16. The microphone assembly, which is the speaking function of the telephone, is assembled into the upper housing.

17. The microphone assembly is soldered to the printed circuit assembly that was previously assembled into the upper housing.

18. The upper and lower housing are screwed together.

19. The handset is connected to the jack that was previously connected to the upper housing.

20. The line cable assembly is assembled into the upper housing. The line cable is used to connect the telephone to a wall jack.

21. The telephone set is visually inspected for defects and a "functional" test of the telephone set is performed.

22. The telephone stand is assembled from plastic pieces molded in Mexico.

23. Four rubber buttons/feet are attached to the bottom of the telephone stand.

24. The telephone set, stand and documents relating to the telephone, including a user guide, are packaged.

ISSUE:

Whether the assembled Partner multi-line telephone sets are considered to be products of Mexico for purposes of U.S. Government procurement.

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2511 et seq.), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. §2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. United States, 573 F. Supp. 1149 (CIT 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See, C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. In C.S.D. 85-25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences ("GSP"), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled.

In Headquarters Ruling Letter ("HRL") 557208 dated July 24, 1993, cordless telephones were produced in Mexico from various components including three printed circuit board ("PCB") subassemblies identified as base unit circuit boards, base unit control boards, and handset mainboards. The PCB subassemblies were "stuffed" in Mexico by incorporating various parts (such as diodes and resistors) onto bare printed circuit boards which were imported into Mexico from the United States, Japan and other countries abroad. The base unit circuit board was produced in a 13-step process involving 212 parts; the base unit control board was produced in a 7-step process involving 74 parts; and, the handset main board was produced in a 12-step process involving 274 parts. The three stuffed PCB assemblies were thereafter utilized to produce finished cordless telephones in a separate 58-step process that involved 95 parts.

At issue in HRL 557208 was whether, for purposes of determining eligibility under the GSP, the components imported into Mexico and used in the production of the finished cordless telephones underwent a double substantial transformation during assembly. Upon consideration of this matter, CBP held that assembling the imported components onto the circuit boards, control boards, and handset boards resulted in an initial substantial transformation. It was also determined that a second substantial transformation occurred when the PCB assemblies were subsequently assembled with other components to form finished telephones because the cordless telephones were readily identifiable as distinct articles of commerce differing in name, character and use from the PCB subassemblies. See also, HRL 735097 dated September 7, 1993 (under the same facts as considered in HRL 557208, CBP concluded that the country of origin of the cordless telephones for marking purposes was Mexico).

In HRL 734979 dated September 3, 1993, non-functional telephone shells were imported into the United States where they were combined with U.S.-origin control boards to form operational telephone sets. As entered into the United States, the shells consisted of housings, plastic and electronic subassemblies, and other parts of a telephone which were all assembled together to form the shell. The plastic parts used to form the telephone housings, buttons, and pads were made in China as were the printed circuit boards utilized for the keypads. The shell was also assembled into the plastic housing in China. In finding that the imported shells were substantially transformed in the United States when combined with U.S.-origin control boards, it was noted that the shells (which resembled telephones upon entry) were unable to function until the control boards were installed. CBP additionally stated that: "Although shells as imported contain some electronics and a circuit board for the key pads, they are apparently minor electronic components as compared to the control boards because they do not perform the sophisticated functions that the control boards do." Moreover, the relatively sophisticated control boards were manufactured *and* installed in the United States.

Whereas complex and meaningful assembly operations may substantially transform imported telephone components, CBP has consistently held that simple assembly and/or packaging operations do not result in a substantial transformation of imported components. See, for example, HRL 734046 dated May 10, 1991 (a base unit headset, headset cord and telephone cord which are imported as a telephone set are not substantially transformed when packed together); HRL 734560 dated July 20, 1992 (telephone components packed together as a set are not substantially transformed by virtue of being assembled into a telephone unit); and, HRL 559067 dated September 19, 1995 (telephone components packed together as a set are not substantially transformed when packaged as a unit for sale as a telephone set).

As the cases set forth above demonstrate, in order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed telephones, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. Further guiding our analysis is the principle that the "essence" of finished telephone sets is housed in the telephone

base and the handset. See, Uniden America Corporation and Uniden Financial, Inc., v United States, 24 C.I.T. 1191, 1195, 120 F.Supp. 2d 1091, 1096 (2000). Moreover, the determination in this case will ultimately be "a mixed question of technology and customs law, mostly the latter." Texas Instruments, Inc. v. United States, 681 F.2d 778, 783 (C.C.P.A. 1982).

As applied, it is our opinion that the various components (individual parts and subassemblies) which are imported into Mexico for assembly into the Partner multi-line telephone sets are substantially transformed during the processing which occurs in that country. In making this determination, we note that trained workers assemble the telephones in a process which can be described as complex and meaningful. During such assembly operations, the various components lose their separate identities and are subsumed into a product that possesses a new name, character and use. As noted, *supra*, many of the components have no function alone and can only perform their function when assembled to form completed telephone sets. Moreover, the finished telephone sets are comprised of certain essential parts (such as the handsets) which are of Mexican origin. Therefore, based upon the specific circumstances of this case, we find that the assembled Partner multi-line telephone sets are a product of Mexico for purposes of U.S. Government procurement.

HOLDING:

Based upon the specific facts of this case, we find that the components imported into Mexico for use in the Partner multi-line telephone sets are substantially transformed when assembled in the manner set forth above. Therefore, the country of origin of the finished Partner multi-line telephone sets for purposes of U.S. Government procurement is Mexico.

Notice of this final determination will be given in the Federal Register as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Michael T. Schmitz

CERTIFIED COPY Joseph W Clark ORIGINAL

Michael T. Schmitz,
Assistant Commissioner
Office of Regulations and Rulings

[FR Doc. 05–13534 Filed 7–8–05; 8:45 am]
BILLING CODE 4820–02–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of decision documents.

SUMMARY: Between April 21, 2004, and May 31, 2005. the Pacific Region and California/Nevada Operations Office of the Fish and Wildlife Service (encompassing Oregon, Washington, Idaho, Hawaii, California, and Nevada) issued 14 permits in response to applications for incidental take of threatened and endangered species, pursuant to sections 10(a)(1)(B) and 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). Copies of the permits and associated decision documents are available upon request.

ADDRESSES: Documents are available from the U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232; facsimile (503) 231–6243. Charges for copying, shipping, and handling may apply.

FOR FURTHER INFORMATION CONTACT: If you would like copies of any of the documents cited in this notice, please contact Shelly Sizemore, Administrative Assistant, at telephone (503) 231–6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct (16 U.S.C. 1532). The Fish and Wildlife Service (Service) may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Although not required by law or regulation, it is Service policy to notify the public of its permit application decisions. Between April 21, 2004 and May 31, 2005, we issued the following permits within the Pacific Region and California/Nevada Operations Office of the Service for incidental take of threatened and endangered species subject to certain conditions set forth therein, pursuant to section 10(a)(1)(B) and section 10(a)(1)(A) of the Act. We issued each permit after determining that: (1) The permit application was submitted in good faith; (2) all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of listed species; and (3) the permit was consistent with the purposes and policy set forth in the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives pursuant to the National Environmental Policy Act of 1969.

Approved plan or agreement	Permit No.	Issuance date
Habitat Conservation Plans:		
Western Riverside County Multiple Species Habitat Conservation Plan	TE088609–0	06/22/04
Newhall Farm Seasonal Crossings	TE018244–0	09/17/04
City of Carlsbad, Multiple Habitat Conservation Plan	TE022606–0	11/12/04
Permit transfer from Office Max (formerly known as Boise Cascade Corp.) to Boise Central Washington Land & Timber, LLC.	TE098525–0	12/29/04
City of Chula Vista, Multiple Species Conservation Plan	TE075235–0	01/12/05
Shaw Mira Loma LLC	TE099137–0	02/01/05
Southern California Edison, Etiwanda-Mira Loma Reconductor Project	TE103476–0	04/20/05
Whiskey Creek (3 permits)	TE095539–0	04/20/05
	TE095548–0	04/20/05
	TE095550–0	04/20/05
Westlake Ranch LLC	TE096373–0	05/18/05
Safe Harbor Agreements:		
Starck Savanna Restoration	TE079352–0	07/08/04
Pi'iholo Ranch Nene Reintroduction	TE093924–0	09/21/04
Candidate Conservation Agreements with Assurances:		
Southern Idaho Ground Squirrel Programmatic Agreement	TE097632–0	03/17/05

Copies of these permits, the accompanying Habitat Conservation Plan, Safe Harbor Agreement or Candidate Conservation Agreement with Assurances, and associated documents are available upon request. Decision documents for each permit include a Findings and Recommendation; a Biological Opinion; and either a Record of Decision, Finding of No Significant Impact, or an Environmental Action Statement. Associated documents may also include an Implementing Agreement, Environmental Impact Statement, or Environmental Assessment, as applicable.

Dated: June 6, 2005.

David J. Wesley,

Deputy Regional Director, Regional Office, Portland, Oregon

[FR Doc. 05–13520 Filed 7–8–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by August 10, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: Lincoln Park Zoo, Chicago, IL, PRT–103581.

The applicant requests a permit to export biological samples of great hornbill (Buceros bicornis) of captive held specimens to Universita degli Studi di Milano, Italy for the purpose of scientific research.

Applicant: U.S. Geological Survey, National Wildlife Health Center, Honolulu, HI, PRT–105568.

The applicant requests a permit to import multiple shipments of biological samples from wild, captive-held, and captive-born endangered wildlife species for the purpose of scientific research. No animals can be intentionally killed for the purpose of collecting samples. All invasively collected samples can only be collected by trained personnel. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: George F. Gehrman, Powell, WY, PRT–104703.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: June 24, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–13574 Filed 7–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Indian Education Programs; Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed renewal of information collections.

SUMMARY: The Bureau of Indian Affairs (BIA) is giving public notice that we will be requesting extension of four currently approved information collections. The collections are: 1076–0096, Education Contracts under JOM Act Applications and Regulatory Requirements, 25 CFR 273.50; 1076–0114, Application for admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute; 1076–0122, Data Elements for Student Enrollment in Bureau-Funded Schools; and 1076–0134, Student Transportation Form, subpart G, 25 CFR part 39. These collections help support the educational efforts for Native American students from elementary through post-secondary levels. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before September 9, 2005.

ADDRESSES: Send comments to Edward Parisian, Director Office of Indian Education Programs, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240, (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection requests from Glenn Allison, Education Specialist (ISEP), (202) 208–3628, Garry Martin, Chief Education Planning, (202) 208–3478 or Keith Neves, Education Planning Specialist, (202) 208–3601.

SUPPLEMENTARY INFORMATION:

I. Education Contracts Under Johnson-O'Malley Act Application and Regulatory Requirements

The regulatory authority allowing a collection of information to be conducted is provided in 25 CFR 273.50, as authorized by the Act of April 16, 1934 (48 Stat. 596). The collection of information is conducted annually, by tribes, Indian organizations and school districts who have contracted with the Bureau to administer a Johnson-O-Malley Program. The purpose of the collection is to provide for an accounting of expenditures and to measure effectiveness of an educational plan outlining educational objectives for Indian students.

II. Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute

The Bureau of Indian Affairs (BIA) is providing the admission forms for Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute for 60-day review and comment period. These admission forms are useful in determining program eligibility of American Indian and Alaska Native students for educational services. The forms have been changed to include a Paperwork Reduction Act and Public Burden statements, a Privacy Act statement, and an Effects of Non-Disclosure statement. These forms are utilized pursuant to Blood Quantum Act, Public Law 99–228; the Snyder Act, chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, chapter 180, page 91, For Support of Schools, July 4, 1884.

III. Data Elements for Student Enrollment in Bureau-Funded Schools

The data elements for enrollment information collected is for attendance in elementary and secondary schools funded by the Bureau of Indian Affairs and to address the criteria for attendance that was changed by the passage of Public Law 99–228. The Secretary of the Interior, through the Bureau of Indian Affairs, is required to provide educational services to federally recognized Indians and Alaskan Natives. Beginning with the Snyder Act and continuing with Public Laws 93–638, 95–561, 100–297, and 103–382, Congress has enacted legislation to ensure Indians receive educational opportunities. The data elements for enrollment information collected is for attendance in elementary and secondary schools operated and funded by the Bureau of Indian Affairs and to address the criteria for attendance that was changed by the passage of Public Law 99–228. This act allows for the tuition free attendance of any Indian student who is a member of a federally recognized tribe or is ¼ degree blood quantum descendant of a member of such tribes, as well as for dependents of Bureau, Indian Health Service or tribal government employees who live on or near the school site.

IV. Student Transportation Form

The Student Transportation regulations in 25 CFR part 39, subpart G, contain the program eligibility and criteria, which govern the allocation of transportation funds. Information collected from the schools will be used to determine the rate per mile. The information collection is needed to provide transportation mileage for Bureau-funded schools, which will receive an allocation of transportation funds.

V. Request for Comments

The Bureau of Indian Affairs requests your comments on these collections concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. A valid OMB Control Number is one with a current expiration date.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m. to 4 p.m., e.s.t. Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

VI. Information Collection Abstract

(1) Education Contracts under Johnson-O'Malley Act Application and Regulatory Requirements:

Title: Education Contracts under Johnson O'Malley Act Application and Regulatory Requirements, 25 CFR 273.50.

OMB Control Number: 1076–0096.

Type of Review: Renewal.

Brief Description of collection: The information collected helps BIA determine the financial assistance needed by eligible Indian students to meet their specialized and unique educational needs including programs supplemental to the regular school program and school operational support in order to maintain established educational standards.

Respondents: Tribes, Tribal Organizations, School District education program administrators.

Number of Respondents: 360.

Estimated Time per Response: 5 hours per response × 360 annual responses = 1,800 hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 1,800 hours.

(2) Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute:

Title: Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute, 25 CFR 273.50.

OMB Control Number: 1076–0114.

Type of Review: Renewal.

Brief Description of Collection: These eligibility application forms are necessary to determine a student's eligibility for educational services. This collection is at no cost to the public.

Respondents: Students attending, or seeking admission, to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

Number of Respondents: 3,943.

Estimated Time per Response: Approximately ½ of an hour per response × 3,943 annual responses = 2,214 hours.

Frequency of Response: Initial enrollment.

Total Annual Burden to Respondents: 2,214 hours.

(3) Data Elements for Student Enrollment in Bureau-funded Schools:

Title: Data Elements for Student Enrollment in Bureau-funded Schools, 25 CFR Part 39.

OMB Control Number: 1076–0122.

Type of Review: Renewal.

Brief Description of Collection: Information necessary to enroll students; information is provided to obtain or retain a benefit, specifically, education.

Respondents: Students or parents provide the information to the registrars.

Number of Respondents: Approximately 48,000 students located at 184 Bureau funded school locations.

Estimated Time per Response: ¼ of an hour per response × 48,000 annual responses = 12,000 hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 12,000 hours.

(4) Student Transportation Form:

Title: Student Transportation Form, Subpart G, 25 CFR 39.

OMB Control Number: 1076–0134.

Type of Review: Renewal.

Brief Description of Collection: This collection provides pertinent data concerning the schools' bus transportation mileage and related long distance travel mileage to determine funding for school transportation.

Respondents: Contract and Grant Schools; Bureau operated schools. About 121 tribal school administrators annually gather the necessary information during student count week.

Number of Respondents: 121.

Estimated Time per Response: At an average of 6 hours each 121 reporting schools = 726 hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 726 hours.

Dated: June 30, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–13527 Filed 7–8–05; 8:45 am]

BILLING CODE 4310–6W–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1094 (Preliminary)]

Metal Calendar Slides From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1094 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of metal calendar slides,[1] provided for in subheading 7326.90.10 of the Harmonized Tariff Schedule of the United States, that are

[1] The imported products subject to this investigation are "V" 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"), with a thickness from 0.19 mm to 0.23 mm, in lengths from 152 mm to 915 mm, in widths from 12 mm to 29 mm, that have been coated/primed, 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 and charts, or the hanger can be stamped from the metal body of the slide itself. These metal calendar slides are classified under HTS subheading 7326.90.10 (Other articles of iron and steel: Forged or stamped; but not further worked: Other: Of tinplate). This HTS number is provided for convenience and U.S. Customs purposes. The written description of the scope of this investigation is dispositive.

alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 15, 2005. The Commission's views are due at Commerce within five business days thereafter, or by August 22, 2005.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: Effective June 29, 2005.

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.—This investigation is being instituted in response to a petition filed on June 29, 2005, by Stuebing Automatic Machine Company, Cincinnati, Ohio.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 20, 2005, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Joanna Lo (202–205–1888) not later than July 15, 2005, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 25, 2005, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). 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).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–13504 Filed 7–8–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–12]

Steel: Evaluation of the Effectiveness of Import Relief

AGENCY: International Trade Commission.

ACTION: Revised schedule for hearings, briefs, and submissions in the subject investigation.

DATES: Effective Date: July 5, 2005.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202) 205–3057, 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: The Commission published its notice of investigation in this proceeding in the **Federal Register** on April 4, 2005 (70 FR 17113), and in that notice set out a schedule that included four days for public hearings and deadlines for filing pre-hearing and post-hearing briefs. In that notice the Commission asked that requests to appear at the hearings be filed in writing with the Secretary to the Commission by June 20, 2005, "so that

the Commission may determine the level of interest in the hearings."

Based on the requests filed by parties and non-parties, the Commission has revised its schedule to consolidate the previously announced four days of public hearings to a one-day hearing on July 21, 2005, and to change the deadline for filing post-hearing briefs and written statements. The revised schedule is as follows: (1) The Commission will hold its public hearing in this investigation at 9:30 a.m. on July 21, 2005, at the U.S. International Trade Commission Building; (2) the deadline for filing pre-hearing briefs will remain July 12, 2005; and (3) the deadline for filing post-hearing briefs is changed to July 29, 2005. Any person who has not entered an appearance as a party to the investigation may submit a written statement concerning matters to be addressed in the report on or before July 29, 2005. All other dates remain the same as announced in the original notice of investigation, including the dates for release of the pre-hearing staff report and the pre-hearing conference (if needed).

For further information concerning this investigation see the Commission's notice cited above and 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).

Authority: This investigation is being conducted under the authority of section 204(d) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: July 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–13528 Filed 7–8–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 002–2005]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice proposes to establish a new Departmentwide system of records entitled, "Department of Justice Regional Data Exchange System (RDEX)" DOJ–012. This new system of records consists of unclassified criminal law enforcement records collected and produced by the following Department of Justice components: the Federal Bureau of Prisons; the United States Marshals Service; and the State of Washington field offices of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Drug Enforcement Administration, and the Federal Bureau of Investigation. This information is being contributed to and maintained in this system as part of the Department of Justice's Law Enforcement Information Sharing Program (LEISP). A principal purpose of LEISP is to ensure that Department of Justice criminal law enforcement information is available for users at all levels of government so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security. RDEX furthers this purpose by consolidating certain law enforcement information from other Department of Justice systems in order that it may more readily be available for sharing with other law enforcement entities. As an initial pilot program, RDEX will serve as a technical interface between the Department and federal, state, and local members of the Northwest Law Enforcement Information Exchange, which is a regional law enforcement information sharing system. Because this system consists of information from other existing Department of Justice systems, the routine uses applicable to this system are substantially the same as those that apply to those systems and that have previously been published by the individual Department of Justice components that contributed the information.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 10, 2005. The public, OMB, and Congress are invited to submit any comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, United States Department of Justice, Washington, DC, 20530–0001 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report of this new system of records to OMB and Congress.

Dated: June 30, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

DOJ–012

SYSTEM NAME:

Department of Justice Regional Data Exchange System (RDEX)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

United States Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001, and other Department of Justice offices throughout the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include all individuals who are referred to in potential or actual cases or matters of concern to the Federal Bureau of Prisons (BOP); the United States Marshals Service (USMS); and the State of Washington field offices of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI). Because the system contains audit logs regarding queries, individuals who use the system to conduct such queries are also covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of unclassified criminal law enforcement records collected and produced by the BOP; the USMS; and the State of Washington field offices of the ATF, DEA, and FBI; including: investigative reports and witness interviews from both open and closed cases; criminal event data (*e.g.*, characteristics of criminal activities and incidents that identify links or patterns); criminal history information (*e.g.*, history of arrests, nature and disposition of criminal charges, sentencing, confinement, and release); and identifying information about criminal offenders (*e.g.*, name, address, date of birth, birthplace, physical description). The system also consists of audit logs that contain information regarding queries made of the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system was established and is maintained pursuant to 28 U.S.C. 533 and 534; Presidential Decision Directives 39 and 62; and Executive Order 13,356.

PURPOSE OF THE SYSTEM:

This system is maintained for the purpose of ensuring that Department of

Justice criminal law enforcement information is available for users at all levels of government so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security. RDEX furthers this purpose by consolidating certain law enforcement information from other Department of Justice systems in order that it may more readily be available for sharing with other law enforcement entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed from this system as follows:

(1) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

(2) To a governmental entity lawfully engaged in collecting criminal law enforcement, criminal law enforcement intelligence, or national security intelligence information for law enforcement or intelligence purposes.

(3) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(4) In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(5) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(6) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(7) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(8) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(9) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

(10) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(11) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(12) To any person or entity if deemed by the Department to be necessary in order to elicit information or cooperation from the recipient for use by the Department in the performance of an authorized law enforcement activity.

(13) To any individual, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a threat.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records in this system are stored primarily in electronic form. However, some information may also be stored in paper form.

RETRIEVABILITY:

Records are retrieved by the name and/or other identifier(s) of the individual.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. Records and technical equipment are maintained in buildings with restricted access. Passwords, password protection identification features, and other system protection methods also restrict access to information in this system. Only Department of Justice personnel and other users who are members of law enforcement agencies, have undergone background and criminal history checks, and have received appropriate training will be permitted access to the system; and such access is limited to those who have an official need for access in order to perform their duties.

RETENTION AND DISPOSAL:

Records in this system in all formats are maintained and disposed of in accordance with appropriate authority of the National Archives and Records Administration.

SYSTEM MANAGERS AND ADDRESSES:

For the RDEX system generally: Chief Information Officer, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

For ATF information: Associate Director, Office of Strategic Intelligence and Information, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

For BOP information: Assistant Director, Correctional Programs Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

For DEA information: Assistant Administrator, Operations Division, Drug Enforcement Administration, Freedom of Information Section, Washington, DC 20537.

For FBI information: Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

For USMS information: Assistant Director, Investigative Services Division, United States Marshals Service, Washington, DC 20530–1000.

NOTIFICATION PROCEDURES:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

Requests for access may be made by appearing in person or by writing to the appropriate system manager at the address indicated in the System Managers and Addresses section, above. The envelope and letter should be clearly marked "Privacy Act Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from access as described

in the section entitled "Exemptions Claimed for the System." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination of whether a record may be accessed will be made after a request is received.

Although no specific form is required, forms may be obtained for this purpose from the FOIA/PA Mail Referral Unit, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001, or on the Department of Justice Web site at *http://www.usdoj.gov/04foia/att_d.htm.*

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information maintained in the system should direct their requests to the appropriate system manager at the address indicated in the System Managers and Addresses section, above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from contesting record procedures as described in the section entitled "Exemptions Claimed for the System." An individual who is the subject of a record in this system may seek amendment of any records that are not exempt. A determination of whether a record is exempt from amendment will be made after a request is received.

RECORD SOURCE CATEGORIES:

Records in RDEX come directly from the criminal law enforcement files and records systems of the participating Department of Justice components (ATF, BOP, DEA, FBI, and USMS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e), and are published in today's **Federal Register**.

[FR Doc. 05–13552 Filed 7–8–05; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Greater Pittsburgh Board of Realtors; Motion of the United States for Modification of the Final Judgment

Notice is hereby given that a Motion for Modification of the Final Judgment, proposed Final Judgment and proposed Order have been filed with the United States District Court for the Western District of Pennsylvania. *United States of America* v. *Greater Pittsburgh Board of Realtors*, Civil Action No. 72–499. The Realtors Association of Metropolitan Pittsburgh ("RAMP"), the successor to the Greater Pittsburgh Broad of Realtors, is bound by a Final Judgment that settled allegations defendants published, circulated, and adhered to agreed-upon uniform rates of commissions and fees in violation of the Sherman Act. The Final Judgment was entered on May 21, 1973 and prohibited the defendants from agreeing on prices and from publishing any rate or commission for the sale of real estate.

RAMP publishes *Pittsburgh Homes Guide by Realtors*, a real estate listings magazine. Member real estate professionals purchase advertising to describe the services they offer. At least one firm offering real estate brokerage services has attempted to purchase advertising that would contain information about discounted fees. RAMP has informed that firm that it will not published the advertising because the Final Judgment prohibits it. The modified consent decree would strike that provision and add a provision making it clear that RAMP can publish information about real estate commissions and fees set by an individual broker. If approved by the Court, the new decree will allow the public access to more information about different kinds of fees charged by real estate professionals who help sell homes. The decree will still serve its original purpose: to enjoin RAMP and its member brokers from agreeing on prices. Copies of the Motion, proposed Final Judgment and Order are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., on the Internet at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the Western District of Pennsylvania, 829 United States Courthouse, 7th and Grant Street, Pittsburgh, PA 15219.

Public comment is invited within 30 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John R. Read, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th ST., NW., Suite 300, Washington, DC 20530, (telephone: (202) 616–5935).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the Western District of Pennsylvania

United States of America, Plaintiff, v. Greater Pittsburgh Board of Realtors, East Suburban Multilist Real Estate Brokers, Inc., South Hills Multilist, Inc., North Suburban Multilist, and Greater Pittsburgh Multilist Council, Defendants.

Civil No. 72–499

Filed:

Entered:

The United States moves this Court to modify the Final Judgment entered in this case.

I. Background

The Complaint, filed on June 21, 1972, alleged that the defendants violated Section 1 of the Sherman Act by agreeing to fix commission rates in connection with the sale of property in the Pittsburgh metropolitan area. The complaint alleged, *inter alia*, that the defendants published, circulated, and adhered to the agreed-upon uniform rates of commissions and fees. On April 16, 1973, the United States filed its proposed consent judgment. The Court entered the judgment on May 21, 1973.

The Realtors Association of Metropolitan Pittsburgh ("RAMP") is the successor-in-interest to defendant Greater Pittsburgh Board of Realtors, RAMP is a local real estate board which governs the membership and professional responsibility of the Realtors who list and show properties in the Pittsburgh metropolitan area. Pursuant to section III of the Final Judgment, the consent decree is binding on RAMP.

Traditionally, real estate agents have charged sellers of property a commission based on a percentage of the sales price of the property sold. The majority of real estate agents will price their services in this manner. However, some real estate agents are now using alternative business models and charging flat fees for their services. Typically, these models offer property sellers savings *vis a vis* traditional commission based services. At least one discount broker, Help-U-Sell Dixie Realty ("HUS"), has entered the Pittsburgh market with an alternative business model.

In order to educate consumers about the availability of alternatively priced services, discount brokers need to advertise information about their fees and service plans. RAMP currently publishes *Pittsburgh Homes Guide by Realtors* ("*Homes Guide*"), a real estate listings magazine. The magazine contains advertisements purchased by member real estate professionals with information about available homes for sale and the services they provide. *Homes Guide* is the only real estate advertising publication covering all of the Pittsburgh metropolitan area. *Homes Guide* is a popular vehicle for Pittsburgh area real estate brokers to advertise their services to consumers and is significantly less expensive than newspaper advertising.

HUS has attempted to advertise fees and potential savings in *Homes Guide*. RAMP has informed HUS that it will not publish advertising containing commission rates or cost savings claims because the Final Judgment prohibits such publication. Section IV(C) of the Final Judgment enjoined the defendants from "[a]dopting, suggesting, publishing or distributing any rate or amount of commissions or other fees for the sale, lease or management of real estate. * * *"

Section IV(C) of the Final Judgment served a useful purpose and was entered to remedy the defendants' alleged price fixing which artificially raised prices above their competitive level. The intent of the decree was to eliminate collusive behavior and promote competitive commissions among real estate brokers. With the growth of discount brokerage services, however, the provision no longer serves competition and has the effect of restricting legitimate advertising of competitive rates. The United States, therefore, moves to eliminate the words "publishing" and "distributing" from section IV(C) of the judgment so that RAMP is not prohibited from publishing competing commission rates.

Because IV(C), due to changed circumstances, now serves principally to inhibit competition, the United States moves to modify section IV(C) to enjoin the defendants only from:

> (C) Adopting or suggesting any rate or amount of commissions or other fees for the sale, lease or management of real estate, provided, however, that surveys and studies may be conducted, published and distributed where not forbidden by Paragraph D of this Section IV of the Modified Final Judgment.

To further clarify the decree, the United States moves to amend paragraph IX, which begins, "[n]othing in this final Judgment shall be deemed to prohibit," to add the following language:

> (C) The publication of advertisements that include the commission rates of individual brokers, provided that the Defendants shall not adopt or suggest rates as proscribed by Section IV(C).

To clarify that RAMP has not consented to the Modified Final Judgment, the United States moves to amend the preamble paragraphs of the Final Judgment. Specifically, the United States moves to replace each instance of the phrase "this Final Judgment" with "the original Final Judgment." In addition, the United States seeks to add the clause, "and upon the United States' sole motion to modify the Final Judgment.

II. The Legal Standards Applicable to Modification of an Antitrust Judgment With the Consent of the Government

This Court has jurisdiction to modify the Final Judgment pursuant to Paragraph XI of the Judgment, the Federal Rules of Civil Procedure, Fed. R. Civ. P. 60(b)(5), and "principles inherent in the jurisdiction of the chancery." *United States* v. *Swift & Co.*, 286 U.S. 106, 114 (1932); *see also In re Grand Jury Procedures*, 827 F. 2d 868, 873 (2d Cir. 1987). Where, as here, the United States, as plaintiff, unilaterally proposes a modification to a consent judgment and the modification does not further restrict the defendants' rights or actions, the Court should apply the same standard as when the United States and defendants both consent to a modification. When the government unilaterally seeks to modify a decree, the court evaluates the modifications in light of both how the additional burdens imposed by the proposed modifications affect the defendant's due process rights and the public interest. *Cf. Duran* v. *Elrod*, 760 F. 2d 756, 759 (7th Cir. 1985). However, where both the government and the defendant consent to modifications, the court focuses solely on the public interest aspects of the calculus. *See, e.g., United States* v. *W. Elec. Co.*, 993 F. 2d 1572, 1576 (D.C. Cir. 1993); *United States* v. *W. Elec. Co.*, 900 F. 2d 283, 305 (D.C. Cir. 1990); *United States* v. *Loew's, Inc.*, 783 F. Supp. 211, 213 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 869–70 (S.D.N.Y. 1987) (citing *United States* v. *Swift & Co.*, 1975–1 Trade Cas. (CCH) ¶ 60.201, at 65.702–03 (N.D. III 1975)). Here, the proposed modifications do not further impinge the defendant's rights, so the court need only evaluate the proposed modifications in light of the public interest. Thus, the issue before the Court is whether modifications is in the public interest. This is the same standard that a district court applies in reviewing an initial consent judgment in a government antitrust case. The judiciary's role in determining whether the initial entry of a consent decree is in the public interest, absent a showing of abuse of discretion or a failure to discharge its duty on the part of the government, is to "inquire * * * into the purpose, meaning, and efficacy of the decree." *United States* v. *Microsoft*, 56 F. 3d 1448, 1462 (D.C. Cir. 1995).

The purpose of the antitrust laws is to protect competition. *See, e.g., United States* v. *Penn-Olin Chem. Co.*, 378 U.S. 158, 170 (1964) (antitrust laws reflect "a national policy enunciated by the Congress to preserve and promote a free competitive economy"). The relevant question before the court therefore is whether modification of the Judgment would serve the public interest in "free and unfettered competition as the rule of trade." *N. Pac. Ry Co.* v. *United States*, 356 U.S. 1, 4 (1958) *see also United States* v. *W. Elec. Co.*, 900 F. 2d at 308; *United States* v. *Am Cyanamid*, 719 F.2d 558, 565 (2d Cir. 1983), *cert denied*, 405 U.S. 1101 (1984); *United States* v. *Columbia Artists Mgmt.*, 66 F. Sup. 865, 870 (S.D.N.Y. 1987). Here, the Court should modify the decree as requested because it will remove a legal roadblock to brokers who want to advertise lower commissions to the benefit of home buyers and sellers.

Although the proposed modification is designed to allow RAMP more freedom in choosing what it can publish in its magazine, RAMP has declined to join the United States in its motion to modify the Final Judgment and has failed to offer an explanation to the United States as to why the public interest is served by the restriction.

III. The Proposed Modification Satisfies the Public Interest Standard

The purpose behind the consent decree's prohibition on advertising stemmed from the publication of prices after the defendants had agreed on commission rates among themselves. The primary concern with the conduct that led to the decree was the agreement on prices, not the publication of unilaterally determined prices. Modifying the consent decree as the United States' proposes will permit RAMP to allow price advertising but will still enjoin RAMP from "adopting" or "suggesting" fees for real estate services.

Further, "[r]estriction on [truthful] advertising are a form of output restriction in the production of

information useful to consumers." [1] Modifying the consent decree as the United States proposes will satisfy the public interest standard because price competition will be enhanced by allowing consumers access to more information about different prices charged by individual real estate agents. Further, the public will benefit from access to information about differing rate structures and fees charged by different agents and such information will reduce search costs by consumers seeking real estate services.

IV. Public Comment Period

The United States does not believe that this modification is subject to the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. 16(b)–(h). However, in this case, the United States intends to follow the comment procedures outlined in the attached Explanation of Procedures.

It is the policy of the United States that an appropriate effort be taken to notify potentially interested persons of the pendency of the motion. In this case, the United States will publish a notice announcing the motion to modify in the **Federal Register** and the *Pittsburgh Post Gazette*, summarizing the motion and the proposed modified final judgment, describing the procedures for obtaining copies of the relevant papers and inviting the submission of comments within 30 days of publication. Within a reasonable time after the comment period, the United States will file any comments it receives and its responses with the Court. The United States requests that the Court not rule upon the motion until the United States has filed any comments and its responses or has notified the Court that no comments were received. The procedure is designed to notify all potentially interested persons that a motion to modify the Final Judgment is pending and provide them adequate opportunity to comment thereon.

V. Conclusion

For the foregoing reasons, the United States requests that the Court enter the proposed Order Modifying Judgment to enjoin, the defendants from:

(C) Adopting or suggesting any rate or amount of commissions or other fees for the sale, lease management of real estate; provided, however, that surveys and studies may be conducted, published and distributed where not forbidden by Paragraph D of this Section IV of the Modified Final Judgment.

and to amend paragraph IX, which begins, "[n]othing in this Final Judgment shall be deemed to prohibit," to add the following language:

(C) The publication of advertisements that include the commission rates of individual brokers, provided that the Defendants shall not adopt or suggest rates as proscribed by Section IV(C).

and to amend the preamble paragraphs to state:

Plaintiff, United States of America, having filed its Complaint herein on June 21, 1972, and Plaintiff and Defendants by their respective attorneys, having consented to the making and entry of the original Final Judgment, without admission by any party in respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties to the original Final Judgment, and upon the United States' sole motion to modify the Final Judgment, it is hereby ORDERED, ADJUDGED and DECREED as follows:

Dated this 28th day of June, 2005.

Respectfully Submitted,

For Plaintiff United States of America

Leslie Peritz,
PA Bar No. 87539, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Ste. 3000, Washington, DC 20530, 202–514–9602.

Erika L. Meyers,
Joan Hogan,
Litigation III Section, Antitrust Division, U.S. Department of Justice, 325 7th St., NW., Ste. 300, Washington, DC 20530, 202–514–8374.

United States District Court for the Western District of Pennsylvania

United States of America, Plaintiff, v. Greater Pittsburgh Board of Realtors, East Suburban Multilist Real Estate Brokers, Inc., South Hills Multilist, Inc., North Suburban Multilist, and Greater Pittsburgh Multilist Council, Defendants.

Civil No. 72–499

Filed

Entered:

Modified Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 21, 1972, and Plaintiff and Defendants by their respective attorneys, having consented to the making and entry of the original Final Judgment, without admission by any party in respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

Now, therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties to the original Final Judgment, and upon the United States' sole motion to modify the Final Judgment, it is hereby

Ordered, adjudged and decreed as follows:

I

For the purposes of this case, this Court has jurisdiction over the subject matter of this action and of the parties hereto. For purposes of this case, the Complaint states claims upon which relief may be granted against the Defendants under Section I of the Act of Congress of July 2, 1890, as amended (15 U.S.C. 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Multiple Listing Service" shall mean any plan or program operated by a Defendant for the circulation of real property listings among members of such Defendant; and

(B) "Person" shall mean any individual, partnership, firm, association, corporation, real estate agency, member of the Defendants or other business or legal entity.

III

The provisions of this Final Judgment applicable to each of the Defendants shall also apply to each of their respective subsidiaries, successors and assigns; to each of their directors, officers, agents and employees, when acting in such respective capacities; and, in addition, to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Each of the Defendants, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained from:

(A) Fixing, establishing or maintaining any rate or amount of commissions or other fees for the sale, lease or management of real estate;

(B) Urging, recommending or suggesting that any of its members or any other person adhere to any rate or amount of commissions or other fees for the sale, lease or management of real estate;

(C) Adopting or suggesting any rate or amount of commissions or other fees for the sale, lease or management of real estate; provided, however, that surveys

[1] Philip Areeda, *Antitrust Law*, ¶ 2023b1, 184, Volume XI (2nd Ed.).

and studies may be conducted, published and distributed where not forbidden by Paragraph D of this Section IV of this Final Judgment;

(D) Conducting, publishing or distributing, for a period of ten (10) years from the date of entry of this Final Judgment, any survey or study relating to rates or amounts of commissions or other fees for the sale, lease or management of real estate or ranges thereof; and thereafter where the purpose or effect of any such survey or study would be to fix, establish, stabilize or maintain any rate or amount or ranges of commissions or other fees for the sale, lease or management of real estate;

(E) Adopting, adhering to, maintaining, enforcing or claiming any rights under any by-law, rule, regulation, plan or program which restricts or limits the right of any of its members or any other real estate dealer in accordance with his own business judgment to agree with his client on any commissions or fees for the sale, lease or management of real estate;

(F) Taking any punitive action against any of its members where such action is based upon the member's failure or refusal to adhere to any rate or amount of commissions or fees for the sale, lease or management of real estate;

(G) Interfering with or limiting its members from maintaining part-time salesmen in their employ, or interfering with the terms of the relationship between its members and their salesmen where to do so would be contrary to or inconsistent with any provision of this Final Judgment;

(H) Fixing, maintaining, suggesting or enforcing any division or split between a selling broker and listing broker of commissions or other fees for the sale, lease or management of real estate;

(I) Refusing to receive, process or distribute a listing of any real estate by any member in a Multiple Listing Service because of the rate or amount of commissions or other fees for the sale, lease or management of real estate thereon; and

(J)(1) Boycotting, agreeing to boycott, or threatening to boycott any person; and/or (2) refusing to do business with any person where such refusal would be contrary to or inconsistent with any provision of this Final Judgment.

V

Each Defendant is ordered to eliminate from all rules, by-laws, regulations, contracts and other forms, any schedule of rates or amounts of commissions or other fees for the sale, lease or management of real estate and any provision requiring or suggesting a fixed division of such fees between a listing broker and a selling broker. Each Defendant is also ordered to insert in all rules, by-laws, regulations, contract and other forms a statement, prominently situated in all capital letters, that rates of commissions or other fees for the sale, lease or management of real estate shall be negotiable between a broker and his client.

VI

(A) Defendant Greater Pittsburgh Board of Realtors shall, upon application made, admit to membership any person duly licensed by the appropriate governmental authority to sell real estate in Pennsylvania as a real estate salesman or as a real estate broker and each of the other Defendants shall, upon application made, admit to membership any person duly licensed by the appropriate governmental authority to sell real estate in Pennsylvania as a real estate broker; provided, however, that the Defendants may adopt and maintain reasonable and nondiscriminatory written requirements for membership, not otherwise inconsistent with the provisions of this Final Judgment;

(B) Each of the Defendants is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its by-laws, rules and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment; and

(C) Upon amendment of its by-laws, rules and regulations as aforesaid, each Defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any right under any by-law, rule or regulation which is contrary to or inconsistent with any of the provisions of this Final Judgment.

VII

Each of the Defendants is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its members and to the persons listed in Schedule (A) attached to this Final Judgment and within one hundred and twenty (120) days from the aforesaid date of entry to file with Clerk of this Court, an affidavit setting forth the fact and manner of the compliance with this Section VII and Sections V and VI (B) above.

VIII

For a period of ten (10) years from the date of entry of this Final Judgment, each Defendant is ordered to file with the Plaintiff on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Defendants' appropriate officers, directors, agents and employees to its and their obligations under this Final Judgment.

IX

Nothing in this Final Judgment shall be deemed to prohibit:

(A) The publication or circulation by a Multiple Listing Service of information, in connection with bona fide efforts to sell real estate, concerning the commission which a broker has agreed upon with his client, or the percentage division thereof which a listing broker has agreed to pay a selling broker, arrived at in accordance with this Final Judgment; or

(B) The adoption and enforcement by a Multiple Listing Service of rules requiring (i) that neither the commission nor the percentage division thereof, arrived at in accordance with this Final Judgment and specified for a listing not to exceed a reasonable period, may be altered without the consent of both the listing and the selling broker, and (ii) that the recipient of any such commission promptly pay over to the listing or selling broker, as appropriate, the percentage division of the commission as specified or as otherwise agreed upon by the listing and selling broker; or

(C) The publication of advertisements that include the commission rates of individual brokers, provided that the Defendants shall not adopt or suggest rates as proscribed in Section IV(C).

X

For the purpose of determining or securing compliance with this Final Judgment:

Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust division, and on reasonable notice to a defendant made to its principal office, be permitted, subject to any legally recognized privilege, and subject to the presence of counsel if so desired:

(1) Access during its office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of such defendant relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant, and without restraint or interference from it to interview officers or employees of such defendant regarding any such matters.

Upon such written request, each defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

Jurisdiction is retained by this curt for the purpose of enabling any of the parties to this Final Judgment to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith; and for the punishment of violations thereof.

Dated:

United States District Judge

[FR Doc. 05–13532 Filed 7–8–05; 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—AAF Association, Inc.

Notice is hereby given that, on June 15, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notification 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, Visible World, Inc., New York, NY has been added as a party to this venture. Also, Cakewalk, Boston, MA; Eastman Kodak, Rochester, NY; S/4/M Solutions for Media, Cologne, GERMANY; and SGI, Mountain View, CA have withdrawn as parties to this venture. The following member has changed its name: Discreet Logic to Autodesk Media and Entertainment, Montreal, Quebec, CANADA.

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 AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, 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 June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 10, 2005. A notice was published in the **Federal Register** pursuant to Seciton 6(b) of the Act on April 1, 2005 (70 FR 16843).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13530 Filed 7–8–05; 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—Cable Television Laboratories, Inc.

Notice is hereby given that, on June 8, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Cable Television Laboratories, Inc. ("CableLabs") 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, CCS, LLC, d/b/a Community Cable Service, Spokane, WA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs 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 September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on February 17, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 25, 2005 (70 FR 15351).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13529 Filed 7–8–05; 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—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on June 17, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Test 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, Matsushita Electric Works, Osaka, JAPAN; Pintail Technologies, Plano, TX; and W.L. Gore (individual member), Elkton, MD have been added as parties to this venture. Also, Artest Corporation, Sunnyvale, CA; Freescale Semiconductor (formerly Motorola), Austin, TX; Invoys Corporation, Pleasanton, CA; and Pragmatics Technologies, San Jose, CA 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 Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test 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 June 17, 2003 (69 FR 35913).

The last notification was filed with the Department on March 30, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 26, 2005 (70 FR 21444).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13531 Filed 7–8–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 5, 2005.

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 email: *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: Revision of a currently approved collection.

Title: American Time Use Survey (ATUS).

OMB Number: 1220–0175.

Frequency: One time per respondent.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 13,800.

Number of Annual Responses: 13,800.

Estimated Time Per Response: 15 to 20 minutes.

Total Burden Hours: 4,600.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing. Services): $0.

Description: The data collected in the American Time Use Survey (ATUS) helps researchers determine how the population in the United States uses its time participating in such activities as paid work, child care, housework, volunteering, socializing, and traveling. ATUS has received wide interest from a variety of users including economist, sociologist, journalist, reporters, and businesspersons. The ATUS information is also expected to be of interest to government policy makers, educators, and lawyers as the survey information has numerous applications. To ensure the widest distribution, BLS will release annual and quarterly data to the public in the form of data tables. Microdata sets containing greater detail than the published tables will also be available, as will special analysis by BLS and outside analysis in *the Monthly Labor Review* (published by BLS) and other publications.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 05–13536 Filed 7–8–05; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Migrant and Seasonal Farmworker (MSFW) Monitoring Report and One-Stop Career Center Complaint/Referral Record: Comments

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed three year extension of the, Services to Migrant and Seasonal Farm Workers Report, ETA Form 5148, and the One-Stop Career Center Complaint/Referral Record, ETA Form 8429 from the current end date of September 30, 2005 to new end date of September 30, 2008.

DATES: Submit comments on or before September 9, 2005.

ADDRESSES: Send comments to: Dennis I. Lieberman, U.S. Department of Labor, Employment and Training Administration, Division of Adults and Dislocated Workers, Office of Workforce Investment, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210 (202–693–3580—not a toll free number); fax: 202–693–3587, and e-mail address: *lieberman.dennis@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Erik Lang, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Division of U.S. Employment Service, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210 (202–693–2916—not a toll free number), fax: 202–603–3015, and e-mail address: *lang.erik@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Employment and Training Administration regulations at 20 CFR 651, 653 and 658 under the Wagner Peyser Act, as amended by the Workforce Investment Act of 1998, set forth requirements to ensure that Migrant and Seasonal Farmworkers (MSFWs) receive services that are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. In compliance with 20 CFR 653.109, the Department of Labor established recordkeeping requirements to allow for the efficient and effective monitoring of State Workforce Agencies' (SWAs) regulatory compliance. The ETA Form 5148, Services to Migrant and Seasonal Farm Workers Report, is used to collect data which are primarily used to

monitor and measure the extent and effectiveness of SWA service delivery to MSFWs. The ETA Form 8429, One-Stop Career Center Compliant Referral Record, is used to collect and document complaints filed by MSFWs and non-MSFWs pursuant to the regulatory framework established at 20 CFR 658.400.

II. Desired Focus of Comments

Currently, the ETA is soliciting comments concerning the proposed three-year extension of the Services to Migrant and Seasonal Farm Workers Report, ETA Form 5148, and the One-Stop Career Center Complaint/Referral Record, ETA Form 8429 from the current end date of September 30, 2005 to new end date of September 30, 2008:

* 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 by including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Extension of a currently approved collection.
Agency: Employment and Training Administration.
Title: Migrant and Seasonal Farmworker (MSFW) Monitoring Report and One-Stop Career Center Complaint/Referral Record.
OMB Number: 1205–0039.
Affected Public: State.
Type of Response: Mandatory.
Number of Respondents: 52.
Annual Responses: 208.
Breakdown of Burden Hours: (See Below).

Complaint Form 8429

1. Recordkeeping

Number of recordkeepers: 639.
Annual hours per record: .5.
Recordkeeper hours: 324.

2. Processing

Annual number of forms: 2,142.
Minutes per form: 8.
Processing hours: 286.

5148 Report

1. Recordkeeping

Number of recordkeepers: 639.
Annual hours per recordkeeper: 1.12.
Recordkeepers hours: 713.

2. Compilation and Reporting

Number of Respondents: 52.
Annual number of reports: 4.
Total number of reports: 208.
Minutes per report: 70.
Recordkeeping hours: 243.
Estimated Total Burden Hours: 1,566.
Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 5, 2005.

Gay M. Gilbert,

Administrator, Office of Workforce Investment.

[FR Doc. 05–13545 Filed 7–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

This notice announces a change in benefit period eligibility under the EB Program for Alaska.

Summary: The following change has occurred since the publication of the last notice regarding the State's EB status:

• Alaska's 13-week insured unemployment rate for the week ending April 9, 2005, fell below the 6.0 percent threshold and was less than 120 percent of the average for the corresponding 13-week period for the prior two (2) years, causing Alaska's EB period that began March 6, 2005, to trigger "off" effective June 4, 2005.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing a claim for EB of the forthcoming end of the EB period and its effect on the individual's rights to EB (20 CFR 615.13(c)(4)).

Signed at Washington, DC, on July 1, 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 05–13544 Filed 7–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based on the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final

decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. For further information contact Barbara Barron at 202–693–9447.

Dated at Arlington, Virginia, this 5th day of July 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2003–082–C.
FR Notice: 68 FR 67217.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use the belt entry as a return air course during two-entry longwall development, and as an intake air course during longwall extraction to insure an adequate quantity of ventilation to dilute and render harmless any methane or other noxious gases that otherwise may accumulate. This is considered an acceptable alternative method for the South Crandall Canyon Mine. MSHA grants the petition for modification for the use of belt air in two-entry longwall mining systems and use of belt air course as a return air course for the South Crandall Canyon Mine with conditions.

Docket No.: M–2003–092–C.
FR Notice: 68 FR 74983.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.352.
Summary of Findings: Petitioner's proposal is to use the belt entry as a return air course during longwall development. This is considered an acceptable alternative method for the South Crandall Canyon Mine. MSHA grants the petition for modification for use of belt air in two-entry longwall mining systems and use of belt air course as a return air course for the South Crandall Canyon Mine with conditions.

Docket No.: M–2004–046–C.
FR Notice: 69 FR 69414.
Petitioner: J & J Coal Company.
Regulation Affected: 30 CFR 75.335.
Summary of Findings: Petitioner's proposal is to construct seals from wooden materials of moderate size and weight; designing the seals to withstand a static horizontal pressure in the range of 10 psi; and installing a sampling tube only in the monkey (higher elevation) seal. This is considered an acceptable alternative method for the Rocky Top Mine. MSHA grants the petition for modification for seals installed in the Rocky Top Mine with conditions.

Docket No.: M–2004–048–C.
FR Notice: 69 FR 71434.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal is to use non-permissible submersible pumps in bleeder and return entries and sealed areas of the Blacksville No. 2 Mine under specific terms and conditions. This is considered an acceptable alternative method for the Blacksville No. 2 Mine. MSHA grants the petition for modification for the use of low- and medium-voltage, three phase, alternating-current submersible pump(s) installed in return and bleeder entries and sealed areas in the Blacksville No. 2 Mine with conditions.

Docket No.: M–2004–050–C.
FR Notice: 69 FR 76959.
Petitioner: W.A. Mining, Inc.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to utilize coal preparation plant refuse and scalp rock material to backfill the existing mine portal face-ups. The backfill will eliminate the existing 60-foot highwall and reclaim four mine entries into the abandoned Caretta No. 2 Mine. This is considered an acceptable alternative method for the Caretta No. 2 Mine. MSHA grants the petition for modification for the Caretta No. 2 Mine with conditions.

Docket No.: M–2004–053–C.
FR Notice: 70 CFR 3566.
Petitioner: Six M Coal Company.
Regulation Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal is to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices. The petitioner proposes to instead use increased rope strength and secondary safety rope connections in place of such devices. This is considered an acceptable alternative method for the No. 1 Slope Mine. MSHA grants the petition for modification for the use of the hoist conveyance (gunboat) without safety catches in the No. 1 Slope Mine with conditions.

Docket No.: M–2005–002–C.
FR Notice: 70 FR 5488.
Petitioner: The Falkirk Mining Company.
Regulation Affected: 30 CFR 77.803.
Summary of Findings: Petitioner's proposal is to use an alternative method of compliance when raising or lowering the boom mast at construction sites during initial dragline assembly. This is considered an acceptable alternative method for the Falkirk Mine. MSHA grants the petition for modification for dragline boom or mast raising, lowering, assembling, disassembling, or during major repairs that require raising or lowering the dragline boom or mast by the on-board generators for the Falkirk Mine with conditions.

Docket No.: M–2005–009–C.
FR Notice: 70 FR 12906.
Petitioner: Eastern Associated Coal Corporation.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to utilize coal preparation plant refuse and scalp rock material to backfill the four existing mine portals and face-up of the permanently abandoned Long Branch Energy Mine No. 20. The backfill will eliminate the existing 45-foot highwall and reclaim the area of the four mine entries into the abandoned Long Branch Energy Mine No. 20 Mine. This is considered an acceptable alternative method for the Kopperston Refuse Impoundment site. MSHA grants the petition for modification for the Kopperston Refuse Impoundment Site with conditions.

Docket No.: M–2005–013–C.
FR Notice: 70 FR 15898.
Petitioner: Webster County Coal, LLC.
Regulation Affected: 30 CFR 75.1101–1(b).
Summary of Findings: Petitioner's proposal is to conduct weekly examinations and functional testing of the deluge fire suppression systems as an alternative method of complying with the existing standard. This is considered an acceptable alternative method for the Dotiki Mine. MSHA grants the petition for modification for the deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles for the Dotiki Mine with conditions.

[FR Doc. 05–13523 Filed 7–8–05; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Kingwood Mining Company, LLC

[Docket No. M–2005–043–C]

Kingwood Mining Company, LLC, Route 1, Box 294C, Newburg, West Virginia has filed a petition to modify the application of 30 CFR 75.364(a)(1)

(Weekly examination) to its Whitetail K-Mine (MSHA I.D. No. 46–08751) located in Preston County, West Virginia. The petitioner proposes to have a certified person conduct weekly examination of the East Mains 1-Right and 2-Right panels for quantity, quality, and direction of the air and record the results of the examinations in a book that will be made available for interested persons. The petitioner states that due to deteriorating roof and numerous falls in the East Mains 1-Right and 2-Right panels, to travel the areas in their entirety would be unsafe; that all approaches inby the inlet and outlet areas into the East Mains 1-Right and 2-Right panels will be dangered off; and that the proposed alternate method will provide adequate air evaluation of the worked out areas and limit the exposure of hazards to the person conducting the examinations. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the existing standard.

2. Andalex Resources, Inc.

[Docket No. M–2005–044–C]

Andalex Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Aberdeen Mine (MSHA I.D. No. 42–02028) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of two 10 pound portable (ABC) fire extinguishers at both temporary and permanent electrical installations. The petitioner proposes to have two multi-purpose dry chemical portable fire extinguishers with at least a minimum capacity of 10 pounds of dry powder at each temporary electrical installation. The petitioner asserts that application of the existing standard will result in a diminution of safety and the proposed alternative method will provide at least the same measure of protection as the existing standard.

3. Energy West Mining Company

[Docket No. M–2005–045–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (Belt air course ventilation) to its Deer Creek Mine (MSHA I.D. No. 42–00121) located in Emery County, Utah. The petitioner proposes to implement this petition for modification for development of the entries and crosscuts in the coal seam between the primary intake and belt slope, and to the return slope upon completion of the connection between the primary intake slope and the belt slope. The petitioner states that when the connection is made with the return slope the petition for modification will be terminated. The petitioner asserts that application of the existing standard for connection and initial development of the coal seam between the intake and belt slopes, will cause a diminution of safety in relation to the increased exposure of hauling coal down the slopes and the proposed alternative method will provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* E-mail: *zzMSHA-Comments@dol.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 10, 2005.

Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 5th day of July 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–13524 Filed 7–8–05; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Proposed Collection, Comment Request, Program Guidelines and Reporting Forms

ACTION: Notice of requests for information collection.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3508 (2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed collection of application information and reporting information for the Partnership for a Nation of Learners initiative within the National Leadership Grant program.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before (insert sixty days from publication).

IMLS is particularly interested in comments that help the agency to:

- 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 collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Rebecca Danvers, Director, Office of Research and Technology, Institute of Museum and Library Services, 1800 M Street NW. 9th Floor, Washington, DC 20036. Dr. Danvers can be reached on Telephone: 202–653–4680, Fax: 202–653–4625 or by e-mail at *rdanvers@imls.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* authorizes the Director of the Institute of Museum and Library Services to make grants to museums,

libraries, and other entities as the Director considers appropriate, and to Indian tribes and to organizations that primarily serve and represent Native Hawaiians. In addition, IMLS awards financial assistance to State Library Administrative Agencies, which are responsible for promoting library services throughout the country.

II. Current Actions

To administer these programs of grants, cooperative agreements and contracts, IMLS must develop application guidelines.

Agency: Institute of Museum and Library Services.

Title: Application Guidelines.

OMB Number: 3137–0035.

Agency Number: 3137.

Frequency: Annually.

Affected Public: Museums, museum organizations, libraries, library organizations, institutions of higher education, Indian tribes and to organizations that primarily serve and represent Native Hawaiians, museum and library professionals, and public broadcasting licensees.

Number of Respondents: 150.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 6000.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Director, Office of Research and Technology, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Dr. Danvers can be reached on Telephone: 202–653–4680 Fax: 202–653–4625 or by e-mail at *rdanvers@imls.gov*.

Dated: July 5, 2005.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 05–13511 Filed 7–8–05; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Board, Committee on Strategy and Budget (CSB).

DATE AND TIME: July 18, 2005, 11 a.m.–12 noon (e.t.).

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Monday, July 18, 2005—Closed Session.

Closed Session (11 a.m. to 12 noon)

Status of FY 2007 Budget Submission to OMB.

For information contact: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *http://www.nsf.gov/nsb*.

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–13683 Filed 7–7–05; 2:16 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters."

3. *The form number if applicable:* NRC Form 241.

4. *How often the collection is required:* NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a licensee engaging in activities under the general license.

5. *Who will be required or asked to report:* Any licensees who holds a specific license from an Agreement State and wants to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

6. *An estimate of the number of responses:* 3,963 responses.

7. *The estimated number of annual respondents:* 167 respondents.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 1,033 hours (15 minutes per response).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Under the reciprocity provisions of 10 CFR Part 150, any Agreement State licensee who engages in activities (use of radioactive material) in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in Section 150.20, is required to file four copies of NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," and four copies of its Agreement State license at least 3 days before engaging in such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 10, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John Asalone, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of June 2005.

For the Nuclear Regulatory Commission.

Beth C. St. May,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–3637 Filed 7–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20]

Notice of Issuance of Amendment to Materials License No. SNM–2508; Department of Energy; Three Mile Island 2 Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sebrosky, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1132; fax number: (301) 425–8555; e-mail: *jms3@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or Commission) has issued Amendment 4 to Materials License SNM–2508 held by the Department of Energy (DOE) for the receipt, possession, transfer, and storage of spent fuel of the Three Mile Island Unit 2 (TMI–2) core debris in an Independent Spent Fuel Storage Installation (ISFSI), located in Butte County, Idaho. The amendment is effective as of the date of issuance.

By application dated January 31, 2005, as supplemented, DOE submitted a request to the NRC, in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 72.56, "Application for amendment of license," to amend the license for the TMI–2 ISFSI to revise the technical specification corrective actions if the 5 year leak test on the dry shielded canisters (DSC) fails.

This amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The NRC staff has determined that the proposed action will not have a significant impact on the environment. For this action, an Environmental Assessment and Finding of No Significant Impact was prepared and published in the **Federal Register** (70 FR 37124, June 28, 2005).

The request for amendment was docketed under 10 CFR Part 72, Docket 72–20. For further details with respect to this action, see the amendment request dated January 31, 2005, and June 9, 2005, supplement. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at: *http://www.nrc.gov/reading-rm/adams.html.* Copies of the referenced documents will also be available for review at the NRC Public Document Room (PDR), located at 11555 Rockville Pike, Rockville, MD 20852. PDR reference staff can be contacted at 1–800–397–4209, 301–415–4737 or by E-mail to *pdr@nrc.gov.* The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 30th day of June, 2005.

For the Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–3631 Filed 7–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

R.E. Ginna Nuclear Power Plant, LLC, R.E. Ginna Nuclear Power Plant; Notice of Receipt and Availability for Comment of Request Regarding Release of Part of Site for Unrestricted Use

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of receipt and availability for comment.

DATES: Comments must be provided in writing by August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick D. Milano, Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–1457; fax no.: 301–415–2102; e-mail: *pdm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated May 20, 2005, an application filed by R. E. Ginna Nuclear Power Plant, LLC (Ginna LLC) requesting the release of a part of the site for unrestricted use at its R. E. Ginna Nuclear Power Plant (Ginna Plant), located in Wayne County, New York. An NRC administrative review, documented in a letter to Ginna LLC dated June 29, 2005, found the request acceptable to begin a technical review. Before approving the proposed partial site release, the NRC will need to determine that the licensee has met the criteria set forth in Section 50.83, "Release of part of a power reactor facility or site for unrestricted use," of Part 50 of Title 10 of the Code of Federal Regulations (10 CFR 50.83). The tract of land proposed for release consists of two adjacent parcels, comprising a total of approximately 15 acres located along the western edge of the Ginna Plant site boundary, and is entirely outside of the Exclusion Area. The release of the part of the site would allow Ginna LLC to convey the tract of land under a Purchase and Sale Contract dated September 10, 2002, that was assumed from the former licensee of the Ginna Plant. Pursuant to this contract agreement, the land would be sold to a real estate developer for the purpose of developing the land for residential use. No physical changes to the Ginna Plant facility or operational changes are being proposed in the application.

The NRC will approve an application for partial release of a non-impacted area, if it determines that the licensee has adequately evaluated the effect of releasing the property and has adequately justified the classification of any release areas as non-impacted.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept written comments concerning this proposal by August 10, 2005. The comments must be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite

the publication date and page number of this **Federal Register** notice. Furthermore, before acting upon this request for approval submitted in accordance with 10 CFR 50.83, the NRC will schedule and conduct in the near future a public meeting in the vicinity of the Ginna Plant for the purpose of obtaining public comments on the proposed release of the part of the site. The NRC will consider and, if appropriate, respond to these written and verbal comments, but such comments will not otherwise constitute part of the decisional record. Comments received after public meeting will be considered if practicable to do so, but only those comments received on or before the public meeting can be assured consideration.

III. Further Information

Documents related to this action, including the application for approval and supporting documentation, are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will also be accessible electronically as text and image files from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*.

The ADAMS accession numbers for the documents related to this notice are:

Title	ADAMS accession No.
Application, "Partial Site Release".	ML051530448
Drawing 1 of 4, "Ginna Site Boundary Survey".	ML051530451
Drawing 2 of 4, "Building Details".	ML051530453
Drawing 3 of 4, "Site Detail"	ML051530454
Drawing 4 of 4, "Station 13A Site Survey Map".	ML051530457

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 5th day of July 2005.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3634 Filed 7–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company (SNC); Notice of Withdrawal of Application for Amendment to Renewed Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of SNC (the licensee) to withdraw its application dated July 20, 2004, for a proposed amendment to Renewed Facility Operating License Nos. DPR–57 and NPF–5 for the Edwin I. Hatch Nuclear Plant, Units 1 and 2, respectively, located in Appling County, Georgia.

The proposed amendment would have revised the Administrative Controls Section 5.3.1 of the technical specifications and replaced the specific designation for the Health Physics Superintendent with a reference to the senior individual in charge of Health Physics, and to add flexibility to the qualification requirements for the unit staff positions.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 28, 2004 (69 FR 57993). However, by letter dated June 27, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 20, 2004, and the licensee's letter dated June 27, 2005, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 29th day of June, 2005.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3632 Filed 7–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–33, issued to Tennessee Valley Authority (the licensee), for operation of the Browns Ferry Nuclear Plant (BFN), Unit 1, located in Limestone County, Alabama.

The proposed amendment would change the BFN, Unit 1, operating license to increase the maximum authorized power level from 3293 megawatts thermal (MWt) to 3952 MWt. This change represents an increase of approximately 20 percent above the current maximum authorized power level. The proposed amendment would also change the BFN, Unit 1, licensing bases and any associated Technical Specifications for containment overpressure, the maximum ultimate heat sink temperature, and the upper bound peak cladding temperature.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult current copies of 10 CFR 2.309, 2.304, and 2.305, which are available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing and petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated in the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

A request for a hearing and petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, or expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A request for hearing and petition for leave to intervene need not comply with 10 CFR 2.304(b)(c) and (d) if an original and two copies otherwise complying with the requirements of that section are mailed within two (2) days after filing by e-mail or facsimile transmission to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to General Counsel, Tennessee Valley Authority, ET 11A, 400 West Summit Hill Drive, Knoxville, Tennessee, 37902, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated June 28, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 29th day of June, 2005.

For the Nuclear Regulatory Commission.

Margaret H. Chernoff,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3633 Filed 7–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641]

Notice of Environmental Assessment and Finding of No Significant Impact for Approval of Decommissioning Plan for Test Area C–74L at Eglin Air Force Base, FL

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011. Telephone: (817) 860–8100; e-mail: *dbs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of the Air Force (the licensee) submitted a decommissioning plan (DP) to the U.S. Nuclear Regulatory Commission (NRC) by Memorandum dated May 24, 2002. Supplemental information was provided by Memoranda dated November 1, 2002, August 21, 2003, October 27, 2004, and January 13, 2005. The licensee requested that the DP for Test Area C–74L at Eglin Air Force Base (AFB) be approved. The NRC is considering the issuance of an amendment to Master Materials License 42–23539–01AF which will approve the DP. If approved by the NRC, the licensee will be authorized to conduct decommissioning activities in accordance with the DP.

The NRC has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR Part 51. The EA was developed to provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement or Finding of No Significant Impact (FONSI). Based on the results of the EA, the NRC has determined that a FONSI is appropriate.

II. Environmental Assessment

Proposed Action

The proposed action is to approve the DP which will allow the licensee to conduct decommissioning in accordance with the procedures and processes provided in the DP. The approval of the DP would be accomplished by license amendment to NRC Materials License 42–23539–01AF following the NRC decision that the DP meets the standards specified in 10 CFR Part 20 and related NRC guidance documents.

The Need for the Proposed Action

The licensee intends to remediate Test Area C–74L and ultimately remove the site from its license (and the associated AFB radioactive material permit) because it no longer conducts NRC-licensed activities at this location. If the site is properly decommissioned, the licensee would then be in compliance with the Timeliness Rule requirements of 10 CFR 30.36, "Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas."

Environmental Impacts of the Proposed Action

Test Area C–74L is located in Walton County, Florida, within the north-central portion of Eglin AFB. The site is located approximately 14 miles northwest of the city of Niceville, Florida. The test area lies within Section 11 of Range 21 West, Township 2 North. The test area currently consists of a 4-acre radiologically controlled area, fire control/ballistics building, gun corridor, target area, well house building, drum storage area, and surrounding land.

From late-1974 to 1978, the area was used for pre-production testing of a gun system which used depleted uranium (DU) ammunition. The licensee elected to discontinue DU munitions testing at this location. An estimated 16,315 pounds of DU was expended at the site. Approximately 9,257 pounds of DU were collected and disposed of during remediation activities conducted between March 1978 and June 1987. The remainder of the material has since been remediated, was dispersed or vaporized as part of DU ordinance testing, or remains onsite and requires remediation.

The portions of the site that may have been contaminated with DU fragments include the ballistic building interior, ballistic and well house building exteriors, target area, 4-acre radiologically restricted grounds, and two drainage ditches. Previous radiological investigations included at least six soil sampling events that occurred between 1976–1999. Limited reclamation activities have been conducted several times since 1980. A detailed site characterization study was conducted during 1999 followed by additional limited characterization studies during 2000–2001. At that time, the only area remaining to be remediated was the 4-acre radiologically controlled area.

The ballistic building interior was not expected to contain radioactive material in measurable quantities, in part, because the building was not used to store DU munitions. The well house building was constructed after completion of DU testing although the land beneath the building was not radiologically surveyed prior to construction. The exteriors of these two buildings may contain small amounts of contamination as a result of possible wind dispersion of DU fragments.

Two drainage ditches are located on site property. Sample results indicated measurable quantities of radionuclides above background values. The licensee does not expect to conduct remediation activities in these ditches because the residual radioactivity is expected to be at levels below the NRC-approved release criteria.

The radiological criteria for unrestricted use is provided in 10 CFR 20.1402. This regulation states that a site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the public that does not exceed 25 millirems (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA).

Current NRC guidance (Section 2.5 of NUREG–1757, Volume 2, "Consolidated NMSS Decommissioning Guidance") recommends that licensees demonstrate compliance with the dose criteria by using dose modeling or derived concentration guideline levels (DCGLs) and final status survey results. The licensee's request to release the site for unrestricted use will be based on use of DCGLs and final status survey results. In the DP, the licensee proposes DCGLs for building interiors, building exteriors, equipment, and site soils. Through an internal review process, the NRC accepted the licensee's proposed building and equipment DCGLs, but rejected the licensee's proposed soil DCGL. By Memorandum dated August 21, 2003, the licensee accepted the NRC's alternate proposal for soil DCGL.

Upon completion of the decommissioning project, the licensee is expected to submit the final status survey results to the NRC for review and approval. In addition, the NRC will conduct confirmatory sampling. If the results of the final status survey and any confirmatory surveys performed are below the NRC-approved DCGLs, the site will be found to be in compliance with the annual dose limit provided in 10 CFR 20.1402. If the surveys indicate that the results are above the DCGLs, then additional remediation may be necessary. Alternatively, the licensee will have to conduct an analysis to demonstrate that the survey results demonstrate compliance with the dose criteria.

The remediation activities will result in potential exposure of workers to radioactive material. The primary radionuclide of concern is uranium-238. The DU is expected to be in the form of solid uranium oxide or uranium metal fragments. The primary health hazard is inhalation of DU. The health effects from DU include both chemical and radiological toxicity with the two important target organs being the kidneys and the lungs. In general, the health consequences are determined by the physical and chemical form of the DU as well as the level and duration of exposure.

To prevent potential health consequences from exposure to DU, the licensee has initiated a radiological safety program. External occupational exposure rates to DU is expected to be minimal based on previous exposure data. The internal exposure pathways will be controlled and monitored as necessary by the use of personnel protective equipment, strict hygiene practices, and air particulate and bioassay sampling. The licensee's proposed program for control of exposure to radioactive materials is typical for the type of work being conducted and is considered acceptable to the NRC to maintain occupational exposures within NRC limits.

The Air Force, or a contractor for the Air Force, will be responsible for packaging and transporting the low-level radioactive wastes. Remediation of the site may have short-term non-radiological health and safety risks caused by the excavation, packaging, and shipping of the residual radioactive material. These non-radiological impacts include the normal risks of exhuming the wastes with earth-moving equipment and transportation of the material to an out-of-state disposal facility. The risks include injury or death from a construction or transportation accident.

There should be minimal risk to members of the public from exposure to radioactive wastes during transport because the radionuclides of concern will be dispersed within the soil, contained in authorized shipping containers, and shipped in accordance with U.S. Department of Transportation requirements.

The reclaimed material will be transported to an out-of-state low level radioactive waste disposal facility licensed to accept and dispose of the wastes. The radiological health risks would be minimal to the workers of the disposal facility, in part, because the facility would have a radiation protection program in place to protect its workers. However, there is still a small risk of an occupational accident occurring while handling the waste material.

In summary, the combination of the NRC-approved DCGLs, the licensee's proposed final status survey results, and the NRC's confirmatory survey results should demonstrate that annual doses to future occupants of the site will be less than the NRC's radiological criteria for unrestricted use of the facility. Additional details of the licensee's radiation safety program and NRC-approved DCGLs will be provided in the NRC's Safety Analysis Report that will be used to support the licensing decision. Furthermore, the radiological impacts of releasing the site for unrestricted use are bounded by the impacts evaluated in NUREG–1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

The proposed action will have a short-term detrimental effect on the impacted area. The licensee plans to scrap portions of the ground surface to remove any residual radioactive material. This action will result in destruction of the cover vegetation and top soil, and may create airborne dust. In response, the licensee plans to implement a program that will minimize any long term damage. Dust suppression methods will be utilized as necessary. The area will be backfilled and revegetated if scraped.

The site includes two drainage ditches. One ditch is located on the south side of the property and drains to the south-south east. The second ditch is located in the northeastern portion of the property and drains towards the northeast. There are two streams in the vicinity of Test Area C–74L. Rocky Creek is located about 700 feet (213 meters) south of the controlled area. A tributary to Rocky Creek is located about 1800 feet (549 meters) to the west of the site. A small dammed pond is located within the western tributary. The groundwater flow is anticipated to have a southward component towards Rocky Creek. Therefore, the remediation of the site has the potential for impacting the wildlife habitat in and around Rocky Creek.

The NRC consulted with the U.S. Fish & Wildlife Service because the reclamation of the site could have an impact on the habitat of a endangered species, the Okaloosa darter. Okaloosa darters are found only in the Choctawhatchee Bay drainage in Florida, where they inhabit vegetated sand runs of clear creeks. According to the U.S. Fish & Wildlife Service, approximately 90 percent of the watershed drainage area in which the Okaloosa darter occurs is under the management of Eglin AFB.

To protect the darter's habitat, the licensee has taken or plans to take several actions. First, an earthen berm currently exists on the southern portion of the radiologically restricted area. This berm is expected to help prevent contaminated soil from leaving the controlled area. Silt fencing will be used as necessary to supplement the berm. Manual remediation of areas of elevated activities in lieu of heavy equipment will help reduce the need for mechanical removal of the top six inches of soil in some areas. Dust suppression methods, including water trucks, will be utilized as necessary to prevent the spread of windblown contamination during reclamation. A decontamination pad will be used as necessary to decontaminate equipment. The licensee believes that light rain will percolate into the ground, although heavy rains may transport some soil material into the two drainage ditches. Scraped surface areas will be covered with plastic sheeting as necessary until backfilled.

With respect to other potentially endangered or threatened species, the licensee claims that the indigo snake has been seen in the vicinity of Test Area C–74L but does not live within the radiologically controlled area. Reclamation activities are not expected to adversely impact the habitat of the indigo snake on Eglin AFB ranges. Further, the licensee claims that there are no red cockaded woodpecker colonies within Test Area C–74L. The U.S. Fish and Wildlife Service ultimately decided that the proposed action (reclamation of the site) was not likely to adversely affect resources protected by the Endangered Species Act of 1973, as amended. This conclusion was reported to the NRC by letter dated February 25, 2004.

The surficial groundwater is about 50–60 feet (15–18 meters) below land surface. Geologic literature indicates that the surficial aquifer beneath the site extends to approximately 125 feet (38 meters) below land surface. The Pensacola Clay separates the surficial aquifer from the underlying Floridian aquifer system. The Pensacola Clay layer is about 160 feet (49 meters) thick, meaning that the drinking water aquifer is no less than 285 feet (87 meters) below the land surface. The hydraulically impenetrable Pensacola Clay layer would be expected to prevent any contamination that might be present in the surficial groundwater from reaching the Floridian aquifer system even if the surficial groundwater was contaminated with DU.

The licensee has conducted site characterization studies and concluded that the land surface contamination of DU has not impacted the groundwater. Most contamination is found within the first 6 inches (15 centimeters) of soil except in selected locations. In these discrete locations, contamination is no more than 4 feet (1.2 meters) below the land surface. There are two drinking water wells in the vicinity of the site. One is located onsite and is 644 feet (196 meters) deep. The second is located a half-mile (0.8 kilometers) away and

has been permanently abandoned. The onsite drinking water well was sampled during 1983, and the sample result indicated no measurable quantities of radioactive materials above background values. Because the surficial groundwater is located 50–60 feet (15–18 meters) below surface, and the drinking water aquifer is located at least 285 feet (87 meters) below surface, the NRC concluded that the probability that DU contamination has impacted either the surficial or drinking water aquifer is highly unlikely.

Environmental Impacts of the Alternatives to the Proposed Action

The licensee seeks NRC approval of the DP. The alternatives to the proposed action are: (1) The no-action alternative, or (2) to deny the amendment request and require the licensee to take some alternate action.

1. No-Action Alternative

One alternative available to the NRC is to take no action by denying the amendment request. Denial of the DP submittal would result in no change in current environmental conditions. The no-action alternative is not a feasible alternative because it will result in violation of the NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease.

2. Environmental Impacts of Alternative 2

A second alternative is to deny the licensee's request in favor of alternate release criteria as allowed by § 20.1403 (criteria for restricted conditions) or § 20.1404 (alternate criteria). However, the NRC's analysis confirmed that the proposed action (approval of the DP as submitted) meets the license termination requirements of § 20.1402. Accordingly, the NRC has determined that the second alternative is not reasonable. Therefore, this alternative action is eliminated from further consideration in this EA.

Conclusion

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the license amendment request. The NRC staff believes that the proposed action will result in minimal environmental impacts, including those to endangered species and critical habitats. The staff has determined that the proposed action, approval of the DP, is the appropriate alternative for selection.

Agencies and Persons Contacted

The NRC staff consulted with both the Florida State Historic Preservation Officer and the local U.S. Fish & Wildlife Service office. The Florida Department of State, Division of Historical Resources stated that no historic properties were known to exist in the area; therefore, the proposed decommissioning will have no effect on historic properties. The U.S. Fish & Wildlife Service has informed the NRC that the proposed action (site reclamation) is not likely to adversely affect protected resources including endangered species and critical habitats. The NRC staff also consulted with the Florida Department of Health, Bureau of Radiation Control. By letter dated May 19, 2005, the State responded that it had no objections to the proposed EA and FONSI.

III. Finding of No Significant Impact

The NRC staff has concluded that the proposed action (amend the Air Force's license to approve the DP) complies with both the Timeliness Rule requirements of 10 CFR 30.36 and License Termination Rule requirements of 10 CFR 20.1402. On the basis of this EA, the NRC has concluded that there are no significant environmental impacts and the license amendment does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

A copy of this document will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The following references are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). ADAMS accession numbers are located in parentheses following the reference.

1. NRC, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities," NUREG–1496, July 1997 (ML042310492).

2. Pugh, Capt. David L., Department of the Air Force Memorandum, "Review of Decommissioning Plan for Eglin AFB, Florida," May 24, 2002 (ML021970666, ML021970669, ML021980188, ML021980239, ML021990724, ML021990330, ML021990377, ML021990737, ML021990743).

3. Pugh, Capt. David L., Department of the Air Force Memorandum, "Clarification Request For C–74L Decommissioning Plan," November 1, 2002 (ML023370482, ML023370535, ML023370648, ML023370660, ML023370675, ML023380282, ML023380332).

4. Brockman, Ken E., NRC Letter to Air Force, "Acknowledgment of Receipt of Decommissioning Plan," November 25, 2002 (ML023290265).

5. Spitzberg, D. Blair, NRC Memorandum, "Notice of Consideration of Amendment Request for Department of the Air Force, Eglin Air Force Base, Florida, and Opportunity for Providing Comments and Requesting a Hearing," January 27, 2003 (ML030270180).

6. Brockman, Ken E., NRC Memorandum, "Regional Technical Assistance Request Form," January 29, 2003 (ML030300253).

7. Cain, Charles L., "NRC Inspection Report 030–28641/2003–01," February 11, 2003 (ML030420534).

8. Kokajko, Lawrence E., NRC Memorandum, "Review of Derived Concentration Guideline Levels (DCGLs) for Eglin Air Force Base," April 10, 2003 (ML031000111).

9. Cain, Charles L., NRC Letter to Air Force, "Request for Additional Information Regarding Eglin Air Force Base Decommissioning Plan," April 24, 2003 (ML031140240).

10. Spitzberg, D. Blair, NRC Letter to U.S. Fish & Wildlife Service, "Request for Comments Regarding Endangered/Threatened Species and Critical Habitats," June 9, 2003 (ML031600579).

11. Spitzberg, D. Blair, NRC Letter to Florida State Historic Preservation Officer, "Request for Comments Regarding Cultural and Historical Resources at Eglin Air Force Base," June 9, 2003 (ML031600613).

12. Carmody, Gail A., U.S. Fish & Wildlife Service Letter to NRC, "Reclamation and Decommissioning Uranium Munitions Site, Area C–74L," July 7, 2003 (ML031920346).

13. Matthews, Janet Snyder, Florida Department of State Letter to NRC, "Reclamation Activities Within a Four-Acre Property at Test Area C–74L, Walton County," July 8, 2003 (ML032050604).

14. NRC, NUREG–1748, "Environmental Review Guidance for Licensing Actions Associated With NMSS Programs," July 2003 (ML032540811).

15. Mather, Lt. Col. Kali K., Air Force Memorandum to NRC, "Supplement to the Decommissioning Plan for Test Area C–74L, Eglin AFB, FL," August 21, 2003 (ML032450123).

16. NRC, NUREG–1757, "Consolidated NMSS Decommissioning Guidance," Volumes 1–3, September 2003 (ML032530410, ML032530405, ML032471471).

17. Seiber, Stephen M., Air Force Letter to NRC, "No Effect Determination," February 11, 2004 (ML040430157).

18. Spitzberg, D. Blair, NRC letter to U.S. Fish & Wildlife Services, "Request for Comments Regarding Department of Air Force's Determination of No Effect," February 18, 2004 (ML040690296).

19. Carmody, Gail A., U.S. Fish & Wildlife Service's Response to NRC's Letter "Request for Comments Regarding Department of Air Force's Determination of No Effect," February 25, 2004 (ML040690296).

20. Whitten, Jack E., NRC Letter to Air Force, "Request for Additional Information Regarding Eglin Air Force Base Decommissioning Plan," February 19, 2004 (ML040500864).

21. Whitten, Jack E., "NRC Inspection Report 030–28641/04–001," February 25, 2004 (ML040570122).

22. Abell, Capt. Clint E., Air Force Memorandum to NRC, "Decommissioning Plan for Test Area C–74L, Eglin AFB, Florida," October 27, 2004 (ML043410237).

23. Abell, Capt. Clint E., Air Force Memorandum to NRC, "Response to NRC Query of Decommissioning of Test Area C–74L, Eglin Air Force Base, Florida," January 13, 2005 (ML050320251).

24. Passetti, William A., Florida Department of Health Letter to NRC, "Environmental Assessment for Decommissioning of Test Area C–74L at Eglin Air Force Base," May 19, 2005 (ML051640567).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*. Documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas this 28th day of June, 2005.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle & Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E5–3629 Filed 7–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30429]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Core Laboratories, Houston, TX

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Jack E. Whitten, Branch Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region RIV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011. Telephone: (817) 860–8197; fax number (817) 860–8263; e-mail: *jew1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Material License No. 42–26928–01 issued to Core Laboratories, Inc., (dba ProTechnics) to authorize the utilization of cesium–137 in quantities in excess of limits listed in 10 CFR 30.71 for well logging activities at temporary job sites where NRC maintains jurisdiction. The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. Environmental Assessment

Background

Core Laboratories, Inc., (Core Laboratories) is a well logging licensee based in Houston, Texas, and conducts tracer operations using radioactive materials in oil and natural gas fields worldwide. Core Laboratories is licensed by both the NRC and Agreement States (Louisiana, New Mexico, and Texas) to conduct well logging operations.

By letter dated July 14, 1997, Core Laboratories requested that NRC grant an amendment to allow the use of radioactive collar markers containing activities of byproduct material exceeding the limits listed in 10 CFR 30.71. An EA was written and based on the EA, the NRC concluded that a finding of no significant impact (FONSI) was appropriate. The EA and the FONSI were published in the 67 **Federal Register** (FR) 5320, February 5, 2002. On March 9, 2002, Core Laboratories was granted an amendment authorizing an exemption to 10 CFR 30.71. This amendment authorized Core Laboratories to use pipe collar markers containing iridium–192, scandium–46, antimony–124, cobalt–60, and cesium–137 with activities up to 50 micro curies (μCi).

On February 23, 2004, Core Laboratories requested an amendment to increase the activity of radioactive markers containing cesium–137 from the 50 μCi, previously approved, with activities up to 100 μCi. This 100 μCi activity exceeds the quantities of byproduct material listed for use as pipe collar markers in oil and gas wells in 10 CFR 39.47, 10 CFR 30.71, and the activities authorized in the March 9, 2002, license amendment to Core Laboratories' byproduct material license. The NRC has reviewed the licensee's amendment request and has developed this EA to assess the environmental consequences of this licensing action using the guidance provided in NUREG–1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.

Proposed Action

The proposed action is to amend the license and modify the previous exemption by approving the licensee's request to use radioactive markers containing 100 μCi cesium–137 for use as pipe collar markers in oil and gas wells. This proposed activity exceeds the limits of radioactive markers authorized in 10 CFR 39.47 and 10 CFR 30.71.

The radioactive markers Core Laboratories requested authorization to use in well logging activities are either installed directly in the pipe collars or are placed on the pipe collar threads and secured between the pipe casing joints and are not easily removed. Once installed in a well bore, the pipe casing and collars are cemented into place.

By letter dated July 14, 1997, Core Laboratories in its correspondence to NRC, describes the procedures it will have in place involving the customer or well owner/operator. These procedures state, in part, that the customer or well owner/operator must contact Core Laboratories in the event the radioactive pipe collar markers must be removed. Core Laboratories will be available on site to secure and take possession of the collar markers upon their return to the surface. Additionally, Core Laboratories will provide the customer or well owner/operator a copy of Attachment XII–1 (Core Laboratories' Radioactive Collar Marker Utilization Log) as a written record of the requirement to notify Core Laboratories if markers returned to the surface before a specified date.

The Need for the Proposed Action

The proposed action is necessary so that Core Laboratories can efficiently carry out its business of well logging in the oil and gas industry. The need for an increase in activity for cesium-137 is due to the heavier density of the materials being used in the well logging application. The higher activity radioactive markers will allow, when logging certain oil and gas wells, for more accurate pipe collar location

measurements for longer periods of time. Radioactive markers with lower activities may result in Core Laboratories having to depend on less accurate pipe collar location measurements when logging oil and gas wells, thereby providing less accurate information to the well owner/operator.

Environmental Impacts of the Proposed Action

Core laboratories provided calculations in its November 14, 1997, and February 27, 2004, letters that demonstrated that the 100 millirem in a year or 2 millirem in any one hour limits to a member of the public would not be exceeded at any time while using the pipe collar markers with increased 50 to 100 μCi activities.

There will be no significant environmental impact realized from the proposed action, due to no material being released into the environment and all of the material being wholly contained within the pipe collars. Additionally, the pipe collar markers will be recovered by Core Laboratories should the casing containing the collars be removed from the well bores.

If the collar markers are returned to the surface prior to having decayed to exempt quantity levels specified on Core Laboratories customer agreement, the customer is required to contact Core Laboratories to take possession of the markers. These markers are then removed from the equipment, placed into a lead shield, and then placed into a U.S. Department of Transportation 7A transport container for shipment back to Core Laboratories.

Upon return to the storage facility, the markers are placed into waste storage to await decay or shipment to an authorized recipient for disposal when quantities of waste justifies such a shipment.

Environmental Impacts of the Alternatives to the Proposed Action

The only alternative to the proposed action of increasing the activity of radioactive markers containing cesium–137 from 50 μCi to 100 μCi is to take no action. The no-action alternative would be to allow the licensee to maintain radioactive marker activities currently authorized in Core Laboratories' NRC license. Again, there will be no significant environmental impact realized from the proposed action or the alternative to the proposed action, due to no material being released into the environment and all of the material being wholly contained within the pipe collars.

On March 9, 2002, Core Laboratories was granted an amendment authorizing an exemption to 10 CFR 30.71 to use pipe collar markers containing iridium–192, scandium–46, antimony–124, cobalt–60, and cesium–137 with activities up to 50 μCi. An EA was published in the 67 FR 55320, February 5, 2002, and based on the EA the NRC concluded that environmental impacts that would be created by the proposed action would not have a significant effect on the quality of the environment and did not warrant the preparation of an Environmental Impact Statement (EIS). Accordingly, it was determined that a FONSI was appropriate.

Agencies and Persons Consulted

Since the proposed action occurs downhole in the well bore and results in a permanent installation, the NRC has concluded that there is no potential to affect threatened or endangered species or historic resources. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, NRC staff has determined that the proposed action is not the type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

The NRC staff provided letters to the Environmental Protection Agency (EPA) and Agreement States of Louisiana, Texas, and New Mexico for their review and comments, in accordance with NUREG–1748, Section 3.3. The Agreement States that were contacted provided no comments. By letter dated March 3, 2005, the EPA responded and recommended that the NRC, as a condition of approving the license amendment, have Core Laboratories provide notice to the Federal or State natural resource agency of which wells have the radioactive collar installed. The NRC staff took this comment into consideration and determined that Core Laboratories already provides notification to agreement states via reciprocity before performing well logging activities in the respective agreement states.

Conclusion

Based in its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action and the preparation of an EIS is not warranted. The staff has determined that the proposed action, approval of the license amendment request to increase the activity of radioactive markers containing cesium–137 from the 50 μCi, to100 μCi, is the appropriate alternative for selection.

III. Finding of No Significant Impact

The NRC staff has concluded that the proposed action complies with 10 CFR Part 20. Exposure to a member of the public would be less than the limits specified in 10 CFR 20.1302. The licensee provided calculations that demonstrated that the 100 millirem in a year or 2 millirem in any one hour could not be exceeded when normal restricted boundaries were established. The NRC staff prepared this EA in support of the proposed action to amend the license. On the basis of this EA, the NRC has concluded that there are no significant environmental impacts and the license amendment does not warrant the preparation of an EIS. Accordingly, it has been determined that a FONSI is appropriate.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are listed below. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

1. NRC, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," NUREG–1748, August 2003. (ML032540811).

2. NRC, "Consolidated NMSS Decommissioning Guidance," NUREG–1757, Volume 1, September 2003 (ML032530410).

3. ProTechnics Division of Core Laboratories Texas Bureau of Radiation Control License No. L03835, Amendment No. 41, expiration date August 31, 2005 (ML051510390).

4. ProTechnics Division of Core Laboratories Louisiana Department of Environmental Quality License No. LA–6678-L01, Amendment No. 17, expiration date October 31, 2004 (ML051510385).

5. ProTechnics Division of Core Laboratories New Mexico Radiation Control Bureau License No. WL264–26, expiration date February 28, 2007 (ML051510393).

6. ProTechnics Division of Core Laboratories Letter to NRC, February 23, 2004 (ML040580736).
7. ProTechnics Division of Core Laboratories Letter to NRC, July 14, 1997 (ML003724357).
8. ProTechnics Division of Core Laboratories Letter to NRC, November 14, 1997 (ML003724675).
9. ProTechnics Division of Core Laboratories Letter to NRC, February 4, 1998 (ML003724694).
10. ProTechnics Division of Core Laboratories Letter to NRC, January 20, 1998 (ML003724684).
11. ProTechnics Division of Core Laboratories Letter to NRC, February 27, 2004 (ML040580735).
12. **Federal Register** Volume 67, Number 24, pages 5320–5321
13. NRC letter to Roger Mulder, State of Texas, January 7, 2005 (ML050130550).
14. NRC letter to Derrith Watchman-Moore, State of New Mexico, January 7, 2005 (ML050130548).
15. NRC letter to Michael Henry, State of Louisiana, January 7, 2005 (ML050130549).
16. NRC letter to Robert Smith, EPA, January 7, 2005 (ML050130547).
17. NRC letter to Bruce Kobelski, EPA, January 7, 2005 (ML050130545).
18. EPA letter to Mark Satorius, NRC, March 3, 2005 (ML050690294).

Dated at Arlington, Texas, this 27th day of June, 2005.

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E5–3630 Filed 7–8–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The Office of Management and Budget announces two meetings of the Acquisition Advisory Panel (AAP or "Panel") established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There are two meetings announced in this **Federal Register** Notice. A public meeting of the Panel will be held on July 27, 2005, beginning at 9 a.m. Pacific Time and ending no later than 5 p.m. A second public meeting of the Panel will be held on August 18, 2005, beginning at 9 a.m. Eastern Time and ending no later than 5 p.m.

ADDRESSES: The July 27, 2005 meeting will be held at the Hyatt Regency Long Beach, Conference Room Beacon B, 200 South Pine Avenue, Long Beach, CA 90802. The August 18, 2005 meeting will be held at the Federal Deposit Insurance Corporation (FDIC), Basement auditorium, 801 17th Street NW., Washington DC 20434. The public is asked to pre-register one week in advance for each meetings due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning these meetings or the Acquisition Advisory Panel itself, or to pre-register for either meeting, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Ms. Anne Terry, AAP Staff Analyst, in writing at: *anne.terry@gsa.gov,* by FAX at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting at which they wish to speak.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at both meetings. Additional time for oral public comments is expected at future public meetings to be announced in the **Federal Register**.

July 27, 2005 Meeting—The working groups, established at previous public meetings of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will report any significant updates during this meeting, which may include any follow-up recommendations for additional working groups or other issues to be examined. The Panel also expects to hear from additional invited speakers from the public and private sectors who will address issues related to the Panel's statutory charter, including commercial practices and performance-based contracting. In addition to working group reports and invited speakers, the Panel welcomes oral public comments at this meeting and has reserved an estimated one hour for this purpose. Members of the public wishing to address the Panel during either meeting must contact Ms. Anne Terry, in writing, as soon as possible to reserve time (see contact information above).

August 18, 2005 Meeting—In addition to working group reports on any significant updates, the Panel plans to hear invited speakers on a variety of topics related to the Panel's statutory charter including a discussion group on commercial practices that will cover the use of Time and Material contracting. The Panel also welcomes oral public comments at this meeting and is reserving an estimated one hour for this purpose. Members of the public wishing to address the Panel during either meeting must contact Ms. Anne Terry, in writing, as soon as possible to reserve time (see **FOR INFORMATION CONTACT** above).

(b) *Availability of Materials for the Meetings:* Please see the Acquisition Advisory Panel Web site for any available materials, including draft agendas, for these meetings (*http://www.acqnet.gov/aap*). Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including "Questions for Government Buying Agencies," "Questions for Contractors that Sell Commercial Goods or Services to the Government," and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled "Proposal for Public Comment." The Panel asks that the public address any of these questions/issues when presenting either oral public comments or written statements to the Panel. The public may also obtain copies of Initial Working Group Reports presented at the March 30, 2005 public meeting at the Panel's Web site under "Meeting Materials" at this Web site.

(c) *Procedures for Providing Public Comments:* It is the policy of the Acquisition Advisory Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. To facilitate Panel discussions at its meetings, the Panel may not accept oral comments at all meetings. The Panel Staff expects that public statements presented at Panel meetings will be

focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion. Oral Comments: Speaking times will be confirmed by Panel staff on a "first-come/first-serve" basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes for both the July 27th and August 18th meetings. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Ms. Anne Terry, in writing (via mail, e-mail, or fax identified above for Ms. Terry) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Terry one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in the FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). *Please note:* Since the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(d) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 05–13561 Filed 7–6–05; 1:16 pm]

BILLING CODE 3110–01–P

PEACE CORPS

Proposed Agency Information Collection Activities: Volunteer Application

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB Review, comment request.

SUMMARY: The Peace Corps is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the Peace Corps is required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or revision of a collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Volunteer Application.

DATES: Comments must be submitted on or before September 9, 2005.

ADDRESSES: Comments should be mailed to Mr. Wilfredo Sauri, Office of Volunteer Recruitment and Selection, Peace Corps, 1111 20th Street, NW., Room 6112, Washington, DC 20526. Mr. Sauri can be contacted by telephone at (202) 692–1819 or 800–424–8580 ext. 1819 or e-mail at *wsauri@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Mr. Wilfredo Sauri, Office of Volunteer Recruitment and Selection, Peace Corps, 1111 20th Street NW., Room 6112, Washington, DC 20526. Mr. Sauri can be contacted by telephone at (202) 692–1819 or e-mail at *wsauri@peacecorps.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the Peace Corps is seeking comments on proposed revisions to its Volunteer Application, which is currently OMB Control Number 0420–0005. This is renewal with revisions of an active OMB Control Number. The purpose of this notice is to solicit public comments on whether: (1) The proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether the information will have a practical use; (2) the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used is accurate; (3) there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A copy of the proposed information collection form can be obtained from Mr. Wilfredo Sauri, Office of Volunteer Recruitment and Selection, Peace Corps, 1111 20th Street, NW., Room 6112, Washington, DC 20526. Mr. Sauri can be contacted by telephone at (202) 692–1819 or 800–424–8580 ext. 1819 or e-mail at *wsauri@peacecorps.gov*. Comments on the form should also be addressed to the attention of Mr. Sauri and should be received on or before August 29, 2005, 60 days from publication in the **Federal Register**.

OMB Control Number: 0420–0005.

Title: Peace Corps Volunteer Application form.

Need and Uses: The Volunteer Application must be completed by applicants to the Peace Corps and is used by staff in the Peace Corps' Volunteer Recruitment and Selection office to determine candidate eligibility and suitability for Peace Corps service. Applicants complete the volunteer application either online or via paper. The information is used initially to determine which applicants should be interviewed and which should be nominated. Following nomination, information on the volunteer application is used by Peace Corps staff in the Office of Placement to make a suitability determination and to determine the specific assignment area and country of service for the applicant.

Type of Review: Renewal, with changes, of a previously approved collection that will expire on July 31, 2005.

Respondents: Potential Peace Corps Volunteers.

Respondents Obligation to Reply: Required for application for Peace Corps service.

Burden on the Public: a. *Annual reporting burden:* 39,000 hours; b. *Annual record keeping burden:* 0 hours; c. *Estimated average burden per response:* 3 hours; d. *Frequency of response:* One time; e. *Estimated number of likely respondents:* 13,000; f. *Estimated cost to respondents:* 0.

This notice is issued in Washington, DC on June 29, 2005.

Gilbert Smith,

Associate Director for Management.

[FR Doc. 05–13535 Filed 7–8–05; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12432]

Issuer Delisting; Notice of Application of American Power Conversion Corporation To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc.

July 1, 2005.

On June 16, 2005, American Power Conversion Corporation, a Massachusetts corporation, ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

On June 9, 2005, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Security from listing and registration on PCX. In making the decision to withdraw the Security from PCX, the Board considered the following: (i) The Issuer maintains the principal listing for the Security on the Nasdaq National Market System ("Nasdaq"); and (ii) the maintenance of multiple listings requires incremental time, effort, and expense in ensuring compliance with the rules and disclosure requirements of both Nasdaq and PCX.

The Issuer stated in its application that it has complied with PCX rules by providing PCX the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to withdrawal of the Security from listing on PCX and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before July 27, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–12432 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–12432. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–13547 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Asia4Sale.com, Inc., Pacific Vision Group, Inc., and Idoleyez Corporation; Order of Suspension of Trading

July 7, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Asia4Sale.com, Inc., because it is delinquent in its filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed its annual and quarterly reports for its fiscal years 2000, 2001, 2002, 2003 and 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pacific Vision Group, Inc., because it is delinquent in its filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed its annual and quarterly reports for its fiscal years 2001, 2002, 2003 and 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Idoleyez Corporation because it is delinquent in its filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed any periodic reports since it filed on August 21, 2003 a Form 10–QSB for the period ended June 20, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension in the trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 7, 2005, through 11:59 p.m. EDT on July 20, 2005.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–13631 Filed 7–7–05; 12:02 pm]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51955; File No. SR–Amex–2005–057]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Continuation of a Quote Assist Feature in the ANTE System on a Pilot Basis

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2005, the American Stock Exchange LLC. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission")

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On May 31, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] On June 24, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 950–ANTE (g) and 958A–ANTE (e) to extend its pilot program implementing a quote-assist feature until April 30, 2006. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at the Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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

Exchange Rule 958A–ANTE (e) currently requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless one of the exceptions set forth in the rule applies. "Immediately upon receipt" is defined in the rule "as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt."[6]

In order to assist the specialists in complying with Amex Rule 958A–ANTE (e) as described above, the ANTE System[7] provides specialists with an automated quote assist feature on a pilot basis. The quote assist feature automatically displays eligible limit orders within a configurable time that can be set on a class-by-class basis by the Exchange. While all customer limit orders are expected to be displayed immediately, the quote assist feature can be set to automatically display limit orders at or close to the end of the 30-second time frame or within any other shorter time frame established by the Exchange. In the event there are instances where the specialist has not yet addressed the order within the applicable 30-second period, the quote assist feature will automatically display the eligible customer limit order in the limit order book at or close to the end of that period. The quote assist feature helps to ensure that eligible customer limit orders are displayed within the required time period then in effect. Commentary .01 to Amex Rule 950–ANTE (g) currently requires the specialist to maintain and keep active the limit order quote assist feature. The specialist may establish the time frame within which the quote assist feature displays eligible customer limit orders, which time frame does not exceed the customer limit order display requirement set forth in Amex Rule 958A–ANTE (e). The specialist may deactivate the quote assist feature provided Floor Official approval is obtained. The specialist must obtain Floor Official approval as soon as practicable but in no event later than three minutes after deactivation. If the specialist does not receive approval within three minutes after deactivation, the Exchange will review the matter as a regulatory issue. Floor Officials will grant approval only in instances when there is an unusual influx of orders or movement of the underlying that would result in gap pricing or other unusual circumstances. The Exchange will document all instances where a Floor Official has granted approval.

The Exchange now proposes to extend the quote assist feature on a pilot basis until April 30, 2006. The Exchange also proposes to move the text of Commentary .01 to Amex Rule 958A–ANTE (e), since the approval of the Amex's limit order display rule negates the need for the application of the specialist's due diligence obligation found in Amex Rule 156 and made applicable to options trading by Amex Rule 950–ANTE (g).

The Exchange notes that the quote assist feature does not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating Amex Rule 958A–ANTE (e). However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate Rule 958A–ANTE (e) if used when the specialist is not physically able to address all the eligible limit orders within 30 seconds. The Exchange has issued a regulatory notice discussing the issue of excessive reliance on the quote assist feature.

The Exchange will continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules. The Exchange commits to conduct surveillance designed to detect whether specialists, as a matter of course, rely on the quote-assist feature to display all eligible limit orders. A practice of excessive reliance upon the quote assist feature will be reviewed by Member Firm Regulation as a possible violation of Amex Rule 958A–ANTE (e). The Exchange runs its limit order display exception report at various display intervals in an attempt to detect a pattern suggestive of undue reliance on the quote assist feature. The Exchange reports to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act, in general,[8] and furthers the objectives of Section 6(b)(5) of the Act, in particular,[9] in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The quote assist feature provides a mechanism to ensure that eligible customer limit orders are displayed within the appropriate time frame.

[3] Amendment No. 1 made a clarifying change to Section III of the filing.

[4] Amendment No. 2 changed the proposed rule text to clarify that the specialist has an obligation to execute or display customer options limit orders immediately or in no event later than 30 seconds after receipt.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] *See* Securities Exchange Act Release No. 51062 (January 21, 2005), 70 FR 4163 (January 28, 2005).

[7] *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the Amex as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6) so that the Amex may continue the quote assist pilot program on the ANTE System uninterrupted. The Exchange states that the proposed rule is substantially similar to comparable rules the Commission has approved for the Amex,[14] the Chicago Board Options Exchange ("CBOE"),[15] and the New York Stock Exchange ("NYSE").[16] Accordingly, the Amex believes that its proposal does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[17] The Commission believes that the Amex's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the Amex, CBOE, and NYSE proposals.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.[18]

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–Amex–2005–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–057 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3622 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* Securities Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

[15] *See* Securities Act Release No. 47701 (April 18, 2003), 68 FR 22426 (April 28, 2003).

[16] *See* Securities Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999).

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on June 24, 2005, the date the Amex filed Amendment No. 2.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51958; File No. SR–CME–2005–02]

Self-Regulatory Organization; Chicago Mercantile Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rules Governing Security Futures Adjustments

June 30, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 thereunder,[2] notice is hereby given that on May 4, 2005, the Chicago Mercantile Exchange ("CME" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the Exchange.

CME has also certified the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

Exchange Act ("CEA")[3] on May 4, 2005. 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

CME proposes to adopt rules governing Security Futures Product Adjustments for purposes of Section 6(h) of the Act.[4] Proposed new language is *italicized.*

CHAPTER 701: SECURITY FUTURES PRODUCTS ADJUSTMENTS

70101. SCOPE OF CHAPTER

This chapter is limited in application to Security Futures Products ("SFPs") traded on Chicago Mercantile Exchange where the underlying interest is a single equity security or a narrow-based index. The procedures for clearing, delivery, settlement and other matters not specifically covered herein shall be governed by the Rules of the Exchange.

70110. ADJUSTMENTS TO SECURITY FUTURES PRODUCTS

1. *Determinations as to whether and how to adjust the terms of Security Futures Products to reflect events affecting underlying interests shall be made by the Clearing House based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to the buyers and sellers of Security Futures Products on the underlying interest, the maintenance of a fair and orderly market in futures on the underlying interest, consistency of interpretation and practice, efficiency of settlement of delivery obligations arising from physically-settled Security Futures Products, and the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying security. The Clearing House may, in addition to determining adjustments to Security Futures Products on a case-by-case basis, adopt interpretations having general application to specified types of events. Every determination by the Clearing House in respect of Security Futures Products pursuant to this Rule shall be within the discretion of the Clearing House and shall be conclusive and binding on all investors and not subject to review. The following paragraphs of this Rule apply to Security Futures Products based on single equity securities only.*

2. *Whenever there is a dividend, stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification or similar event in respect of any underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of any underlying security, the number of Security Futures Product contracts, the unit of trading, the settlement price and the underlying security, or any of them, with respect to all outstanding Security Futures Products open for trading in the underlying security may be adjusted in accordance with this Rule. If the Clearing House does not learn, or does not learn in a timely manner, of an event for which the Clearing House would have otherwise made an adjustment, the Clearing House shall not be liable for any failure to make such adjustment or delay in making such adjustment. In making any adjustment determination, the Clearing House shall apply the factors set forth in this Rule in light of the circumstances known to it at the time such determination is made.*

3. *It shall be the general rule that there will be no adjustments to reflect ordinary cash dividends or distributions or ordinary stock dividends or distributions (collectively, "ordinary distributions") by the issuer of the underlying security.*

4. *Subject to paragraph 3 of this Rule, it shall be the general rule that in the case of a stock dividend, stock distribution or stock split whereby one or more whole numbers of shares of the underlying security are issued with respect to each outstanding share, each SFP contract covering that underlying security shall be increased by the same number of additional SFP contracts as the number of shares issued with respect to each share of the underlying security, the last settlement price established immediately before such event shall be proportionately reduced, and the unit of trading shall remain the same.*

5. *Subject to paragraph 3 of this Rule, it shall be the general rule that in the case of a stock dividend, stock distribution or stock split whereby other than a whole number of shares of the underlying security is issued in respect of each outstanding share, the last settlement price established immediately before such event shall be proportionately reduced, and conversely, in the case of a reverse stock split or combination of shares, the last settlement price established immediately before such event shall be proportionately increased. Whenever the settlement price with respect to a stock future has been reduced or increased in accordance with this paragraph, the unit of trading shall be proportionately increased or reduced, as the case may be.*

6. *It shall be the general rule that in the case of any distribution made with respect to shares of an underlying security, other than ordinary distributions and other than distributions for which adjustments are provided in paragraphs 4 or 5 of this Rule, if the Clearing House determines that an adjustment to the terms of Security Futures Products on such underlying security is appropriate, (a) the last settlement price established immediately before such event shall be reduced by the value per share of the distributed property, in which event the unit of trading shall not be adjusted, or alternatively, (b) the unit of trading in effect immediately before such event shall be adjusted so as to include the amount of property distributed with respect to the number of shares of the underlying security represented by the unit of trading in effect prior to such adjustment, in which event the settlement price shall not be adjusted. The Clearing House shall, with respect to adjustments under this paragraph or any other paragraph of this Rule, have the authority to determine the value of distributed property.*

7. *In the case of any event for which adjustment is not provided in any of the foregoing paragraphs of this Rule, the Clearing House may make such adjustments, if any, with respect to the Security Futures Products affected by such event as the Clearing House determines.*

8. *Adjustments pursuant to this Rule shall as a general rule become effective in respect of outstanding Security Futures Products on the "ex-date" established by the primary market for the underlying security.*

9. *It shall be the general rule that (a) all adjustments of the settlement price of an outstanding stock future shall be rounded to the nearest adjustment increment, (b) when an adjustment causes a settlement price to be equidistant between two adjustment increments, the settlement price shall be rounded up to the next highest adjustment increment, (c) all adjustments of the unit of trading shall be rounded down to eliminate any fraction, and (d) if the unit of trading is rounded down to eliminate a fraction, the adjusted settlement price shall be further adjusted, to the nearest adjustment increment, to reflect any diminution in the value of the stock*

[3] 7 U.S.C. 7a–(c).

[4] 15 U.S.C. 78f(h).

future resulting from the elimination of the fraction.

10. Notwithstanding the general rules set forth in paragraphs 3 through 9 of this Rule or which may be set forth as interpretations to this Rule, the Clearing House shall have the power to make exceptions in those cases or groups of cases in which, in applying the standards set forth in paragraph 1 of this Rule, the Clearing House shall determine such exceptions to be appropriate. However, the general rules shall be applied unless the Clearing House affirmatively determines to make an exception in a particular case or group of cases.

INTERPRETATION TO RULE 70110

ADJUSTMENTS TO SECURITY FUTURES PRODUCTS

1. (a) Cash dividends or distributions by the issuer of the underlying security that the Clearing House believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis, will, as a general rule, be deemed to be "ordinary distributions" within the meaning of paragraph 3 of this Rule. The Clearing House will determine on a case-by-case basis whether other dividends or distributions are "ordinary distributions" or whether they are dividends or distributions for which an adjustment should be made. (b) Stock dividends or distributions by the issuer of the underlying security that the Clearing House believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly basis will, as a general rule, be deemed to be "ordinary distributions" within the meaning of paragraph 3 of this Rule. The Clearing House will ordinarily adjust for other stock dividends and distributions. (c) Where the Clearing House determines to adjust for a cash or stock dividend or distribution, the adjustment shall be made in accordance with the applicable provisions of this Rule.

2. Adjustments will ordinarily be made for rights distributions, except as provided below in the case of certain "poison pill" rights. When an adjustment is made for a rights distribution, the unit of trading in effect immediately prior to the distribution will ordinarily be adjusted to include the number of rights distributed with respect to the number of shares or other units of the underlying security comprising the unit of trading. If, however, the Clearing House determines that the rights are due to expire before the time they could be exercised upon delivery under the futures contract, then delivery of the rights will not be required. Instead, the Clearing House will ordinarily adjust the last settlement price established before the rights expire to reflect the value, if any, of the rights as determined by the Clearing House in its sole discretion. Adjustments will not ordinarily be made to reflect the issuance of so-called "poison pill" rights that are not immediately exercisable, trade as a unit or automatically with the underlying security, and may be redeemed by the issuer. In the event such rights become exercisable, being to trade separately from the underlying security, or are redeemed, the Clearing House will determine whether an adjustment is appropriate.

3. Adjustments will not be made to reflect a tender offer or exchange offer to the holders of the underlying security, whether such offer is made by the issuer of the underlying security or by a third person or whether the offer is for cash, securities or other property. This policy will apply without regard to whether the price of the underlying security may be favorably or adversely affected by the offer or whether the offer may be deemed to be "coercive." Outstanding Security Futures Products ordinarily will be adjusted to reflect a merger, consolidation or similar event that becomes effective following the completion of a tender offer or exchange offer.

4. Adjustments will not be made to reflect changes in the capital structure of an issuer where all of the underlying securities outstanding in the hands of the public (other than dissenters' shares) are not changed into another security, cash or other property. For example, adjustments will not be made merely to reflect the issuance (except as a distribution on an underlying security) of new or additional debt, stock, or options, warrants or other securities convertible into or exercisable for the underlying security, the refinancing of the issuer's outstanding debt, the repurchase by the issuer of less than all of the underlying securities outstanding, or the sale by the issuer of significant capital assets.

5. When an underlying security is converted into a right to receive a fixed amount of cash, such as in a merger, outstanding Security Futures Products will be adjusted to replace such underlying security with such fixed amount of cash as the underlying interest, and the unit of trading shall remain unchanged.

6. In the case of a corporate reorganization, reincorporation or similar occurrence by the issuer of an underlying security which results in an automatic share-for-share exchange of shares in the issuer for shares in the resulting company, Security Futures Products on the underlying security will ordinarily be adjusted by replacing such underlying security with a like number of units of the shares of the resulting company. Because the securities are generally exchanged only on the books of the issuer and the resulting company, and are not generally exchanged physically, deliverable shares will ordinarily include certificates that are denominated on their face as shares in the original issuer, but which, as a result of the corporate transaction, represent shares in the resulting company.

7. When an underlying security is converted in whole or in part into a debt security and/or a preferred stock, as in a merger, and interest or dividends on such debt security or preferred stock are payable in the form of additional units thereof, outstanding Security Futures Products that have been adjusted by replacing the original underlying security with the security into which the original underlying security has been converted shall be further adjusted, effective as of the ex-date for each payment of interest or dividends thereon, by increasing the unit of trading by the number of units of the new underlying security distributed as interest or dividends thereon.

8. Notwithstanding this Interpretation of Rule 70110, distributions of short-term and long-term capital gains in respect of stock fund shares by the issuer thereof shall not, as a general rule, be deemed to be "ordinary dividends or distributions" within the meaning of paragraph 3 of Rule 70110, and adjustments of the terms of Security Futures Products on such stock fund shares for such distributions shall be made in accordance with applicable provisions of Rule 70110, unless the Clearing House determines, on a case-by-case basis, not to adjust for such a distribution.

9. In the event that a new series of Security Futures Products is introduced with a settlement price expressed in decimals and there is an outstanding series of Security Futures Products on the same underlying security with a settlement price expressed as a fraction that could be expressed in whole cents, the Clearing House may restate the settlement price of the outstanding series as its equivalent decimal price. If the settlement price for the outstanding series is a fraction that cannot be expressed in whole cents, the settlement price may not be restated as a decimal.

70120. UNAVAILABILITY OR INACCURACY OF FINAL SETTLEMENT PRICE

1. *If the Clearing House shall determine that the primary market(s) for the underlying security in respect of a maturing stock future did not open or remain open for trading at or before the time when the final settlement price for such futures would ordinarily be determined, or that the price or other value used to determine the final settlement price is unreported or otherwise unavailable, then, in addition to any other actions that the Clearing House may be entitled to take under the Rules, the Clearing House shall be empowered to do any or all of the following with respect to maturing futures affected by such event ("affected futures"):*

(a) *The Clearing House may suspend the time for making the final variation payment with respect to affected futures and, in the case of physically-settled Security Futures Products, may postpone the delivery date. At such time as the Clearing House determines that the required price or other value is available or the Clearing House has fixed the final settlement price pursuant to subparagraph (a) or (b) of this Rule, the Clearing House shall fix a new date for making the final variation payment and may fix a new delivery date for physically-settled Security Futures Products.*

(b) *The Clearing House may fix the final settlement price for affected futures, based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to buyers and sellers of affected futures, the maintenance of a fair and orderly market in such futures, and consistency of interpretation and practice. Without limiting the generality of the foregoing, the Clearing House may, if it deems such action appropriate for the protection of investors and the public interest, fix the final settlement price on the basis of the reported price of the underlying security or reported level of the underlying index at the close of regular trading hours (as determined by the Clearing House) on the last preceding trading day for which a closing stock price or index level was reported by the reporting authority.*

2. *The Clearing House may fix the final settlement price for affected futures using the opening prices of the relevant security or securities when the primary market(s) reopen. In that case, the date for making the final variation payment for the affected futures shall be postponed until the business day next following the day on which the final settlement price is fixed; and, in the case of physically-settled Security Futures Products, the delivery date shall also be postponed accordingly.*

3. *Every determination of the Clearing House pursuant to this Section shall be within the discretion of the Clearing House and shall be conclusive and binding on all investors and not subject to review. Unless the Clearing House directs otherwise, the price of an underlying security and the current index value of an underlying index as initially reported by the relevant reporting authority shall be conclusively presumed to be accurate and shall be deemed final for the purpose of determining settlement prices and the final settlement price, even if such price or value is subsequently revised or determined to have been inaccurate.*

INTERPRETATION TO 70120. UNAVAILABILITY OR INACCURACY OF FINAL SETTLEMENT PRICE

The Clearing House will not adjust officially reported stock prices for final settlement purposes, even if those prices or values are subsequently found to have been erroneous, except in extraordinary circumstances. Such circumstances might be found to exist where, for example, the closing price or current index value as initially reported is clearly erroneous and inconsistent with prices or values reported earlier in the same trading day, and a corrected closing price or current index value is promptly announced by the reporting authority. In no event will a completed settlement be adjusted due to errors in officially reported stock prices or current index values.

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 or such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposed to adopt CME Chapter 702, Security Futures Product Adjustments. The proposed CME Chapter 702 specifies the Exchange's response to corporate events and the possible unavailability or inaccuracy of spot values for use as final settlement prices. The Exchange believes that these rules are substantially identical to rules currently deployed by the Options Clearing Corporation ("OCC") with respect to the maintenance and bookkeeping of security futures products ("SFPs") and to the provisions of CME Chapter 8B.[5]

Section 6(h)(3) of the Act Requirements

Section 6(h)(3) of the Act[6] contains listing standards and conditions for trading SFPs. Below is a summary of each such requirement or condition, followed by a brief explanation of how CME would comply with it, whether by particular provisions in CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act[7] requires that any security underlying a SFP be registered pursuant to Section 12 of the Act.[8] This requirement is addressed by CME Rules 70001.2, 70003.2.b, 70004.2.a, and proposed CME Rule 70002.1.a.

Clause (B) of Section 6(h)(3) of the Act[9] requires that a market on which a physically settled SFP is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the SFP. CME has reached an agreement with a participant of DTC, a registered clearing agency, to facilitate the delivery-versus-payment transactions which result from an agreement to make or take delivery of the underlying security by the market participant.[10] This DTC participant would provide CME with a dedicated DTC account. This account would be a sub-account of the participant's main account and would be utilized solely for CME

[5] CME Chapter 8B addresses procedures applied to SFPs effected on a marketplace apart from CME but cleared by CME Clearing House.

[6] 15 U.S.C. 78f(h)(3).

[7] 15 U.S.C. 78f(h)(3)(A).

[8] 15 U.S.C. 78l.

[9] 15 U.S.C. 78f(h)(3)(B).

[10] The Exchange clarified its arrangement for the payment and delivery of securities underlying the SFPs. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on June 9, 2005.

activity with respect to the delivery of, and payment for, securities delivered against CME SFPs. CME would act as a contra party to each delivery transaction. The CME Clearing House would submit a delivery instruction for each transaction to DTC by electronic interface provided by the DTC participant. Market participants would be required to provide proof to CME outlining their operational and legal ability to make or take delivery of the underlying securities. These agreements and relevant procedures would be fully operational prior to any possible delivery event associated with such SFPs.

Clause (C) of Section 6(h)(3) of the Act [11] provides that listing standards for SFPs must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[12] For the reasons discussed herein, notwithstanding specified differences between the Sample Listing Standards and CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act [13] requires that each SFP be based on common stock or such other equity securities as the Commission and CFTC jointly determine are appropriate. This requirement is addressed by CME Rules 70001.1, 70002.1., 70003.2., and 70004.2.

Clause (E) of Section 6(h)(3) of the Act [14] requires that each SFP be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear SFPs, which permits the SFPs to be purchased on one market and offset on another market that trades such product. CME proposes to clear SFPs traded through Exchange facilities through CME Clearing House. CME Clearing House would have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes.

Clause (F) of Section 6(h)(3) of the Act [15] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act [16] effect transactions in a SFP. CME clearing members and their correspondents are bound by the applicable sales practice rules of the National Futures Association ("NFA"), which is a national securities association. As such, the sales practice rules of NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.[17] Moreover, the application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that "[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA."

Clause (G) of Section 6(h)(3) of the Act [18] requires that each SFP be subject to the prohibition against dual trading in Section 4j of CEA [19] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act [20] and the rules and regulations thereunder. CME Rule 123 requires Exchange members to comply with all applicable "provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC."

Further, the prohibition of dual trading in SFPs per Regulation § 41.27 [21] adopted pursuant to Section 4j(a) of CEA [22] applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined matching algorithm. The Exchange intends to offer SFPs on CME exclusively on its CME Globex electronic trading platform. To the extent that the conditions cited above do not exist in the context of the CME Globex system, the CME Rulebook contains no specific rule relating to dual trading in an electronic forum.

Clause (H) of Section 6(h)(3) of the Act [23] provides that trading in a SFP must not be readily susceptible to manipulation of the price of such SFP, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. CME believes that CME Listing Standards are designed to ensure that CME SFPs and the underlying securities would not be readily susceptible to price manipulation. Under CME Rule 432, an activity "to manipulate prices or to attempt to manipulate prices" is a "major offense" punishable, per CME Rule 430, by "expulsion, suspension, and/or a fine of not more than $1,000,000 plus the monetary value of any benefit received as a result of the violative action."

Clause (I) of Section 6(h)(3) of the Act [24] requires that procedures be in place for coordinated surveillance amongst the market on which a SFP is traded, any market on which any security underlying the SFP is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The Exchange has surveillance procedures in place to detect manipulation on a coordinated basis with other markets. In particular, CME is an affiliate member of the Intermarket Surveillance Group ("ISG") and is party to an affiliate agreement and an agreement to share market surveillance and regulatory information with the other ISG members. Further, CME is party to a supplemental agreement with the other ISG members to address the concerns expressed by the Commission with respect to affiliate ISG membership.[25] Finally, CME Rule 424 permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade, and their respective regulators.

Clause (J) of Section 6(h)(3) of the Act [26] requires that a market on which a SFP is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The Exchange states that it relies upon its Market Regulation Department and its large, highly trained staff to actively monitor market participants and their trading practices and to enforce compliance with CME rules. CME Market Regulation Department staff is organized into Compliance and Market Surveillance Groups. In performing its functions, CME Market Regulation Department routinely works closely with CME Audit Department, CME Clearing House, CME Legal Department, CME Globex Control Center, and CME Information Technology Department.

CME Compliance is responsible for enforcing the trading practice rules of the Exchange through detection, investigation, and prosecution of those

[11] 15 U.S.C. 78f(h)(3)(C).
[12] 15 U.S.C. 78*o*–3(a).
[13] 5 U.S.C. 78f(h)(3)(D).
[14] 15 U.S.C. 78f(h)(3)(E).
[15] 15 U.S.C. 78f(h)(3)(F).
[16] 15 U.S.C. 78*o*–3(a).
[17] 15 U.S.C. 78*o*–3(a).
[18] 15 U.S.C. 78f(h)(3)(G).
[19] 15 U.S.C. 6j.
[20] 15 U.S.C. 78k(a).
[21] 17 CFR 41.27.
[22] 7 U.S.C. 4j(a).
[23] 15 U.S.C. 78f(h)(3)(H).
[24] 15 U.S.C. 78f(h)(3)(I).
[25] *See* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (joint CFTC and Commission rule relating to cash settlement and regulatory halt requirements for SFPs).
[26] 15 U.S.C. 78f(h)(3)(J).

who may attempt to violate those CME Rules. Further, CME Compliance is responsible for handling customer complaints, ensuring the integrity of the Exchange's audit trail, and administering an arbitration program for the resolution of disputes. CME Compliance employs investigators, attorneys, trading floor investigators, data analysts, and a computer programming and regulatory systems design staff.

CME believes that CME Market Regulation Department has created some of the most sophisticated tools in the world to assist with the detection of possible rule violations and monitoring of the market. Among the systems it uses are the Regulatory Trade Browser ("RTB"), the Virtual Detection System ("VDS"), the Reportable Position System ("RPS"), and the RegWeb Profile System ("RegWeb"). These systems include information on all CME Globex users, all transactions, large positions, and statistical information on trading entities.

CME Market Surveillance is dedicated to the detection and prevention of market manipulation and other similar forms of market disruption. As part of these responsibilities, CME Market Surveillance enforces the Exchange's position limit rules, administers the hedge approval process, and maintains the Exchange's RPS system.

CME believes that the foundation of the CME Market Surveillance program is the deep knowledge of its staff about the major users, brokers, and clearing firms, along with its relationship with other regulators. Day-to-day monitoring of market positions is handled by a dedicated group of surveillance analysts assigned to specific market(s). Each analyst develops in-depth expertise of the factors that influence the market in question. The Exchange estimates that perhaps 90% of the market users at any single time are known to the Exchange. Daily surveillance staff activities include:

- Monitoring positions for size based on percentage of open interest and historic user participation in each contract.
- Aggregation of positions across clearing members with the use of CME trade reporting systems to account for all positions held by any single participant. CME believes that this daily review permits the surveillance analyst to promptly identify unusual market activity.
- As a contract approaches maturity, large positions are scrutinized to determine whether such activity is consistent with prior experience, allowing prompt regulatory intervention if necessary.
- Analysts closely monitor market news through on-line and print media.
- Staff conducts on-site visits to large market participants periodically.

CME Market Regulation staff investigates possible misconduct and, when appropriate, initiates disciplinary action. CME Rule 430 empowers the Exchange's disciplinary committees to discipline, limit, suspend, or terminate a member's activities for cause, amongst other sanctions. Further, per CME Rule 123, the Exchange requires its members to be responsible for "the filing of reports, maintenance of books and records, and permitting inspection and visitation" in order to facilitate such investigations by Exchange staff.

CME Rule 536 requires that certain information be recorded with respect to each order, including: Time entered, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code, and clearing firm. This information may be recorded manually on timestamped order tickets, electronically in a clearing firms system, or by entering the orders with the required information into CME Globex immediately upon receipt. A complete CME Globex electronic audit trail is archived and maintained by CME for at least a five year period. Clearing firms must also maintain any written or electronic order records for a period of five years.

Clause (K) of Section 6(h)(3) of the Act[27] requires that a market on which a SFP is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the SFP is traded and other markets on which any related security is traded. The Exchange filed with the Commission CME Rules establishing a generalized framework for the trade of SFPs.[28] In particular, proposed CME Rule 71001.F. provides, in accordance with Regulation § 41.25(a)(2) of CEA,[29] that "[t]rading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined per SEC Rule 6h–1(a)(3) and CFTC Regulation § 41.1(1), has been instituted for the underlying security."

Clause (L) of Section 6(h)(3) of the Act[30] requires that the margin requirements for a SFP comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[31] CME has margin rules in place.[32] Thus, CME believes that its customer margin rules are consistent with the requirements of the Act.

For the reasons described above, CME believes that CME Listing Standards submitted herewith satisfy the requirements set forth in Section 6(h)(3) of the Act.[33]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[34] in general, and furthers the objectives of Section 6(b)(5) of the Act,[35] in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(7) of the Act.[36] Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[37]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[27] 15 U.S.C. 78f(h)(3)(K).
[28] *See* SR–CME–2005–03.
[29] 17 CFR 41.25(a)(2).
[30] 15 U.S.C. 78f(h)(3)(L).
[31] 15 U.S.C. 78g(c)(2)(B).
[32] *See* Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672 (October 21, 2002) (SR–CME–2002–01).
[33] 15 U.S.C. 78f(h)(3).
[34] 15 U.S.C. 78f(b).
[35] 15 U.S.C. 78f(b)(5).
[36] 15 U.S.C. 78s(b)(7).
[37] 15 U.S.C. 78s(b)(1).

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–CME–2005–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CME–2005–02. 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. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2005–02 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3617 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51957; File No. SR–CME–2005–03]

Self-Regulatory Organization; Chicago Mercantile Exchange; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Rules Governing Contract Specifications for Physically Delivered Single Security Futures

June 30, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 thereunder,[2] notice is hereby given that on May 4, 2005, the Chicago Mercantile Exchange ("CME" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 31, 2005, CME filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

CME has also certified the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity Exchange Act ("CEA")[4] on May 4, 2005.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to adopt rules governing the trade of physically delivered single security futures products ("SFPs"). Further, the Exchange hereby certifies the listing of futures on Exchange Traded Funds ("ETFs"), specifically, the Nasdaq-100 Tracking Stock℠ ("QQQQ"), Standard & Poor's Depositary Receipts® ("SPDR"), and IWM.[5] The Exchange believes that these contract specifications are substantially similar to contract specifications currently in use with respect to physically delivered single security futures traded elsewhere. Proposed new language is *italicized*.

CHAPTER 710: PHYSICALLY DELIVERED SINGLE SECURITY FUTURES

71000. SCOPE OF CHAPTER

This chapter is limited in application to contract specifications applied to security futures contracts that require the physical delivery of a single security (a "Physically Delivered Single Security Futures"). Single securities that are eligible for listing per this Chapter 710 include those that meeting the initial listing standards per Exchange Rule 70001 and the maintenance listing standards per Exchange Rule 70002.

71001. FUTURES CALL

71001.A. Trading Unit

Physically Delivered Single Security Futures contracts shall require the delivery of a particular number of shares, as specified per Rule 71004, of common stock; an exchange traded fund ("ETF Share"); a trust issued receipt ("TIR"); a registered closed-end management investment company ("Closed-End Fund Share"); or, American Depository Receipts ("ADR").

71001.B. Price Increments

Physically Delivered Single Security Futures contracts shall be traded in U.S. Dollars with a minimum price increment as determined by the Board of Directors as depicted in Rule 71004.

71001.C. Trading Schedule

Physically Delivered Single Security Futures contracts may be traded during such hours, for delivery in such months as determined by the Board of Directors.

71001.D. Termination of Trading

All trading in a particular Physically Delivered Single Security Futures contract shall terminate at the close of business on the third Friday of the contract month.

71001.E. Position Limits

Position limits shall be applied on Physically Delivered Single Security Futures contracts such that, during the last five trading days of an expiring contract month, a person shall not own or control more than a specified number of contracts net long or net short in the expiring contract month, as depicted in Exchange Rule 71004. Position limits for each Physically Delivered Single Security Futures contract shall be

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter from John W. Labuszewski, Managing Director, CME, to Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on May 31, 2005. ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to amend the size of its iShares Russell 2000 ("IWM") futures contract to 200 instead of 100 shares. The Exchange believes that this implies that the value of the $0.01 minimum price fluctuation shall be $2.00 instead of $1.00. Also, the Exchange proposes to amend the launch date for IWM futures to June 20, 2005 from June 6, 2005.

[4] 7 U.S.C. 7a–2(c).

[5] The Exchange proposes to make the proposed rule change effective on June 6, 2005 when it intends to list for trading futures based on SPDRs and QQQQs. The Exchange proposes to list futures based on IWMs on June 20, 2005. *See* Amendment No. 1, *supra* note 3.

determined on a case-by-case basis at levels no greater than those prescribed by CFTC Regulation § 41.25(a)(3).

71001.F. Price Limits and Trading Halts

There is no daily price limit for Physically Delivered Single Security Futures contracts. Trading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined per SEC Rule 6h–1(a)(3) and CFTC Regulation § 41.1(l), has been instituted for the underlying security.

71002. SETTLEMENT PRICE

71002.A. Daily Settlement Price

Except for the last day of trading on an expiring contract, daily settlement prices shall be determined per Rule 813.

71002.B. Final Settlement Price

On the last day of trading for an expiring contract, the Final Settlement Price is determined in accordance with Rule 71002.A. unless the Final Settlement Price is fixed in accordance with Rule 70120.

71003. DELIVERY

Three (3) business days after the last trading day for an expiring contract, the National Securities Clearing Corporation and Depository Trust Corporation will facilitate delivery of, and payment for, the underlying common stock, American Depository Receipts, shares of exchange-traded funds, shares of closed-end management investment companies, or trust issued receipts whereby: a seller (i.e., the holder of a net short position) delivers the securities underlying the contract to a respective buyer (i.e., the holder of a net long position); and, in exchange, that buyer pays his respective seller the aggregate dollar amount of the Expiration Day Settlement Price multiplied by the quantity of the underlying securities delivered.[6]

71004. APPROVED SECURITIES

The following securities have been approved by the Board of Directors as the subject of Physically Delivered Single Security Futures Contracts:

Approved security	Unit of trading	Minimum fluctuation	Position limit in expiring contract in last 5 trading days
Nasdaq-100 Tracking Stock℠ ("QQQQ")	200 shares	$0.01 or $2.00 per contract	11,250
Standard & Poor's Depositary Receipts® ("SPDR").	100 shares	$0.01 or $1.00 per contract	22,500
iShares Russell 2000 ("IWM")	200 shares	$0.01 or $2.00 per contract	[7] 11,250

[7] Trading in physically settled futures on IWMs did not qualify for the 22,500 position limit pursuant to CFTC Regulation § 41.25(a)(3)(i)(A) prior to the 2-for-1 split with an ex-date of June 9, 2005. However, after the split, futures based on IWMs do qualify for a net position limit no greater than 22,500 (100 share contract) pursuant to this CFTC Regulation. To the extent that CME amended the IWM contract size from the originally proposed 100 share contract to 200 share contract as a result of the split, the applicable position limit for futures on IWM contracts pursuant to CFTC Regulation § 41.25 would be 11,250. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 28, 2005.

71005. EMERGENCIES, ACTS OF GOD, ACTS OF GOVERNMENT

If delivery or acceptance or any precondition or requirement of either is prevented by a strike, fire, accident, action of government or act of God, the seller or buyer shall immediately notify the Exchange President. If the President determines that emergency action may be necessary, he shall call a special meeting of the Board of Directors and arrange for the presentation of evidence respecting the emergency condition. If the Board determines that an emergency condition exists, it shall take such action as it deems necessary under the circumstances and its decision shall be binding upon all parties to the contract.

INTERPRETATIONS & SPECIAL NOTICES RELATING TO CHAPTER 710

Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), does not guarantee the accuracy and/or completeness of the S&P Stock Indices or any data included therein. S&P makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the S&P Index ETFs or any data included therein in connection with the trading of futures contracts, options on futures contracts or any other use. S&P makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the S&P Index ETFs or any data included therein. Without limiting any of the foregoing, in no event shall S&P have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

NEITHER FRANK RUSSELL COMPANY'S PUBLICATION OF THE RUSSELL INDEXES NOR ITS LICENSING OF ITS TRADEMARKS FOR USE IN CONNECTION WITH SECURITIES OR OTHER FINANCIAL PRODUCTS DERIVED FROM A RUSSELL INDEX IN ANY WAY SUGGESTS OR IMPLIES A REPRESENTATION OR OPINION BY FRANK RUSSELL COMPANY AS TO THE ATTRACTIVENESS OF INVESTMENT IN ANY SECURITIES OR OTHER FINANCIAL PRODUCTS BASED UPON OR DERIVED FROM ANY RUSSELL INDEX. FRANK RUSSELL COMPANY IS NOT THE ISSUER OF ANY SUCH SECURITIES OR OTHER FINANCIAL PRODUCTS AND MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO ANY RUSSELL INDEX OR ANY DATA INCLUDED OR REFLECTED THEREIN, NOR AS TO RESULTS TO BE OBTAINED BY ANY PERSON OR ANY ENTITY FROM THE USE OF THE RUSSELL INDEX OR ANY DATA INCLUDED OR REFLECTED THEREIN.

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, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared

[6] The Exchange has clarified that Depository Trust Corporation will facilitate delivery of, and payment for, the underlying common stock, American Depository Receipts, shares of exchange-traded funds, shares of closed-end management investment companies, or trust issued receipts via a participant of DTC with whom CME has a dedicated account. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 9, 2005.

summaries, set forth in Sections A, B, and C below, of the most significant aspects or such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt contract specifications governing physically delivered single security futures. Further, the Exchange proposes to list for trading, per such rules, futures on ETFs, specifically, QQQQ, SPDR, and IWM. The Exchange intends to offer physically delivered single security futures exclusively on CME's GLOBEX® electronic trading platform as opposed to trading on the floor of the Exchange.

Contract Size—CME Rule 71001.A., Trading Unit, specifies that "Physically Delivered Single Security Futures contracts shall require the delivery of a particular number of shares, as specified per CME Rule 71004, of common stock; an exchange traded fund ('ETF Share'); a trust issued receipt ('TIR'); a registered closed-end management investment company ('Closed-End Fund Share'); or, American Depository Receipts ('ADR')." CME Rule 71004, Approved Securities, provides that futures based on SPDRs shall be traded in units of 100 shares. SPDRs closed at $117.96 on March 31, 2005. The Exchange believes that this implies a contract valuation of $11,796. However, the Exchange proposes to trade QQQQs and IWMs based upon a 200-share unit. The Nasdaq-100 Tracking Stock closed at $36.57 on March 31, 2005, which equates to a contract value of $7,314. IWMs closed at $124.24 on March 31, 2005 but are scheduled to be split on a 2-for-1 basis on June 9, 2005 which, the Exchange believes, implies a post-split share value of $62.12 or a contract value of $12,424 based upon a 200-share contract.

The Exchange believes that these values are generally somewhat smaller than the size of the E-mini S&P 500, E-mini Russell 2000, and E-mini Nasdaq-100. The Exchange further believes that they are generally, with the exception of QQQQs and IWMs, consistent with practices in the context of other SFPs and with ETF-based options traded on stock option exchanges, which are generally based upon a 100-share trading unit.

Quotation Specification—CME Rule 71002.B., Price Increments, provides that "Physically Delivered Single Security Futures contracts shall be traded in U.S. Dollars with a minimum price increment as determined by the Board of Directors as depicted in Rule 71004." CME Rule 71004, Approved Securities, provides that ETF futures would be quoted in minimum increments of $0.01 per share. The Exchange believes that this equates to a $1.00 tick in the context of SPDRs and a $2.00 tick in QQQQs and IWMs. The Exchange further believes that this provision is not inconsistent with provisions associated with other extant SFPs or stock options based on ETFs. Moreover, the Exchange believes that a penny tick matches practices in the underlying ETF markets.

Position Limits—CME Rule 71001.E., Position Limits, provides that "[p]osition limits shall be applied on Physically Delivered Single Security Futures contracts such that, during the last five trading days of an expiring contract month, a person shall not own or control more than a specified number of contracts net long or net short in the expiring contract month, as depicted in CME Rule 71004. Position limits for each Physically Delivered Single Security Futures contract shall be determined on a case-by-case basis in accordance with CFTC Regulation § 41.25(a)(3)." CME Rule 71004, Approved Securities, provides that the position limit applied to futures based on QQQQs and IWMs during the last five trading days of an expiring contract month shall be 11,250 contracts and 22,500 contracts for SPDRs. The Exchange represents that these figures were determined by reference to CFTC Regulation § 41.25(a)(3),[8] which prescribes appropriate position limits by reference to the average daily volume (ADV) in the security over the prior six (6) months and the shares outstanding.

	ADV (10/04–3/05)	Shares outstanding (000)
SPDRs	51,890,256	425,860 (4/22/05)
IWMs (pre-split)	8,022,330	40,950 (4/22/05)
IWMs (post-split)	16,044,660	81,900 (4/22/05)
QQQQs	98,137,035	520,900 (4/21/05)

The Exchange believes that the 11,250 contract limit adopted in the context of IWMs and QQQQs is in conformance with CFTC Regulation § 41.25(a)(3)(i)(A)[9] which specifies that "where the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying shares of the underlying security outstanding, the designated contract market * * * may adopt a net position limit no greater than 22,500 (100-share) contracts." However, to the extent that the Exchange proposes to adopt a 200-share contract with respect to IWMs and QQQQs, the 22,500 limit need be halved to 11,250 contracts. Finally, the Exchange believes that SPDRs likewise exceed the parameters specified per CFTC Regulation § 41.25(a)(3)(i)(A).[10] Thus, the Exchange proposes to adopt a 22,500 limit, noting the proposed 100-share contract size.

Trading Schedule—The CME Board has determined that trading in futures on the three ETFs mentioned above shall be conducted from 8:30 a.m. to 3:15 p.m., Mondays through Fridays (Chicago time), when the underlying markets for the ETFs are open.[11] The CME Board has further determined initially to list futures for delivery in the first two quarterly delivery months in the March, June, September, and December cycle plus the first two non-quarterly or "serial" months (January, February, April, May, July, August, October, November) per CME Rule 71001.C., Trading Schedule.

[8] 17 CFR 41.25(a)(3). IWMs qualify for the 22,500 position limit on a post-split basis because the trading volume and shares outstanding doubled due to the 2-for-1 split on June 9, 2005. Because of the split, the average daily trading volume is considered doubled for the most recent six-month period in compliance with CFTC Regulation § 41.25. Telephone conservation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 28, 2005.

[9] 17 CFR 41.25(a)(3)(i)(A).

[10] 17 CFR 41.25(a)(3)(i)(A).

[11] CME confirmed that futures on the three ETFs would not be traded during holidays and other periods when the underlying markets for the ETFs are not open. Telephone conversation between Richard Co, Director of Financial Research, CME, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 24, 2005.

SUMMARY TERMS AND CONDITIONS

Contract Size	One-hundred (100) ETF shares of S&P 500 (SPDR); or two-hundred (200) shares of Nasdaq-100 Tracking Stock℠ (QQQQ) or iShares Russell 2000 (IWM).
Contract Months	March Quarterly Cycle plus first two serial months.
Trading Hours	Traded on the GLOBEX® electronic trading platform from 8:30 am to 3:15 pm Mondays through Fridays (Chicago times).
Minimum Price Fluctuation	$0.01 or $1.00 per contract in context of SPDRs; $2.00 per contract in context of QQQQs and IWMs.
Trading Halts	Trading halts are coordinated with halts in the underlying ETFs.
Position Limits	11,250 contracts for QQQQs and IWMs and 22,500 contracts for SPDRs net long or short during the last five (5) trading days of an expiring contract.
Final Settlement Date	Third Friday of the Contract Month.
Last Trading Day	Trades until the normal close of trading on the Final Settlement Date.
Final Settlement	Final settlement is accomplished through delivery of the requisite number of ETF shares.

Trading Halts—CME Rule 71001.F., Price Limits and Trading Halts, provides that there would be no daily price limit for Physically Delivered Single Security Futures contracts. However, trading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined in CFTC Regulation 41.1(1),[12] has been instituted for the underlying security. The Exchange believes that this provision is consistent with the prescriptions of CFTC Regulation § 41.25(a)(2)(i)[13] and Rule 6h–1(a)(3) of the Act.[14]

Daily Settlement—Settlement prices on a daily basis shall be established per current Exchange practices as defined in CME Rule 813, Settlement Price.

Final Settlement—Final settlement would be accomplished through the delivery of the underlying securities against the expiring contract per the provisions of CME Rule 71003, Delivery. Specifically, CME Rule 71003 provides that "[t]hree (3) business days after the last trading day for an expiring contract, the National Securities Clearing Corporation ("NSCC") and Depository Trust Corporation ("DTC") will facilitate delivery of, and payment for, the underlying * * * [security] * * * whereby: A seller * * * delivers the securities * * * and, in exchange, that buyer pays his respective seller the aggregate dollar amount of the Expiration Day Settlement Price multiplied by the quantity of the underlying securities delivered."[15] The invoice amount would be established per CME Rule 71002.B., Final Settlement Price, as the closing price of the futures contract established per normal settlement procedures.[16] Deliveries shall be facilitated through the CME Clearing House and its designated facilitating agents.

Compliance With Listing Standards—Single securities eligible for listing per these proposed rules would be governed by Chapter 700 of the Exchange's Rulebook ("Rulebook"), which specifies initial and maintenance listing standards for physically delivered single security futures and for security futures based on an Index of two or more securities.[17] The Exchange believes that Chapter 710 of the Rulebook governing physically delivered single security futures is based closely upon the specifications under which single security futures are traded elsewhere.

In order to attain initial eligibility for listing, a security must comply with certain requirements with respect to activity and issue size as discussed below. As illustrated in the accompanying table, all three of the subject securities meet the qualifications for initial listing as specified above.

- Per CME Rule 70001.1., "[t]here must be at least seven million shares or receipts evidencing the underlying security outstanding."
- Per CME Rule 70001.7, "it must have had a total trading volume * * * of at least 2,400,000 shares or receipts evidencing the underlying security in the preceding 12 months."
- Per CME Rule 70001.8, "the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange commences to list and trade the Security Futures Product on said underlying security."[18]

	Shares outstanding (000)	Total volume (4/04–3/05)	Price (3/31/05)
SPDRs	425,860 (4/22/05)	11,841,058,200	$117.96
IWMs	40,950 (4/22/05)	1,849,663,900	112.15
QQQQs	520,900 (4/21/05)	24,973,601,523	36.57

Section 6(h)(3) of the Act Requirements

[12] 17 CFR 41.1(1).

[13] 17 CFR 41.25(a)(2)(i).

[14] 17 CFR 240.6h–1(a)(3).

[15] As described below, CME has reached an agreement with a participant of DTC, a registered clearing agency, to facilitate the delivery-versus-payment transactions that result from an agreement to make or take delivery of the ETFs.

[16] *See* Amendment No. 1, *supra* note 3.

[17] Chapter 700 of the CME Rulebook has been developed for purposes of compliance with Section 6(h) of the Act. CME believes that CME Listing Standards are generally identical to the sample listing standards published in the Commission's, Division of Market Regulation Staff Legal Bulletin No. 15, as supplemented by the Joint Order of the Commission and CFTC identifying listing standards for shares of ETFs, TIRs, and Closed-End Fund. *See* Commission, Division: Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001). *See also* Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

[18] The joint order by the CFTC and the Commission modifying the requirement specified in Section 6(h)(3)(D) of the Act and the criterion specified in Section 2(a)(1)(D)(i)(III) of the CEA to permit an ETF share, TIR or Closed-End Fund share to underlie a security future also provides that the market price of the underlying share be $7.50 for the majority of business days during the three calendar months preceding listing of the SFP and that the issuer of the ETF, TIR, or Closed-End Fund be in compliance with all of the applicable requirements of the Act. *See* Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002). CME intends to comply with this joint order. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on June 28, 2005.

Section 6(h)(3) of the Act [19] contains listing standards and conditions for trading SFPs. Below is a summary of each such requirement or condition, followed by a brief explanation of how CME would comply with it, whether by particular provisions in CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act [20] requires that any security underlying a SFP be registered pursuant to Section 12 of the Act.[21] This requirement is addressed by CME Rules 70001.2, 70003.2.b, 70004.2.a, and proposed CME Rule 70002.1.a.

Clause (B) of Section 6(h)(3) of the Act [22] requires that a market on which a physically settled SFP is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the SFP. CME has reached an agreement with a participant of DTC, a registered clearing agency, to facilitate the delivery-versus-payment transactions which result from an agreement to make or take delivery of the underlying security by the market participant.[23] This DTC participant would provide CME with a dedicated DTC account. This account would be a sub-account of the participant's main account and would be utilized solely for CME activity with respect to the delivery of, and payment for, securities delivered against CME SFPs. CME would act as a contra party to each delivery transaction. The CME Clearing House would submit a delivery instruction for each transaction to DTC by electronic interface provided by the DTC participant. Market participants would be required to provide proof to CME outlining their operational and legal ability to make or take delivery of the underlying securities. These agreements and relevant procedures would be fully operational prior to any possible delivery event associated with such SFPs.

Clause (C) of Section 6(h)(3) of the Act [24] provides that listing standards for SFPs must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[25] For the reasons discussed herein, notwithstanding specified differences between the Sample Listing Standards and CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act [26] requires that each SFP be based on common stock or such other equity securities as the Commission and CFTC jointly determine are appropriate. This requirement is addressed by CME Rules 70001.1, 70002.1., 70003.2., and 70004.2.

Clause (E) of Section 6(h)(3) of the Act [27] requires that each SFP be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear SFPs, which permits the SFPs to be purchased on one market and offset on another market that trades such product. CME proposes to clear SFPs traded through Exchange facilities through CME Clearing House. CME Clearing House would have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes.

Clause (F) of Section 6(h)(3) of the Act [28] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act [29] effect transactions in a SFP. CME clearing members and their correspondents are bound by the applicable sales practice rules of the National Futures Association ("NFA"), which is a national securities association. As such, the sales practice rules of NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.[30] Moreover, the application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that "[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA."

Clause (G) of Section 6(h)(3) of the Act [31] requires that each SFP be subject to the prohibition against dual trading in Section 4j of CEA [32] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act [33] and the rules and regulations thereunder. CME Rule 123 requires Exchange members to comply with all applicable "provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC."

Further, the prohibition of dual trading in SFPs per Regulation § 41.27 [34] adopted pursuant to Section 4j(a) of CEA [35] applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined matching algorithm. The Exchange intends to offer SFPs on CME exclusively on its CME Globex electronic trading platform. To the extent that the conditions cited above do not exist in the context of the CME Globex system, the CME Rulebook contains no specific rule relating to dual trading in an electronic forum.

Clause (H) of Section 6(h)(3) of the Act [36] provides that trading in a SFP must not be readily susceptible to manipulation of the price of such SFP, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. CME believes that CME Listing Standards are designed to ensure that CME SFPs and the underlying securities would not be readily susceptible to price manipulation. Under CME Rule 432, an activity "to manipulate prices or to attempt to manipulate prices" is a "major offense" punishable, per CME Rule 430, by "expulsion, suspension, and/or a fine of not more than $1,000,000 plus the monetary value of any benefit received as a result of the violative action."

Clause (I) of Section 6(h)(3) of the Act [37] requires that procedures be in place for coordinated surveillance amongst the market on which a SFP is traded, any market on which any security underlying the SFP is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The Exchange has surveillance procedures in place to detect manipulation on a coordinated basis with other markets. In particular, CME is an affiliate member of the Intermarket Surveillance Group ("ISG") and is party to an affiliate agreement and an agreement to share market surveillance and regulatory information

[19] 15 U.S.C. 78f(h)(3).
[20] 15 U.S.C. 78f(h)(3)(A).
[21] 15 U.S.C. 78l.
[22] 15 U.S.C. 78f(h)(3)(B).
[23] The Exchange clarified its arrangement for the payment and delivery of securities underlying the SFPs. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 9, 2005.
[24] 15 U.S.C. 78f(h)(3)(C).
[25] 15 U.S.C. 78o–3(a).
[26] 15 U.S.C. 78f(h)(3)(D).
[27] 15 U.S.C. 78f(h)(3)(E).
[28] 15 U.S.C. 78f(h)(3)(F).
[29] 15 U.S.C. 78o–3(a).
[30] 15 U.S.C. 78o–3(a).
[31] 15 U.S.C. 78f(h)(3)(G).
[32] 15 U.S.C. 4j.
[33] 15 U.S.C. 78k(a).
[34] 17 CFR 41.27.
[35] 7 U.S.C. 6j(a).
[36] 15 U.S.C. 78f(h)(3)(H).
[37] 15 U.S.C. 78f(h)(3)(I).

with the other ISG members. Further, CME is party to a supplemental agreement with the other ISG members to address the concerns expressed by the Commission with respect to affiliate ISG membership.[38] Finally, CME Rule 424 permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade, and their respective regulators.

Clause (J) of Section 6(h)(3) of the Act[39] requires that a market on which a SFP is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The Exchange states that it relies upon its Market Regulation Department and its large, highly trained staff to actively monitor market participants and their trading practices and to enforce compliance with CME rules. CME Market Regulation Department staff is organized into Compliance and Market Surveillance Groups. In performing its functions, CME Market Regulation Department routinely works closely with CME Audit Department, CME Clearing House, CME Legal Department, CME Globex Control Center, and CME Information Technology Department.

CME Compliance is responsible for enforcing the trading practice rules of the Exchange through detection, investigation, and prosecution of those who may attempt to violate those CME Rules. Further, CME Compliance is responsible for handling customer complaints, ensuring the integrity of the Exchange's audit trail, and administering an arbitration program for the resolution of disputes. CME Compliance employs investigators, attorneys, trading floor investigators, data analysts, and a computer programming and regulatory systems design staff.

CME believes that CME Market Regulation Department has created some of the most sophisticated tools in the world to assist with the detection of possible rule violations and monitoring of the market. Among the systems it uses are the Regulatory Trade Browser ("RTB"), the Virtual Detection System ("VDS"), the Reportable Position System ("RPS"), and the RegWeb Profile System ("RegWeb"). These systems include information on all CME Globex users, all transactions, large positions, and statistical information on trading entities.

CME Market Surveillance is dedicated to the detection and prevention of market manipulation and other similar forms of market disruption. As part of these responsibilities, CME Market Surveillance enforces the Exchange's position limit rules, administers the hedge approval process, and maintains the Exchange's RPS system.

CME believes that the foundation of the CME Market Surveillance program is the deep knowledge of its staff about the major users, brokers, and clearing firms, along with its relationship with other regulators. Day-to-day monitoring of market positions is handled by a dedicated group of surveillance analysts assigned to specific market(s). Each analyst develops in-depth expertise of the factors that influence the market in question. The Exchange estimates that perhaps 90% of the market users at any single time are known to the Exchange. Daily surveillance staff activities include:

- Monitoring positions for size based on percentage of open interest and historic user participation in each contract.
- Aggregation of positions across clearing members with the use of CME trade reporting systems to account for all positions held by any single participant. CME believes that this daily review permits the surveillance analyst to promptly identify unusual market activity.
- As a contract approaches maturity, large positions are scrutinized to determine whether such activity is consistent with prior experience, allowing prompt regulatory intervention if necessary.
- Analysts closely monitor market news through on-line and print media.
- Staff conducts on-site visits to large market participants periodically.

CME Market Regulation staff investigates possible misconduct and, when appropriate, initiates disciplinary action. CME Rule 430 empowers the Exchange's disciplinary committees to discipline, limit, suspend, or terminate a member's activities for cause, amongst other sanctions. Further, per CME Rule 123, the Exchange requires its members to be responsible for "the filing of reports, maintenance of books and records, and permitting inspection and visitation" in order to facilitate such investigations by Exchange staff.

CME Rule 536 requires that certain information be recorded with respect to each order, including: Time entered, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code, and clearing firm. This information may be recorded manually on timestamped order tickets, electronically in a clearing firms system, or by entering the orders with the required information into CME Globex immediately upon receipt. A complete CME Globex electronic audit trail is archived and maintained by CME for at least a five-year period. Clearing firms must also maintain any written or electronic order records for a period of five years.

Clause (K) of Section 6(h)(3) of the Act[40] requires that a market on which a SFP is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the SFP is traded and other markets on which any related security is traded. The Exchange filed with the Commission CME Rules establishing a generalized framework for the trade of SFPs.[41] In particular, proposed CME Rule 71001.F. provides, in accordance with Regulation § 41.25(a)(2) of CEA,[42] that "[t]rading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined per SEC Rule 6h–1(a)(3) and CFTC Regulation § 41.1(l), has been instituted for the underlying security."

Clause (L) of Section 6(h)(3) of the Act[43] requires that the margin requirements for a SFP comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[44] CME has margin rules in place.[45] Thus, CME believes that its customer margin rules are consistent with the requirements of the Act.

For the reasons described above, CME believes that CME Listing Standards submitted herewith satisfy the requirements set forth in Section 6(h)(3) of the Act.[46]

2. Statutory Basis

The Exchange believes that its proposed rule change, as amended, is consistent with Section 6(b) of the Act,[47] in general, and furthers the objectives of Section 6(b)(5) of the Act,[48] in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in

[38] *See* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (joint CFTC and Commission rule relating to cash settlement and regulatory halt requirements for SFPs).

[39] 15 U.S.C. 78f(h)(3)(J).

[40] U.S.C. 78f(h)(3)(K).

[41] *See* SR–CME–2005–03.

[42] 17 CFR 41.25(a)(2).

[43] 15 U.S.C. 78f(h)(3)(L).

[44] 15 U.S.C. 78g(c)(2)(B).

[45] *See* Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672 (October 21, 2002) (SR–CME–2002–01).

[46] 15 U.S.C. 78f(h)(3).

[47] 15 U.S.C. 78f(b).

[48] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change, as amended, 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(7) of the Act.[49] Within 60 days of the date of effectiveness of the proposed rule change, as amended, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[50]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CME–2005–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CME–2005–03. 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. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2005–03 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8010–01–P

[49] 15 U.S.C. 78s(b)(7).

[50] 15 U.S.C. 78s(b)(1).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51959; File No. SR–CME–2005–01]

Self-Regulatory Organization; Chicago Mercantile Exchange; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing Standards for Security Futures Products

June 30, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 thereunder,[2] notice is hereby given that on May 4, 2005, the Chicago Mercantile Exchange ("CME" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by CME.

CME has also certified the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity Exchange Act ("CEA")[3] on May 4, 2005. 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

CME proposes to amend its Security Futures Product Listing Standards ("Listing Standards") for purposes of Section 6(h) of the Act.[4] These amendments are intended to conform CME Listing Standards for physically settled security futures products, including exchange traded funds ("ETFs"), trust issued receipts ("TIRs"), closed-end funds and narrow-based indices ("NRIs"), to current industry practices. The text of the proposed rule change is below. Proposed new language is *italicized*; and proposed deletions are in [brackets].

CHAPTER 700: SECURITY FUTURES PRODUCT LISTING STANDARDS

70000. SCOPE OF CHAPTER

No change.

70001. SINGLE SECURITY FUTURES—INITIAL LISTING STANDARDS

For a Security Futures Product, that is physically settled, to be eligible for initial listing, the security underlying the futures contract must meet each of the following requirements:

1.–5. No change.

6. In the case of an underlying security other than an ETF Share, TIR or Closed-End Fund Share, it must have had [an average daily trading volume (in all markets in which the underlying security has traded) of at least 109,000 shares or receipts evidencing the underlying security in each of the preceding 12 months.] *total trading volume (in all markets in which the underlying security is traded) of at least 2,400,000 shares or receipts evidencing the underlying security in the preceding 12 months.*

Interpretation of Requirement 6 as Applied to Restructure Securities

No change.

7. No change.

8. [It must have had a market price per security of at least $7.50, as measured by the lowest closing price

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 15 U.S.C. 78f(h).

reported in any market in which it has traded, for the majority of business days during the three calendar months preceding the date of selection.] *If the underlying security is a "covered security as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange commences to list and trade the Security Futures Product on said underlying security. For purposes of this provision, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

Interpretation of Requirement 8 as Applied to Restructure Securities

Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, the Exchange may "look back" to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

a. The Restructure Security has an aggregate market value of at least $500 million;

b. The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

c. The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

d. The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term "Relevant Percentage" means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, the Exchange will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, the Exchange will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement [(viii)] *8*, the Exchange may look back to the market price history of the Original Equity Security if: (i) The foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades "regular way" prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least [$7.50]; *$3.00.*

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, the Exchange will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once the Exchange commences to rely upon a Restructure Security's trading volume and market price history for any trading day, the Exchange will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

9. If the underlying security is not a "covered security as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $7.50 for the previous five consecutive business days preceding the date on which the Exchange commences to list and trade the Security Futures Product on said underlying security. For purposes of this provision, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.

Interpretation of Requirement 9 as Applied to Restructure Securities

Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, the Exchange may "look back" to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

a. The Restructure Security has an aggregate market value of at least $500 million;

b. The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

c. The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

d. The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term "Relevant Percentage" means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, the Exchange will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, the Exchange will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement [(viii)] 8, the Exchange may look back to the market price history of the Original Equity Security if: (i) The foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades "regular way" prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least $7.50.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, the Exchange will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once the Exchange commences to rely upon a Restructure Security's trading volume and market price history for any trading day, the Exchange will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

[9.] *10.* If the underlying security is an ADR:

a. The Exchange must have an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying the ADR is traded;

b. The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which the Exchange has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading ("Selection Date");

c.

(1) The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, and in markets where the Exchange has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

(2) The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

(3) The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date.

Or

d. The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

[10.] *11.* The Exchange will not list for trading any SFP where the underlying security is a Restructure Security that is not yet issued and outstanding, regardless of whether the Restructure Security is trading on a "when issued" basis or on another basis that is contingent upon the issuance or distribution of securities.

70002. SINGLE SECURITY FUTURES—MAINTENANCE LISTING STANDARDS

1. [Absent exceptional circumstances, the] *The* Exchange will not open for trading any SFP, that is physically settled, with a new delivery month, and may prohibit any opening purchase transactions in the SFP already trading, to the extent it deems such action necessary or appropriate, unless the underlying security meets each of the following maintenance requirements; provided that, if the underlying security is an ETF Share, TIR or Closed-End Fund Share, the applicable requirements for initial listing of the related SFP (as described in Rule 70001 above) shall apply in lieu of the following maintenance requirements:

a. It must be registered under Section 12 of the Exchange Act.

[a.] *b.* There must be at least 6,300,000 shares or receipts evidencing the underlying security outstanding that are owned by persons other than those who are required to report their security holdings pursuant to Section 16(a) of the Exchange Act.

[b.] *c.* There must be at least 1,600 securityholders.

[c.] *d.* It must have had an average daily trading volume (across all markets in which the underlying security is traded) of least 82,000 shares or receipts evidencing the underlying security in each of the preceding 12 months.

Interpretation of Requirement [1.c.] *1.d.* as Applied to Restructure Securities

If a Restructure Security is approved for a SFP trading under the initial listing standards in [Section I] *Rule 70001*, the average daily trading volume history of the Original Equity Security (as defined in [Section I] *Rule 70001*) prior to the commencement of trading in the Restructure Security (as defined in [Section I] Rule 70001), including "when-issued" trading, may be taken into account in determining whether this requirement is satisfied.

[d.] The security underlying the Security Futures Product must have had a market price of at least $5.00, as measured by the highest closing price reported in any market in which it has traded, for a majority of business days during the preceding six calendar months; provided, however, that the Exchange may waive this requirement and open for trading a SFP with a new delivery month, if:

(1) The aggregate market value of the underlying security equals or exceeds $50 million;

(2) Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all delivery months;

(3) Its average daily trading volume (in all markets in which the underlying security is traded) has been at least 109,000 shares or receipts evidencing the underlying security in each of the preceding 12 months; and

(4) The market price per share or receipt of the underlying security closed at $3.00 or above on a majority of the business days during the preceding six calendar months, as measured by the highest closing price for the underlying security reported in any market in which the underlying security traded, and the market price per share or receipt of the underlying security is at least $3.00 at the time such additional series are authorized for trading. During the next consecutive six calendar month period, to satisfy this paragraph, the market price per share or receipt of the underlying security must be at least $4.00.]

e. The market price per share or receipt of the underlying security has not closed below $3.00 on the previous trading day to the Expiration Day of the nearest expiring Contract on the underlying security. The market price per share of the underlying security will be measured by the closing price

reported in the primary market in which the underlying security traded.

Interpretation of Requirement [d] 1.e. as Applied to Restructure Securities

If a Restructure Security is approved for SFP trading under the initial listing standards per Rule 70001[.8], the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including "when-issued" trading, may be taken into account in determining whether this requirement is satisfied.

[e.] *f.* If the underlying security is an ADR and was initially deemed appropriate for SFP trading per Rule 70001.10.b or Rule 70001.*10.c.[.8.b. or 70001.8.c.*], the Exchange will not open for trading SFPs having additional delivery months on the ADR unless:

(1) The percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which the Exchange has in place effective surveillance sharing agreements for any consecutive three-month period is: (1) At least 30%, without regard to the average daily trading volume in the ADR; or (2) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000 receipts;

(2) The Exchange has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

(3) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

2.–4. No change.

70003. SFPs BASED ON INDEX COMPOSED OF TWO OR MORE SECURITIES—INITIAL LISTING STANDARDS

No change.

70004. SFPs BASED ON INDEX COMPOSED OF TWO OR MORE SECURITIES—MAINTENANCE LISTING STANDARDS

The Exchange will not open for trading SFPs, that are physically settled, based on an index composed of two or more securities with a new delivery month unless the underlying index:

1. No change.

2. Meets the following requirements:

a.–i. No change.

Interpretation of Requirement 2.i. Regarding Procedures for Rebalancing

[The date of determination for the mandatory annual rebalancing of an approximately equal dollar-weighted index underlying a physically settled security futures product as described in the first sentence of (i) will initially be the last trading day of the year, except that, if the Exchange has rebalanced such index on an interim basis as described in the second sentence of (i), any following annual rebalancing of such index will occur on the anniversary date of the interim rebalancing. New contracts issued on or after a date on which the corresponding index is rebalanced in accordance with (i) will be based on an index consisting of the original component securities, weighted applying the methodology described under (i) above on the basis of security prices on the rebalancing date. Outstanding contracts will not be affected by any rebalancing.]

In the case of a physically settled SFP based on an approximately equal dollar-weighted index composed of one or more securities, each component security will be weighted equally based on its market price on the Selection Date, subject to rounding up or down the number of shares or receipts evidencing such security to the nearest multiple of 100 shares or receipts.

j.–l. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects or 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 Listing Standards applicable to physically settled security futures products ("SFPs") for NBIs and for single security products, including ETFs, TIRs, and shares of registered closed-end management investment companies ("Closed-End Fund").[5] The Exchange proposes to amend its Listing Standards to conform to current industry practices. In particular, the Exchange proposes to amend the current requirement that a security underlying a SFP, other than an ETF, TIR, or Closed-End Fund share, must have had an average daily trading volume of at least 109,000 shares or receipts evidencing the underlying security in each of the preceding 12 months to adopt a requirement, in conformance with current industry practice (and the standards for an ETFs, TIRs, and Closed-End Fund share), that such security must evidence total trading volume of at least 2,400,000 shares or receipts evidencing the underlying security in the preceding 12 months. Finally, the Exchange also proposes to adopt other minor or technical amendments to its Listing Standards to conform with industry practices, such as adjusting the market price per share of a security underlying a SFP to distinguish between a covered security as defined under Section 18(b)(1)(A) of the Securities Act of 1933 and a security that is "not covered."[6]

Section 6(h)(3) of the Act Requirements

Section 6(h)(3) of the Act[7] contains listing standards and conditions for trading SFPs. Below is a summary of each such requirement or condition, followed by a brief explanation of how CME would comply with it, whether by particular provisions in CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act[8] requires that any security underlying a SFP be registered pursuant to Section 12 of the Act.[9] This requirement is addressed by CME Rules 70001.2, 70003.2.b, 70004.2.a, and proposed CME Rule 70002.1.a.

Clause (B) of Section 6(h)(3) of the Act[10] requires that a market on which a physically settled SFP is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the

[5] *See* Securities Exchange Act Release No. 46975 (December 9, 2002), 67 FR 77297 (December 17, 2002) (SR–CME–2002–02).

[6] The joint order by the CFTC and the Commission modifying the requirement specified in Section 6(h)(3)(D) of the Act and the criterion specified in Section 2(a)(1)(D)(i)(III) of the CEA to permit an ETF share, TIR or Closed-End Fund share to underlie a security future also provides that the market price of the underlying share be $7.50 for the majority of business days during the three calendar months preceding listing of the SFP and that the issuer of the ETF, TIR, or Closed-End Fund be in compliance with all of the applicable requirements of the Act. See Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002). CME intends to comply with this joint order. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on June 28, 2005.

[7] 15 U.S.C. 78f(h)(3).

[8] 15 U.S.C. 78f(h)(3)(A).

[9] 15 U.S.C. 78l.

[10] 15 U.S.C. 78f(h)(3)(B).

SFP. CME has reached an agreement with a participant of DTC, a registered clearing agency, to facilitate the delivery-versus-payment transactions which result from an agreement to make or take delivery of the underlying security by the market participant.[11] This DTC participant would provide CME with a dedicated DTC account. This account would be a sub-account of the participant's main account and would be utilized solely for CME activity with respect to the delivery of, and payment for, securities delivered against CME SFPs. CME would act as a contra party to each delivery transaction. The CME Clearing House would submit a delivery instruction for each transaction to DTC by electronic interface provided by the DTC participant. Market participants would be required to provide proof to CME outlining their operational and legal ability to make or take delivery of the underlying securities. These agreements and relevant procedures would be fully operational prior to any possible delivery event associated with such SFPs.

Clause (C) of Section 6(h)(3) of the Act[12] provides that listing standards for SFPs must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[13] For the reasons discussed herein, notwithstanding specified differences between the Sample Listing Standards and CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act[14] requires that each SFP be based on common stock or such other equity securities as the Commission and CFTC jointly determine are appropriate. This requirement is addressed by CME Rules 70001.1, 70002.1., 70003.2., and 70004.2.

Clause (E) of Section 6(h)(3) of the Act[15] requires that each SFP be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear SFPs, which permits the SFPs to be purchased on one market and offset on another market that trades such product. CME proposes to clear SFPs traded through Exchange facilities through CME Clearing House. CME Clearing House would have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes.

Clause (F) of Section 6(h)(3) of the Act[16] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act[17] effect transactions in a SFP. CME clearing members and their correspondents are bound by the applicable sales practice rules of the National Futures Association ("NFA"), which is a national securities association. As such, the sales practice rules of NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.[18] Moreover, the application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that "[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA."

Clause (G) of Section 6(h)(3) of the Act[19] requires that each SFP be subject to the prohibition against dual trading in Section 4j of CEA[20] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act[21] and the rules and regulations thereunder. CME Rule 123 requires Exchange members to comply with all applicable "provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC."

Further, the prohibition of dual trading in SFPs per Regulation § 41.272[22] adopted pursuant to Section 4j(a) of CEA[23] applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined matching algorithm. The Exchange intends to offer SFPs on CME exclusively on its CME Globex electronic trading platform. To the extent that the conditions cited above do not exist in the context of the CME Globex system, the CME Rulebook contains no specific rule relating to dual trading in an electronic forum.

Clause (H) of Section 6(h)(3) of the Act[24] provides that trading in a SFP must not be readily susceptible to manipulation of the price of such SFP, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. CME believes that CME Listing Standards are designed to ensure that CME SFPs and the underlying securities would not be readily susceptible to price manipulation. Under CME Rule 432, an activity "to manipulate prices or to attempt to manipulate prices" is a "major offense" punishable, per CME Rule 430, by "expulsion, suspension, and/or a fine of not more than $1,000,000 plus the monetary value of any benefit received as a result of the violative action."

Clause (I) of Section 6(h)(3) of the Act[25] requires that procedures be in place for coordinated surveillance amongst the market on which a SFP is traded, any market on which any security underlying the SFP is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The Exchange has surveillance procedures in place to detect manipulation on a coordinated basis with other markets. In particular, CME is an affiliate member of the Intermarket Surveillance Group ("ISG") and is party to an affiliate agreement and an agreement to share market surveillance and regulatory information with the other ISG members. Further, CME is party to a supplemental agreement with the other ISG members to address the concerns expressed by the Commission with respect to affiliate ISG membership.[26] Finally, CME Rule 424 permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade, and their respective regulators.

Clause (J) of Section 6(h)(3) of the Act[27] requires that a market on which a SFP is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The Exchange states that it relies upon its Market

[11] The Exchange clarified its arrangement for the payment and delivery of securities underlying the SFPs. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 9, 2005.

[12] 15 U.S.C. 78f(h)(3)(C).

[13] 15 U.S.C. 78*o*–3(a).

[14] 15 U.S.C. 78f(h)(3)(D).

[15] 15 U.S.C. 78f(h)(3)(E).

[16] 15 U.S.C. 78f(h)(3)(F).

[17] 15 U.S.C. 78*o*–3(a).

[18] 15 U.S.C. 78*o*–3(a).

[19] 15 U.S.C. 78f(h)(3)(G).

[20] 15 U.S.C. 4j.

[21] 15 U.S.C. 78k(a).

[22] 17 CFR 41.27.

[23] 7 U.S.C. 6j(a).

[24] 15 U.S.C. 78f(h)(3)(H).

[25] 15 U.S.C. 78f(h)(3)(I).

[26] *See* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (joint CFTC and Commission rule relating to cash settlement and regulatory halt requirements for SFPs).

[27] 15 U.S.C. 78f(h)(3)(J).

Regulation Department and its large, highly trained staff to actively monitor market participants and their trading practices and to enforce compliance with CME rules. CME Market Regulation Department staff is organized into Compliance and Market Surveillance Groups. In performing its functions, CME Market Regulation Department routinely works closely with CME Audit Department, CME Clearing House, CME Legal Department, CME Globex Control Center, and CME Information Technology Department.

CME Compliance is responsible for enforcing the trading practice rules of the Exchange through detection, investigation, and prosecution of those who may attempt to violate those CME Rules. Further, CME Compliance is responsible for handling customer complaints, ensuring the integrity of the Exchange's audit trail, and administering an arbitration program for the resolution of disputes. CME Compliance employs investigators, attorneys, trading floor investigators, data analysts, and a computer programming and regulatory systems design staff.

CME believes that CME Market Regulation Department has created some of the most sophisticated tools in the world to assist with the detection of possible rule violations and monitoring of the market. Among the systems it uses are the Regulatory Trade Browser ("RTB"), the Virtual Detection System ("VDS"), the Reportable Position System ("RPS"), and the RegWeb Profile System ("RegWeb"). These systems include information on all CME Globex users, all transactions, large positions, and statistical information on trading entities.

CME Market Surveillance is dedicated to the detection and prevention of market manipulation and other similar forms of market disruption. As part of these responsibilities, CME Market Surveillance enforces the Exchange's position limit rules, administers the hedge approval process, and maintains the Exchange's RPS system.

CME believes that the foundation of the CME Market Surveillance program is the deep knowledge of its staff about the major users, brokers, and clearing firms, along with its relationship with other regulators. Day-to-day monitoring of market positions is handled by a dedicated group of surveillance analysts assigned to specific market(s). Each analyst develops in-depth expertise of the factors that influence the market in question. The Exchange estimates that perhaps 90% of the market users at any single time are known to the Exchange. Daily surveillance staff activities include:

- Monitoring positions for size based on percentage of open interest and historic user participation in each contract.
- Aggregation of positions across clearing members with the use of CME trade reporting systems to account for all positions held by any single participant. CME believes that this daily review permits the surveillance analyst to promptly identify unusual market activity.
- As a contract approaches maturity, large positions are scrutinized to determine whether such activity is consistent with prior experience, allowing prompt regulatory intervention if necessary.
- Analysts closely monitor market news through on-line and print media.
- Staff conducts on-site visits to large market participants periodically.

CME Market Regulation staff investigates possible misconduct and, when appropriate, initiates disciplinary action. CME Rule 430 empowers the Exchange's disciplinary committees to discipline, limit, suspend, or terminate a member's activities for cause, amongst other sanctions. Further, per CME Rule 123, the Exchange requires its members to be responsible for "the filing of reports, maintenance of books and records, and permitting inspection and visitation" in order to facilitate such investigations by Exchange staff.

CME Rule 536 requires that certain information be recorded with respect to each order, including: Time entered, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code, and clearing firm. This information may be recorded manually on timestamped order tickets, electronically in a clearing firms system, or by entering the orders with the required information into CME Globex immediately upon receipt. A complete CME Globex electronic audit trail is archived and maintained by CME for at least a five year period. Clearing firms must also maintain any written or electronic order records for a period of five years.

Clause (K) of Section 6(h)(3) of the Act [28] requires that a market on which a SFP is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the SFP is traded and other markets on which any related security is traded. The Exchange filed with the Commission CME Rules establishing a generalized framework for the trade of SFPs.[29] In particular, proposed CME Rule 71001.F. provides, in accordance with Regulation § 41.25(a)(2) of CEA,[30] that "[t]rading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined per SEC Rule 6h–1(a)(3) and CFTC Regulation § 41.1(1), has been instituted for the underlying security."

Clause (L) of Section 6(h)(3) of the Act [31] requires that the margin requirements for a SFP comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[32] CME has margin rules in place.[33] Thus, CME believes that its customer margin rules are consistent with the requirements of the Act.

For the reasons described above, CME believes that CME Listing Standards submitted herewith satisfy the requirements set forth in Section 6(h)(3) of the Act.[34]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[35] in general, and furthers the objectives of Section 6(b)(5) of the Act,[36] in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[28] 15 U.S.C. 78f(h)(3)(K).

[29] *See* SR–CME–2005–03.

[30] 17 CFR 41.25(a)(2).

[31] 15 U.S.C. 78f(h)(3)(L).

[32] 15 U.S.C. 78g(c)(2)(B).

[33] *See* Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672 (October 21, 2002) (SR–CME–2002–01).

[34] 15 U.S.C. 78f(h)(3).

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(7) of the Act.[37] Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[38]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CME–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CME–2005–01. 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. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2005–01 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3620 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

[37] 15 U.S.C. 78s(b)(7).

[38] 15 U.S.C. 78s(b)(1).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51948; File No. SR–ISE–2005–28]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes for Transactions in Options on the Standard & Poor's Depository Receipts® on a Retroactive Basis

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 2005, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 15, 2005, the Exchange filed Amendment No. 1 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to adopt a $.10 per contract surcharge for certain transactions in options based on the Standard & Poor's Depository Receipts(®), or SPDRs(®) ("SPDRs") to become effective retroactively as of January 10, 2005.[4] The text of the proposed rule change, as amended, is available on the Exchange's Internet Web site (*http://www.iseoptions.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to retroactively establish, as of January 10, 2005, a $.10 per contract surcharge fee for certain transactions in options on SPDRs[5] that became effective on May 20, 2005 pursuant to a previous proposed rule change submitted by the Exchange.[6]

The Exchange's Schedule of Fees currently has in place a surcharge fee item that calls for a $.10 per contract fee for transactions in certain licensed products. The Exchange entered into a license agreement with Standard and Poor's, a unit of McGraw-Hill Companies, Inc., authorizing the Exchange to list SPDR options. The Exchange is adopting this fee for transactions in SPDR options to defray the licensing costs. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made non-substantive changes to clarify the purpose for the fee change.

[4] The Exchange filed with the Commission an identical proposed revision to its Schedule of Fees on May 20, 2005 (SR–ISE–2005–06), which was immediately effective as of that date under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder. The Exchange filed Amendment No. 1 thereto on June 15, 2005. That proposal was published in Exchange Act Release No. 51901 (June 22, 2005), 70 FR 37455 (June 29, 2005). Because the Exchange seeks to apply the surcharge to its Schedule of Fees on a retroactive basis as of January 10, 2005, the Exchange is submitting this proposal to the Commission under Section 19(b)(2) of the Act, to be published for notice and comment.

[5] The Exchange represents that these fees will be charged only to Exchange members.

[6] *See supra* note 4.

of the license. However, because competitive pressures in the industry have resulted in the waiver of transaction fees for Public Customers,[7] the Exchange proposes to exclude Public Customer Orders[8] from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders under a pilot program that is set to expire on July 31, 2005.[9]

Additionally, if it is concluded by the courts, after all avenues of appeal, that no license from Standard and Poor's was required by the Exchange to list SPDR options, then upon any refund by Standard and Poor's, the Exchange shall submit a rule filing to the Commission providing for a reimbursement of the surcharge fees paid by members to the Exchange as a result of this surcharge fee.

The Exchange now proposes to extend this surcharge fee retroactively to all applicable transactions occurring since January 10, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of 6(b)(4) of the Act[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties with respect to this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–ISE–2005–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–28 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3623 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

[7] Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[8] Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer.

[9] *See* ISE Rule 1900(10) (defining Linkage Orders). The surcharge fee will apply to the following Linkage Orders: Principal Acting as Agent Orders and Principal Orders.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51951; File No. SR–MSRB–2005–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Month-End Performance Data for Municipal Fund Securities Under MSRB Rule G–21

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB has filed with the SEC a proposed rule change amending Rule G–21, on advertising, to establish requirements relating to the availability of performance data current to the most recent month-end in connection with advertisements by brokers, dealers and municipal securities dealers ("dealers") containing performance data for municipal fund securities. The MSRB proposes that dealers be required to comply with the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for advertisements of municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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 MSRB has recently amended Rule G–21 to, among other things, establish requirements relating to the inclusion of performance data in advertisements used or produced by dealers relating to municipal fund securities (the "recent amendments").[3] These requirements are, in most respects, consistent with the requirements applicable under Rule 482 adopted by the SEC under the Securities Act of 1933, as amended[4] (the "Securities Act"), for mutual fund advertisements that contain performance data. However, one provision of Securities Act Rule 482 that was not included in the recent amendments requires that mutual fund advertisements showing performance data that is not current as of the most recent month-end also include a phone number or Web site address at which performance data may be obtained that is current to the most recent month-end, available no later than seven business days after the end of the month.

The proposed rule change would further amend Rule G–21 to require dealers to include in advertisements that contain performance data for municipal fund securities a phone number or Web address where investors may obtain performance data current to the most recent month-end, unless the data included in the advertisement is itself current to the most recent month-end. Specifically, the proposed rule change would amend clause (C) of Rule G–21(e)(ii) to provide that performance data in advertisements must be calculated as of the most recent practicable date considering the type of municipal fund securities and the media used, except that any advertisement containing total return quotations would be in compliance with this requirement if:

(1)(a) Total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such return, or all information required for the calculation of such return, is available to the dealer, and (b) total return quotations (current to the most recent month ended seven business days prior to the date of any use[5] for which such return, or all information required for the calculation of such return, is available to the dealer) are provided at a toll-free or collect telephone number or Web site identified in the advertisement and the month to which such information is current is identified; or

(2) Total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such return, or all information required for the calculation of such return, is available to the dealer and the month to which such information is current is identified.

In addition, the proposed rule change would amend clause (C)(1) of Rule G–21(e)(i) to require that any municipal fund securities advertisement that displays performance information must identify either a toll-free (or collect) telephone number or a Web site where an investor may obtain total return quotations current to the most recent month-end for which such return is available.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[6] which provides that the MSRB's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will further investor protection by making information provided in advertisements of municipal fund securities more up-to-date and more comparable among different municipal fund securities investments and between municipal fund securities and registered mutual funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On December 16, 2004, the MSRB published for comment a draft amendment to Rule G–21 with respect to advertisements of municipal fund securities.[7] The MSRB received four comment letters.[8] ICI, CSF and Vanguard fully support the draft amendments, while CSPN is generally supportive of the draft amendments subject to certain concerns regarding the deadlines imposed under the proposal. The comments received are discussed below. After reviewing these comments, the MSRB approved the draft amendments, with certain modifications described below, for filing with the SEC.

Impact on State 529 Plan Community

Comments Received. CSPN states that it has conducted an informal poll of its issuer members regarding the impact of the draft amendments on their activities. CSPN notes that all but one issuer prepare monthly performance data but that less than half currently target having such data available for all of their investment options within seven business days of month-end as provided for in the draft amendments. CSPN states that most (but not all) issuers that

[3] *See* Exchange Act Release No. 51736 (May 24, 2005), 70 FR 31551 (June 1, 2005).

[4] 15 U.S.C. 77a *et seq.*

[5] The term "use" is used with the same meaning as in Securities Act Rule 482.

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] *See* MSRB Notice 2004–43 (December 16, 2004).

[8] Letter from David J. Pearlman, Chairman, College Savings Foundation ("CSF"), to Ernesto A. Lanza, dated January 14, 2005; letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), to Ernesto A. Lanza, dated January 19, 2005; letter from Heidi Stam, Principal, Securities Regulation, Vanguard Group, Inc. ("Vanguard"), to Ernesto A. Lanza, dated January 19, 2005; and letter from Tim Berry, Chair, College Savings Plan Network ("CSPN"), and Indiana State Treasurer, to Ernesto A. Lanza, dated January 27, 2005.

do not meet the seven business day timeframe indicate that 10 business days would be an appropriate outside posting date.

CSPN also notes that some issuers express concern that "implementation of the proposed Rule without modification might unfairly disadvantage programs, or investment options within programs, which are not invested entirely (or at all) in mutual funds of one mutual fund family, thereby negatively affecting depositor choice." CSPN observes that "application of the proposed standard to qualified tuition programs * * * [is] more complex than is the case with mutual funds. Many issuers' programs include investment options that are invested in assets other than mutual funds. Many issuers rely upon contractual arrangements with financial institutions to obtain performance data with respect to some or all of their program's investment options." CSPN states:

> Many issuers also rely upon contractual arrangements with financial institutions with respect to the marketing of their programs, including in some instances the marketing of investment options managed for investment purposes by other financial institutions, by the issuer or by another public entity. An inability to include the most recent available total return data in advertisements may disadvantage an issuer's program as compared with other programs. In addition, an inability to include an investment option in advertisements because total return data is not then available with respect to such investment option may disadvantage such investment option as compared with other investment options within the same program.

Other concerns that issuers express to CSPN include initial and ongoing costs of implementing appropriate procedures to assure compliance and the speed at which such procedures can be put in place. CSPN argues that the draft amendments "effectively impose the compliance burden of the proposed requirement upon unregulated issuers, as it is issuers who will be financially and, in some instances, operationally responsible for the provision of the referenced total return data through a toll-free (or collect) telephone number or Web site."

With respect to specific elements of the draft amendments, CSPN seeks clarification that the language would never require that performance data be current as of a date other than the end of a month (*i.e.*, that it would never require mid-month calculations). In addition, CSPN requests that the month-end data that is required to be made available by telephone or the Internet not be made subject to the posting deadline of seven business days after the end of the month. In the alternative, if the MSRB retains a posting deadline, CSPN suggests that such deadline be extended to 15 business days. In addition, CSPN states that this posting deadline be based on when the performance data (or information needed to calculate performance data) becomes available to the issuer, rather than available to the dealer.

MSRB Response. The MSRB does not view the rule language to require that performance data be calculated other than on an end-of-month basis unless the advertisement in which such data appears otherwise states or reasonably implies. Therefore, no change to the rule is required for this purpose.

The MSRB believes that it is important that the rule retain the seven business day from end of month deadline, both to ensure consistency with mutual fund rules and to avoid large-scale mismatches between the timeframes for performance data available to investors for one municipal fund security versus another. This deadline provides that performance data must be current to the most recent month ended seven business days prior to the date of any use for which such return, or all information required for the calculation of such return, is available to the dealer. In general, so long as either the actual performance data, or all the information necessary to calculate performance, for the most recently ended calendar month is available to the dealer within seven business days after the end of such month, such performance must be used for compliance with the rule. However, if neither the performance data nor the information required to calculate performance is available to the dealer within that seven business day period, the dealer may continue to use the performance data from the preceding month until the most recent month's data is available or can be calculated. Where the issuer has undertaken to prepare performance data for use by dealers in their advertisements, the performance data will be presumed to be first made available to the dealer for purposes of this requirement when such performance data is made available by the issuer to the dealer, regardless of whether some or all of the information needed to calculate performance has previously become available to the dealer.[9] The MSRB has added a requirement that dealers disclose the month to which month-end performance data is current to ensure that investors understand the information they are provided and are in a better position to make meaningful comparisons between different investment options.

Finally, where an issuer offers various different investment options, the rule's currentness standard should be read to apply to each investment option separately. Thus, so long as dealers display performance data for each investment option in a manner that complies with the preceding paragraph, it is possible that, at any given time, performance data for one investment option of an issuer may be current to a different month-end than with respect to the performance data for another investment option of the same issuer.

Fee and Expense Disclosure

Comments Received. Vanguard recommends that the MSRB require additional disclosures in advertisements that include performance data. Vanguard states:

> We urge the MSRB to consider enhancing fee disclosure in the context of municipal fund securities performance advertising. Accordingly, we ask the MSRB to consider requiring brokers and dealers, in any advertisement containing municipal fund securities performance data, to clearly and prominently disclose all fees and expenses applicable to an investment in those securities in close proximity to such performance data.

Vanguard observes that information about fees and expenses is critical in evaluating investments and making informed investment decisions, and such information is "essential in order to achieve and maintain the proper balance" with performance data. Vanguard notes that NASD has filed with the SEC a proposed amendment to its mutual fund advertising rule that would require mutual fund advertisements that include performance data to disclose, in a prominent text box, sales charges and annual expense ratio.[10] Vanguard states, however, that it does not support NASD's formatting requirements with respect to such disclosure.

MSRB Response. The MSRB agrees that disclosure of fees and expenses would be appropriate and that it is crucial for informed investment decisions that such information be available in conjunction with performance data. The MSRB believes that any such requirement in connection with municipal fund securities be made consistent with requirements that may

[9] This presumption may be lost if the dealer itself causes a material delay in the issuer's calculation of performance or if the issuer fails to fulfill its undertaking on a consistent basis.

[10] *See* Exchange Act Release No. 50226 (August 20, 2004), 69 FR 52738 (August 27, 2004) (SR–NASD–2004–043).

become applicable to mutual fund advertisements. The MSRB is taking this suggestion under advisement pending final action by the SEC on the NASD rulemaking proposal.

Effective Date

Comments Received. CSF requests that the draft amendments have an effective date of 180 days after SEC approval. CSPN also requests a delayed effectiveness of 180 days if the MSRB maintains specific deadlines for making month-end information available. The ICI recommends coordination of the effective date for the draft amendments with the recent amendments, which were then pending with a proposed effective date of three months after approval. However, in a separate comment letter to the SEC on the recent amendments, the ICI requested that such amendments become effective 210 days after approval. The ICI noted that the SEC had provided a 210-day transition period when it had adopted extensive changes to its mutual fund advertising rule in 1988.

MSRB Response. The MSRB agrees that the proposed rule change should have the same effective date as the performance data provisions of the recent amendments since the proposed rule change also relates to performance data and therefore is best implemented in tandem with the related provisions of the recent amendments. The MSRB observes that, under the recent amendments, the SEC provided that all advertisements for municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005 must come into compliance with Rule G–21(e)(ii) and certain other provisions relating to performance data.[11] As a result, dealers also would be required to comply with the amendments to Rule G–21(e)(ii) effected by the proposed rule change for advertisements of municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB proposes that dealers be required to comply with the proposed rule change for advertisements of municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005. Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–MSRB–2005–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–MSRB–2005–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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–MSRB–2005–09 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3615 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* Exchange Act Release No. 51736 (May 24, 2005), 70 FR 31551 (June 1, 2005).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51952; File No. SR–MSRB–2005–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Technical Amendment to Rule G–37, on Political Contributions and Prohibitions on Municipal Securities Business

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of a technical amendment to Rule G–37, on political contributions and prohibitions on municipal securities business. The MSRB has set an effective date for the proposed rule change of July 5, 2005. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).

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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G–37, on political contributions and prohibitions on municipal securities business, provides that contributions to officials of an issuer by a municipal finance professional ("MFP") of a dealer can result in the dealer being banned from municipal securities business with such issuer for a period of two years. When a person first becomes an MFP, the rule imposes a "look back" in which certain contributions made by such person prior to becoming an MFP (in addition to contributions made after becoming an MFP) can result in the imposition of the ban. The nature of such look back varies depending on the type of MFP. In the case of persons who become MFPs solely as a result of their supervisory activities or firm leadership positions within the meaning of clause (C), (D) or (E) of Rule G–37(g)(iv) ("supervisor MFPs"), the look back period established in Rule G–37(b)(iii) is limited to the six month period prior to becoming an MFP.

The MSRB has learned that some people may read the language in Rule G–37(b)(iii) literally to provide that the *only* contributions of supervisor MFPs that can result in a ban on business are those made during the six month look back period, and that contributions made after becoming such an MFP are excluded. This interpretation clearly was not the intent of this provision. The proposed rule change would clarify this language to ensure that those contributions made after becoming an MFP are also subject to the potential ban.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[5] which provides that MSRB rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

The MSRB believes that the proposed rule change clarifies the rule's intent of ensuring that the high standards and integrity of the municipal securities industry are maintained.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from June 2, 2005, the date on which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

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.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2005–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–MSRB–2005–10. 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 MSRB. 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–MSRB–2005–10 and should be submitted on or before August 1, 2005.

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3616 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51956; File No. SR–NASD–2005–081]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Maximum Single Order Share Size Limits in Nasdaq's Brut Facility

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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 NASD. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] which renders it 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

Nasdaq proposes to expand the single order total dollar price limit in Nasdaq's Brut Facility. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4903. Order Entry Parameters

(a)–(e) No Change.

(f) Order Size—Any order in whole shares up to 1,000,099 shares may be entered into the System, subject to a dollar volume limitation of $[2]75,000,000.

* * * * *

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to expand the maximum single-order total dollar value parameter in Nasdaq's Brut Facility. Currently, the dollar value of a single order entered into the Brut system may not exceed $25,000,000. Nasdaq proposes to expand that amount to $75,000,000.

Nasdaq believes that expansion of the single-order total dollar value amount will provide additional flexibility for Brut system users trading more liquid, higher-priced securities, as well as facilitating trading in larger dollar amounts on days of increased market activity, such as index rebalance and options expiration days.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A of the Act,[4] in general, and with Section 15A(b)(6) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] Consequently, because the foregoing rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day pre-operative period, which would make the proposed rule operative immediately.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.[9] Allowing the rule change to become operative immediately should allow Brut system users to take advantage of additional trading flexibility without delay. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

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

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] Rule 19b–4(f)(6) under the Act also requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The NASD complied with this requirement.

[9] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–081. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–081 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3621 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51953; File No. SR–NASD–2005–085]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Relating to Manning Price-Improvement Standards for Decimals

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend through December 31, 2005, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretive Material 2110–2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Manning"). There are no proposed changes to the rule text of the Manning Interpretation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires an NASD member firm to provide a minimum level of price improvement to an incoming order in a Nasdaq National Market or SmallCap security if the firm chooses to trade as principal with an incoming order at a price superior to that of the customer limit order that it currently holds. If the firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute the held customer limit order. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute the held customer limit order, it is in violation of the Manning Interpretation. The Commission originally approved, on a pilot basis, price-improvement standards for decimalized securities contained in the Manning Interpretation on April 6, 2001.[5] At that time, NASD added the following language to IM–2110–2:

For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, the minimum amount of price improvement necessary in order for a market maker to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[6]

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001).

[6] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny).

Continued

Since approval, these standards continue to operate on a pilot basis which terminates on June 30, 2005.[7] NASD has determined to seek an extension of its current pilot until December 31, 2005. NASD believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission continues to analyze the issues related to customer limit order protection in a decimalized environment. NASD is not proposing any other changes to the pilot at this time.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(6) of the Act,[9] in particular, which require, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve treatment of customer limit orders and enhance the integrity of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD asserts that the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder[11] because the rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; nor

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[12] NASD has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately so that the pilot can continue uninterrupted.

The Commission hereby grants the request.[13] The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption and designates the proposed rule change to be operative 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–085 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–085. 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 at the principal office of NASD and at the Commission's Public Reference Room. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–085 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3624 Filed 7–8–05; 8:45 am]

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Quotations submitted to Nasdaq that do not meet this standard are rounded to the nearest minimum quotation increment (namely, $0.01), specifically, rounded down for buy orders and rounded up for sell orders. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001) (SR–NASD–01–07).

[7] *See* Securities Act Release No. 50893 (December 20, 2004), 69 FR 78078 (December 29, 2004).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b–4(f)(6)(iii) states that NASD must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. NASD satisfied this requirement.

[13] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51954; File No. SR–NSCC–2005–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Charges for Communications Fees To Continue Operating Legacy Communication Networks

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 17, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items

[1] 15 U.S.C. 78s(b)(1).

I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the fees charged to members that fail to migrate their communications systems from legacy networks to The Depository Trust & Clearing Corporation's ("DTCC's") Securely Managed and Reliable Technology ("SMART") system [2] or to the Securities Industry Automation Corporation's ("SIAC's") Secure Financial Transaction Infrastructure ("SFTI") networks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Beginning in 2003, NSCC has periodically informed members of the need to migrate their telecommunications connectivity from SIAC's legacy based Broker and Access networks to DTCC's SMART system or SIAC's SFTI.[4] While several advantages exist in having all members successfully migrate, NSCC's main objective in insourcing these services into its own data processing operations is to provide consistent business continuity planning capabilities across all NSCC services. In the event of a large-scale regional disruption, any member accessing NSCC through a legacy network will not have the benefits provided by the other communications vehicles which could create exposure to these members and their counterparties.[5]

While most NSCC members have complied with stated migration requirements, several members continue to access NSCC through legacy networks, which is imposing significant unnecessary costs on NSCC for continued support of these systems. NSCC rules provide that members will be charged for communications charges at cost. Therefore, in order to encourage these members to migrate and in order to equitably allocate costs among its members, NSCC intends to allocate its costs for continued support of legacy networks among the members using such systems on a pro rata basis. NSCC plans to soon issue an important notice to members specifying the date such fees will become effective.[6]

In order to avoid bearing these costs, members currently using legacy systems are required to take the following actions: (i) As soon as possible, ensure adequate communications connectivity through SMART and/or SFTI, (ii) successfully complete testing through the newly-established pathways, (iii) complete full conversion of all input/output for applicable NSCC applications directly to/from NSCC through SMART and/or SFTI, and (iv) cancel the legacy network connections.

The proposed change is consistent with Section 17A of the Act [7] and the rules and regulations thereunder applicable to NSCC because it will enable NSCC to equitably allocate costs among its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2005–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NSCC–2005–07. 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

[2] SMART is DTCC's centralized, end-to-end managed communications infrastructure that provides connectivity support for all post-trade clearance and settlement processing. Most of the services offered by DTCC's subsidiaries, The Depository Trust Company, the Fixed Income Clearing Corporation, and NSCC are accessible through SMART. SMART is interoperable with SFTI.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] DTCC Important Notices Z#0008, Z#0009, and Z#0010.

[5] SMART is designed to withstand catastrophic disaster scenarios and is set up to operate in DTCC's multiple remote sites to ensure its operability in the event of disruption. Legacy network connections are not automatically configured to "fail over" to DTCC's remote processing sites and therefore do not provide members using these networks with the resilience that would be needed in the event of a large-scale regional disruption.

[6] NSCC expects that the migration deadline will be set for the end of 2005.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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 NSCC and on NSCC's Web site at *http://www.nscc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2005–07 and should be submitted on or before August 1, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3619 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51972; File No. SR–PCX–2005–84]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Securities in Subpenny Increments

July 5, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2005, the Pacific Exchange, Inc. ("PCX" 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 substantially been prepared by the Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to amend the interpretation to PCXE Rule 7.6(a) to reflect the anticipated extension of a Commission exemption that permits securities transactions to be entered, executed, and reported in subpenny increments, although such quotations are disseminated in rounded, penny increments without a rounding identifier. The text of the proposed rule change is available on the PCX Web site (*http://www.pacificex.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously granted PCX an exemption from Rules 11Ac1–1, 11Ac1–2, and 11Ac1–4 under the Act[5] with respect to securities priced less than $1.00 per share that permits Archipelago Exchange, a facility of PCX ("ArcaEx"), electronic trading permit ("ETP") holders of ArcaEx, and vendors that distribute ArcaEx quotation information to enter, execute, and report quotations in exchange-listed, Nasdaq National Market, and SmallCap securities in increments less than $0.01 per share, although such quotations are disseminated in rounded, penny increments without a rounding identifier.[6] In conjunction with the initial grant of this exemption, the Exchange modified Interpretation .05 to PCXE Rule 7.6(a) on a pilot basis to reflect a subpenny minimum price variation for securities priced less than $1.00. That pilot rule is operative until September 30, 2005.[7] Subsequently, the Exchange requested the Commission to extend the exemption to permit the Exchange to accept and execute orders and quotations of all exchange-listed, National Market, and SmallCap securities in increments less than $0.01 per share, although such quotations are disseminated in rounded, penny increments without a rounding identifier.[8] That exemption expires on June 30, 2005.[9] PCX has requested the Commission, in a separate letter, to extend this exemption until the effective date of Rule 612 of Regulation NMS.[10] With this filing, the Exchange is amending Interpretation .05 to PCXE Rule 7.6(a) to reflect the anticipated extension of this Commission exemption.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.11Ac1–1, 240.11Ac1–2, and 11Ac1–4.

[6] *See* Letter from David S. Shillman, Associate Director, Division of Market Regulation, Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated September 24, 2004.

[7] *See* Securities Exchange Act Release No. 50441 (September 24, 2004), 69 FR 58570 (September 30, 2004).

[8] *See* Letter from David S. Shillman, Associate Director, Division, Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated February 10, 2005.

[9] *See id.*

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS adopting release). Rule 612, which governs sub-penny quotations, will become effective on August 29, 2005.

[11] The Commission notes that it has granted the Exchange the extension it requested. *See* Letter to Alden Adkins, Chief Regulatory Officer, PCX, from Annette L. Nazareth, Director, Division, Commission, dated July 1, 2005.

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

[13] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder [15] because the rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[16] The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately.

The Commission hereby grants the request.[17] The Commission believes that such waiver is consistent with the protection of investors and the public interest because the sole purpose of the rule change to accurately reflect the new expiration date of a Commission exemption.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2005–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–PCX–2005–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2005–84 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–13546 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of the Results of the 2004 Annual Product Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the disposition of the product petitions accepted for review in the 2004 GSP Annual Product Review (including self-initiated product reviews) and the results of the 2004 *De Minimis* Waiver, the 2004 Redesignation, and the 2004 Competitive Need Limitation Reviews.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee, Office of the United States Trade Representative (USTR), Room F–220, 1724 F Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "Trade Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the 2004 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee reviewed petitions to change the product coverage of the GSP. The disposition of those petitions is described in Annex I of this notice.

In the 2004 *De Minimis* Waiver and Redesignation Review, the GSP Subcommittee evaluated the appraised import values of each GSP-eligible article in 2004 to determine whether an article from a GSP beneficiary developing country exceeded the GSP Competitive Need Limitations (CNLs). Articles that exceeded one of the GSP CNLs in 2004, and that are newly excluded from GSP eligibility for a specific country, are listed in Annex II. Certain articles from GSP-eligible countries that had previously exceeded one of the CNLs, but had fallen below the CNLs in 2004 ($115 million and 50 percent of U.S. imports of the article), were redesignated for GSP eligibility. These articles and countries are listed in Annex III. *De minimis* waivers were granted to certain articles that exceeded the 50 percent import share CNL but for which the aggregate value of the imports of that article was below the 2004 *de minimis* level of $17.0 million. Annex IV to this notice contains a list of the articles and the associated countries granted *de minimis* waivers.

Marideth J. Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, Chairman, GSP Subcommittee.

BILLING CODE 3190–W5–P

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] In addition, Rule 19b–4(f)(6)(iii) states that the Exchange must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. The Commission has determined to waive the requirement in this case.

[17] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

Annex I. Decisions on Product Petitions in the 2004 GSP Annual Review

Case #	HTS	Product	Decision
		A. Petitions to Add Products to GSP	
2004-01	0804.10.20	Dates, fresh of dried, whole with or without pits	Deny
2004-02	0804.10.40	Dates, fresh or pact, whole packed over 4.6 kg	Grant
2004-03	0804.10.60	Dates whole without pits, over 4.6 kg	Grant
2004-04	0804.10.80	Dates, other than whole	Deny
2004-05	2008.99.25	Dates, otherwise prepared	Deny
2004-06	5702.51.20	Rugs, hand loomed, hand woven	Grant **
2004-07	5702.91.30	Rugs, hand loomed, hand woven	Grant **
2004-08	5702.92.0010	Rugs, hand loomed, hand woven	Grant
2004-09	5702.99.1010	Rugs, hand loomed, hand woven	Grant **
2004-10	5703.10.0020	Rugs, hand loomed, hand woven	Grant
2004-11	5703.20.10	Rugs, hand loomed, hand woven	Grant
2004-12	5703.30.0020	Rugs, hand loomed, hand woven	Grant
2004-13	7320.10.60	Leaf Springs for Heavy Trucks	Deny
** India excluded for exceeding the CNL.			
		B. Petition to Remove Product from GSP	
2004-14	3904.61.00	Polytetrafluorethylene (PTFE) Resin	Deny
		C. Petitions to Waive Competitive Need Limits	
2004-15	3823.19.20	Fatty acids from coconut oil [Philippines]	Grant
2004-16	4107.19.50	Upholstery leather [Argentina]	Grant
2004-17	4107.92.80	Fancy leather [Argentina]	Grant
2004-18	6802.91.25	Travertine [Turkey]	Deny
		Addendum: USTR self-initiated petitions to waive Competitive Need Limitation for Certain Countries	

		Addendum: USTR self-initiated petitions to waive Competitive Need Limitation for Certain Countries	
2004-19	4412.13.40	Certain plywood sheets N/O 6 mm thick [Indonesia]	Grant
2004-20	7113.11.50	Certain silver articles of jewelry [Thailand]	Grant
2004-21	9001.30.00	Contact lenses [Indonesia]	Grant
2004-22	9009.12.00	Electrostatic photocopying apparatus [Thailand]	Grant

Annex II. New Products Receiving CNL Exclusions

HTSUS	Partner	Imports	Share	Product description (truncated)
06031080	Colomb	115,305,852	37.3	Cut flowers and flower buds suitable for bouquets or ornamental purposes, fresh cut
08045080	Phil R	11,674,130	54.6	Guavas, mangoes, and mangosteens, dried
44121940	Brazil	249,969,702	55.3	Plywood of wood sheets, n/o 6 mm thick each, with outer plies of coniferous wood,
68022110	Turkey	16,383,548	60.2	Monumental or building stone & arts. thereof, of travertine, simply cut/sawn,
68029120	Turkey	35,757,101	57.9	Monumental or building stone & arts. thereof, of travertine, dressed or polished but
68029300	India	143,962,887	15.8	Monumental or building stone & arts. thereof, of granite, further worked than
72024950	Russia	27,333,597	51.4	Ferrochromium containing by weight 3 percent or less of carbon
74081160	Russia	131,841,505	18.7	Refined copper, wire, w/maximum cross-sectional dimension over 6 mm but not over
74081900	Brazil	65,406,618	53	Refined copper, wire, w/maximum cross-sectional dimension of 6 mm or less
84099991	Brazil	123,499,421	15.7	Parts nesi, used solely or principally with the engines of heading 8408, for vehicles
85443000	Hondura	161,843,236	2.9	Insulated ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft

Annex III. Products Receiving Redesignation

HTUS	Partner	2004 Imports	Share	Description (truncated)
16041450	Thailnd	0	0	Tunas and skipjack, not in airtight containers, not in bulk or in immediate containers
38231920	Phil R	23,320,315	38.9	Industrial monocarboxylic fatty acids or acid oils from refining derived from
46019105	India	0	0	Plaits of vegetable materials and similar products of such plaiting materials, whether
46019905	India	223,019	6	Plaits and similar products of plaiting materials (not vegetable), whether or not
71131925	Turkey	4,531,856	9.7	Gold mixed link necklaces and neck chains
71162005	Thailnd	5,392,584	7.6	Jewelry articles of precious or semiprecious stones, valued not over $40 per
71162015	Thailnd	1,723,503	3.6	Jewelry articles of precious or semiprecious stones, valued over $40 per piece
74031100	Russia	7,440,250	0.3	Refined copper cathodes and sections of cathodes
76151930	Thailnd	104,994,950	29.9	Aluminum, cooking and kitchen ware (o/than cast), enameled or glazed or
85165000	Thailnd	72,014,101	8	Microwave ovens of a kind used for domestic purposes

Annex IV. Products Receiving de Minimis Waivers

HTSUS Subheading	Trading Partner	2004 U.S. Imports	Article description (truncated)
02023002	Uruguay	$284,693	High-qual. beef cuts, boneless, processed, frozen, descr in gen. note 15 of the HTS
03026910	Phil R	$373,678	Fish, nesi, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with
03052020	Russia	$81,000	Sturgeon roe, dried, smoked, salted or in brine
04100000	Indnsia	$9,603,442	Edible products of animal origin, nesi
07114000	India	$2,603,454	Cucumbers including gherkins, provisionally preserved but unsuitable in that state for immediate
07129070	Egypt	$448,493	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced, broken or in powder, but not
07139060	India	$277,679	Dried leguminous vegetables nesi, shelled, if entered for consumption during the period from May 1
07139080	India	$248,546	Dried leguminous vegetables nesi, shelled, if entered Sept. 1 through the following April 30, or
08025020	Turkey	$595,594	Pistachios, fresh or dried, in shell
08106000	Thailnd	$896,308	Durians, fresh
08134010	Thailnd	$2,176,992	Papayas, dried
08134080	Thailnd	$1,063,290	Tamarinds, dried
11023000	Thailnd	$2,840,742	Rice flour
12021040	Egypt	$24,510	Peanuts (ground-nuts), not roasted or cooked, in shell, subject to add. US note 2 to Ch.12
13019040	India	$3,000	Turpentine gum (oleoresinous exudate from living trees)
14019040	Argent	$1,456,227	Lime bark, raffia, reeds, rushes, cleaned, bleached or dyed cereal straw, other vegetable materials nesi,
15179010	Argent	$4,013,177	Edible artificial mixtures of products provided for in headings 1501 to 1515, cont. 5% or more by weight
16010040	Brazil	$86,503	Sausages and similar products of beef, beef offal or blood; food preparations based on these
16025009	Argent	$9,343,952	Prepared or preserved meat of bovine animals, cured or pickled, not containing cereals or vegetables
17019180	Brazil	$783,662	Cane/beet sugar & pure sucrose, refined, solid, w/added flavoring, nesoi
17029035	Brazil	$5,263,728	Invert molasses
18061043	Brazil	$71,582	Cocoa powder, o/90% by dry wt of sugar, subject to gen. note 15 of the HTS
19012045	Argent	$29,730	Mixes for bakers wares (dairy prod. of Ch4 US note 1), n/o 25% bf, not retail, subj. to add. US nte 10 to
20060070	Thailnd	$2,158,760	Fruit nesi, and nuts, except mixtures, preserved by sugar (drained, glace or crystallized)
20089935	Thailnd	$3,952,479	Lychees and longans, otherwise prepared or preserved, nesi
20089950	Thailnd	$1,884,349	Papayas, other than pulp, otherwise prepared or preserved, nesi
20093920	Brazil	$65,676	Lime juice, Brix value exceeding 20, fit for beverage purposes
23050000	Argent	$958,171	Oilcake and other solid residues, resulting from the extraction of peanut (ground-nut) oil
23063000	Argent	$1,515,813	Oilcake and other solid residues, resulting from the extraction of vegetable fats or oils, of sunflower
25151220	Turkey	$719,497	Travertine, merely cut into blocks or slabs of a rectangular (including square) shape
28042900	Russia	$10,658,127	Rare gases, other than argon
28262000	Brazil	$241,099	Fluorosilicates of sodium or of potassium
28401100	Turkey	$40,247	Anhydrous disodium tetraborate (refined borax)
28401900	Turkey	$4,032,757	Disodium tetraborate (refined borax) except anhydrous
28415010	Kazakhs	$154,777	Potassium dichromate
28419020	Kazakhs	$4,017,017	Ammonium perrhenate
28500020	Russia	$122,240	Hydride, nitride, azide, silicide and boride of vanadium

Annex IV. Products Receiving de Minimis Waivers (continued)

29035100	Romania	$405,000	1,2,3,4,5,6-Hexachlorocyclohexane
29036908	Brazil	$4,363,152	p-Chlorobenzotrifluoride; and 3,4-Dichlorobenzotrifluoride
29095040	Indnsia	$3,424,538	Oderificious or flavoring compounds of ether-phenols, ether-alcohol-phenols & their halogenated,
29153400	Russia	$138,793	Isobutyl acetate
29349918	Brazil	$3,142,569	Aromatic or modified aromatic pesticides nesoi, of other heterocyclic compounds, nesoi
38084010	Argent	$4,750,143	Disinfectants, containing any aromatic or modified aromatic disinfectant
41012040	Brazil	$3,300	Whole bovine hides/skins (not buffalo) (n/o 8 kg dried, 10 kg dry salted or 16 kg fresh/otherwise
41015050	Brazil	$198,910	Whole raw bovine hides/skins (not buffalo), weight over 16 kg, surface area over 2.6 m2, pretanned
41019035	Argent	$320	Raw buffalo hides and skins (other than whole), pretanned but not further prepared
41019040	Argent	$28,846	Raw bovine hides and skins (other than whole), vegetable pretanned but not further prepared
41062190	India	$532,034	Hides and skins of goats or kids, without hair on, tanned but not further prepared, in the wet state other
41062200	Pakistn	$776,991	Hides and skins of goats or kids, without hair on, tanned but not further prepared, in the dry state
41071140	India	$17,395	Full grain unsplit whole buffalo leather, without hair on, surface over 2.6 sq m, prepared after tanning or
41071160	Brazil	$1,552,924	Full grain unsplit upper & sole leather of bovines (not buffalo) nesoi or equine, w/o hair on, prepared
41071240	India	$683,632	Grain split whole buffalo leather, without hair on, unit surface area over 2.6 sq m, prepared after tanning
41079140	India	$247,776	Full grain unsplit buffalo leather (not whole), w/o hair on, prepared after tanning or crusting (including
41079940	India	$49,648	Buffalo leather other than full grains unsplit & grain splits, not whole, w/o hair on, prepared after
42029204	Phil R	$8,448,354	Insulated beverage bags, outer surface of textile materials, interior only flexible plastic container store
50071030	India	$4,652,181	Woven fabrics of noil silk, containing 85 percent or more by weight of silk or silk waste
52083120	India	$170,712	Dyed plain weave certified hand-loomed fabrics of cotton, containing 85% or more cotton by weight,
52084120	India	$369,602	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotton by weight, weighing not over
52084210	India	$137,456	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotton by weight, over 100 but n/o
52093130	India	$2,834,467	Dyed, plain weave certified hand-loomed fabrics of cotton, containing 85% or more cotton by weight,
52094130	India	$1,772,543	Plain weave certified hand-loomed fabrics of cotton, cont. 85% or more cotton by weight,weighing over
71132025	India	$805,195	Base metal clad w/gold mixed link necklaces and neck chains
72021110	Georgia	$5,526,351	Ferromanganese containing by weight more than 2 percent but not more than 4 percent of carbon
73072110	India	$9,125,962	Stainless steel, flanges for tubes/pipes, forged, not machined, not tooled and not otherwise processed
74130090	Turkey	$9,037,011	Copper, stranded wire, cables, plaited bands and the like, not electrically insulated, fitted with fittings
81121200	Kazakhs	$882,137	Beryllium, unwrought; beryllium powders
81121900	Kazakhs	$1,939,062	Beryllium, articles nesoi
84069030	Brazil	$394,242	Parts of steam turbines, rotors, not further worked than cleaned or machined for removal of fins, etc.,
84101300	Brazil	$1,584,040	Hydraulic turbines and water wheels of a power exceeding 10,000 kW
85281216	Thailnd	$1,275,264	Non-high def. color television reception app., nonprojection, w/CRT, display diag. ov 34.29 cm but
85283050	India	$305,789	High definition color video projectors, with a cathode-ray tube, incorporating VCR or player
90160040	Thailnd	$968,238	Jewelers' balances (nonelectrical) of a sensitivity of 5 cg or better, with or without weights, and parts
96142060	Turkey	$112,243	Smoking pipes and bowls, wholly of clay, and other smoking pipes w/bowls wholly of clay

[FR Doc. 05-13592 Filed 7-8-05; 8:45 am]
BILLING CODE 3190-W5-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2005–21710]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publication of the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Patricia A. Prosperi, Departmental Director, Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on June 30, 2005.

Linda J. Washington,

Deputy Assistant Secretary for Administration.

Federal Railroad Administration

Jane H. Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration.
Delmas Johnson, Associate Administrator for Administration, National Highway Traffic Safety Administration.
Judy Kaleta, Senior Counsel for Dispute Resolution, Office of the Secretary.
Margaret Reid, Associate Administrator for Administration and Finance, Federal Railroad Administration.
Joel Szabat, Program Manager, Federal Railroad Administration.
Mark Yachmetz, Associate Administrator for Railroad Development, Federal Railroad Administration.

Federal Transit Administration

Richard H. Doyle, Regional Administrator, Cambridge, MA, Federal Transit Administration.
Thomas Herlihy, Assistant General Counsel for Legislation, Office of the Secretary.
John W. Irvin, Associate Administrator for Communications and Congressional Affairs, Federal Transit Administration.
Patricia G. Smith, Associate Administrator for Commercial Space Transportation, Federal Aviation Administration.
Linda J. Washington, Deputy Assistant Secretary for Administration, Office of the Secretary.

National Highway Traffic Safety Administration

Jacquelyn Glassman, Chief Counsel, National Highway Traffic Safety Administration.
Arthur Hamilton, Associate Administrator for Federal Lands Highway Program, Federal Highway Administration.
Linda Lawson, Director, Office of Safety, Energy and Environment, Office of the Secretary.
Susan Gorcowski McLaughlin, Associate Administrator for Communications and Consumer Information, National Highway Traffic Safety Administration.
Ronald Medford, Senior Associate Administrator for Vehicle Safety, National Highway Traffic Safety Administration.

Federal Highway Administration

Frederick Isler, Associate Administrator for Civil Rights, Federal Highway Administration.
Brian Keeter, Associate Administrator for Public Affairs, Federal Highway Administration.
Jeffrey Paniati, Associate Administrator for Operations, Federal Highway Administration.
D. Marlene Thomas, Associate Administrator for Administration, Federal Motor Carrier Safety Administration.
Michael J. Vecchietti, Associate Administrator for Administration, Federal Highway Administration.

Maritime Administration

James E. Caponiti, Associate Administrator for National Security, Maritime Administration.
Bruce Carlton. Associate Administrator for Policy and International Trade, Maritime Administration.
Jean E. McKeever, Associate Administrator for Shipbuilding, Maritime Administration.
Margaret Reid, Associate Administrator for Administration and Finance, Federal Railroad Administration.
Eileen Roberson, Associate Administrator for Administration, Maritime Administration.

Office of the Secretary, Research and Innovative Technology Administration, and Saint Lawrence Seaway Development Corporation

Dorrie Aldrich, Associate Director, Office of Strategic Initiatives, Office of the Secretary.
Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary.
Stacey Gerard, Associate Administrator, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration.
Daniel Matthews, Chief Information Officer, Office of the Secretary.
Craig Middlebrook, Deputy Administrator, Saint Lawrence Seaway Development Corporation.
Eric Peterson, Deputy Administrator, Research and Innovative Technology Administration.
Michael Trujillo, Departmental Director, Office of Civil Rights, Office of the Secretary.

Pipeline and Hazardous Materials Safety Administration

Dorrie Aldrich, Associate Director for Strategic Initiatives, Office of the Secretary.
Jane Bachner, Deputy Associate Administrator for Policy, Federal Railroad Administration.
Edward Brigham, Associate Administrator for Administration, Pipeline and Hazardous Materials Safety Administration.
Paula Ewen, Director, Office of Information and Management Services, Federal Highway Administration.
David Lev, Deputy Associate Administrator, Volpe Center, Research and Information Technology Administration.
Eric Peterson, Deputy Administrator, Research and Information Technology Administration.
Greg Walter, Senior Associate Administrator for Policy and Operations, National Highway Traffic Safety Administration.

Federal Motor Carrier Safety Administration

Brian Dettelbach, Assistant Inspector General for Legal Legislative and External Affairs, Office of Inspector General.
Chip Nottingham, Associate Administrator for Policy, Federal Highway Administration.
Terry Shelton, Associate Administrator for Research Technology and Information Management, Federal Motor Carrier Safety Administration.
D. Marlene Thomas, Associate Administrator for Administration, Federal Motor Carrier Safety Administration.
Linda J. Washington, Deputy Assistant Secretary for Administration, Office of the Secretary.

Office of Inspector General

Michael Delgado, Assistant Inspector General for Investigations, Treasury Inspector General for Tax Administration, Department of the Treasury.
Melissa Heist, Assistant Inspector General for Audit, Environmental Protection Agency.
Samuel Holland, Assistant Inspector General for Investigations, Federal Deposit Insurance Corporation.
Evelyn Klemstine, Assistant Inspector General for Auditing, National Aeronautics and Space Administration.
Helen Lew, Assistant Inspector General for Auditing, Department of Education.
David Montoya, Assistant Inspector General for Investigations, Department of the Interior.
Michael Stephens, Deputy Inspector General, Department of Housing and Urban Development.
Eugene Wesley, Assistant Inspector General for Auditing, General Services Administration.
Joseph Willever, Deputy Inspector General, Office of Personnel Management.
Mark Woods, Assistant Inspector General for Investigations, Department of Agriculture.

[FR Doc. 05–13540 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2005–21318]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before September 9, 2005.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., 401, Washington, DC 20590. Docket No. NHTSA–2005–21318.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block, Contracting Officer's Technical Representative, Office of Research and Technology (NTI–131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5119, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

2006 Motor Vehicle Occupant Safety Survey

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—December 31, 2007.

Summary of the Collection of Information—NHTSA proposes to conduct a year 2006 Motor Vehicle Occupant Safety Survey by telephone among a national probability sample of 12,000 adults (age 16 and older). Participation by respondents would be voluntary. NHTSA's information needs require seat belt and child safety seats sections too large to merge into a single survey instrument without producing an inordinate burden on respondents. Rather than reduce these sections, the proposed survey instrument would be divided into two questionnaires. Each questionnaire would be administered to one-half the total number of subjects to be interviewed. Questionnaire #1 would focus on seat belts and include smaller sections on air bags, on general driving (including speed), and on drinking and driving because of the extensive impact of alcohol on the highway safety problem. Questionnaire #2 would focus on child restraint use, accompanied by smaller sections on air bags, Emergency Medical Services, and use of wireless phones. Both questionnaires would contain sections on crash injury experience. some basic seat belt questions contained in Questionnaire #1 would be duplicated on Questionnaire #2.

In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed survey would be anonymous and confidential.

Description of the Need for the information and Proposed Use of the Information—The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

During the late 1960s and early 1970s, more than 50,000 persons were killed each year in motor vehicle crashes in the United States. Diverse approaches were taken to address the problem. Vehicle safety designs and features were improved; restraint devices were improved; safety behaviors were mandated in state legislation (including seat belt use, child safety seat use, and motorcycle helmet use); alcohol-related legislation was enacted; this legislation was enforced; public information and education activities were widely implemented; and roadways were improved.

As a result of these interventions and improvements, crash fatalities dropped significantly. By 1992, total fatalities had fallen to 39,250, representing a 23% decline from 1966. In addition, the resident population and the number of vehicle miles traveled increased greatly over those years. When fatality rates are computed per 100,000 population, the rate for 1992 (15.39) was about 40 percent lower than the 1966 rate (25.89). In sum, heightened highway safety activity conducted over the past three decades corresponds with major strides in reducing traffic fatalities.

Remaining barriers to safety will be more resistant to programmatic influences now that the easy gains have already been accomplished. Moreover, crash fatalities have risen since 1992, totaling 42,643 in 2003. Thus significant effort will be needed just to preserve the gains that already have been made. Up-to-date information is essential to plot the direction of future activity that will achieve reductions in crash injuries and fatalities in the coming years.

In order to collect the critical information needed by NHTSA to develop and implement effective countermeasures that meet the Agency's mandate to improve highway traffic safety, NHTSA conducted its first Motor Vehicle Occupant Safety Survey in 1994. The survey included questions related to seat belts, child safety seats, air bags, bicyclist safety, motorcyclist safety, and Emergency Medical Services.

It also contained small segments on alcohol use and on speeding. The survey has been repeated four times since then, with the survey instrument updated prior to each survey administration to incorporate emergent issues and items of increased interest. The most recent survey was fielded during the first quarter of calendar year 2003.

The proposed survey is the sixth Motor Vehicle Occupant Safety Survey. The survey would collect data on topics included in the preceding surveys and would monitor changes over time in the use of occupant protection devices and in attitudes related to vehicle occupant safety. It is important that NHTSA monitor these changes so that the Agency can determine the effects of its efforts to promote the use of safety devices and to identify areas where its efforts should be targeted and where new strategies may be needed. As in earlier years, NHTSA proposes to make a small number of revisions to the survey instrument to address new information needs. If approved, the proposed survey would assist NHTSA in addressing the problem of motor vehicle occupant safety and in formulating programs and recommendations to Congress. The results of the proposed survey would be used to: (a) Identify areas to target current programs and activities to achieve the greatest benefit; (b) develop new programs and initiatives aimed at increasing the use of occupant safety devices by the general public; and (c) provide informational support to States and localities in their traffic safety efforts. The findings would also be used directly by State and local highway safety and law enforcement agencies in the development and implementation of effective countermeasures to prevent injuries and fatalities to vehicle occupants.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Under this proposed effort, the Contractor would conduct cognitive testing, a survey pretest, and final survey administration. The cognitive testing would only be performed for Questionnaire #2 as this instrument has changed significantly since previous cognitive testing whereas Questionnaire #1 has not significantly changed. A total of nine in-person one-on-one cognitive interviews averaging 40 minutes in length would be conducted with parents of children under the age of 9 who use a child restraint with their child at least on occasion. These interviews would identify any problems with the most recently developed questions that need to be addressed. A total of 30 telephone pretest interviews (15 per questionnaire) averaging 20 minutes in length would be administered to test the computer programming of the questionnaires, and to determine if any last adjustments to the questionnaires are needed. Following any revisions carried out as a result of the pretest, the Contractor would conduct telephone interviews averaging approximately 20 minutes in length with 12,000 randomly selected members of the general public age 16 and older in telephone households. The respondent sample would be selected from all 50 States plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected through random digit dialing. Businesses are ineligible for the sample and would not be interviewed. No more than one respondent would be selected per household. Each member of the sample would complete one interview.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information—NHTSA estimates that the cognitive interviews would require an average of 40 minutes apiece or a total of 6 hours for the 9 respondents. The pretest interviews would require an average of 20 minutes apiece or a total of 10 hours for the 30 respondents. Each respondent in the final survey sample would require an average of 20 minutes to complete the telephone interview or a total of 4,000 hours for the 12,000 respondents. Thus, the number of estimated reporting burden hours a year on the general public would be 4016 for the proposed survey (6 for the cognitive interviewing, 10 for the pretest, and 4000 for the final survey administration). This represents an increase of 6 hours over the burden associated with the 2003 Motor Vehicle Occupant Safety Survey. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any recordkeeping burden or recordkeeping cost from the information collection.

Authority: 44 U.S.C. 3506(c)(2)(A).

Marilena Amoni,

Associated Administrator, Program Development and Delivery.

[FR Doc. 05–13509 Filed 7–8–05; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34718]

Ohi-Rail Corporation—Lease and Operation Exemption—Wheeling & Lake Railway Company

Ohi-Rail Corporation (Ohi-Rail), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement entered into with Wheeling & Lake Erie Railway Company (W&LE), W&LE's line of railroad known as the Cleveland Subdivision, Carrollton Branch, from milepost 0.0 in Canton, OH, to milepost 27.71 in Carrollton, OH, and from milepost 0.0 to milepost 3.00 on the Minerva Branch. The lease will also provide overhead interchange rights from milepost 0.44 in the Canton Yard to milepost 1.7 at Furnace Junction, with no servicing of customers between those mileposts. The total distance of rail lines to be leased and operated by Ohi-Rail is 30.71 miles.[1]

Based on projected revenues for the Cleveland Subdivision, Carrollton Branch and the Minerva Branch, Ohi-Rail expects to remain a Class III rail carrier after consummation of the proposed transaction. It certifies that the projected annual rail revenue does not exceed $5 million.

The transaction was scheduled to be consummated shortly after June 20, 2005, but no sooner than the June 21, 2005 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34718, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Brendan Delay, 619 Linda Street, Suite 101, Rocky River, OH 44116.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 1, 2005.

[1] Ohi-Rail indicated that it will interchange traffic on this line with W&LE at the Canton Yard between milepost 0.0 and milepost 1.7.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–13439 Filed 7–8–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Privacy Act of 1974, as Amended; System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Office of the Comptroller of the Currency, Treasury, is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Comptroller of the Currency (OCC) has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records.

The following new systems of records, published on October 26, 2001, at 66 FR 54327, have been added to the OCC's inventory of Privacy Act notices: CC .100—Enforcement Action Report System; CC .120—Bank Fraud Information System; CC .220—Section 914 Tracking System; CC .340—Access Control System, and CC .700—Correspondence Tracking System as published on October 26, 2001, beginning at 66 FR 54327.

This publication incorporates the amendments to: CC .200—Chain Banking Organizations System; CC .210—Bank Securities Dealers System; CC .500—Chief Counsel's Management Information System; CC .510—Litigation Information System, and CC .600—Consumer Complaint and Inquiry Information System which were published October 26, 2001, beginning at 66 FR 54333. It also incorporates the amendment to Comptroller .110 published on April 27, 2005, at 70 FR 21840.

The following systems of records are being deleted by the OCC: CC .300—Administrative Personnel System; CC .310—Financial System, and CC .320—General Personnel System.

Systems Covered by This Notice

This notice covers all systems of records adopted by the OCC up to June 21, 2005. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: July 1, 2005.

Nicholas Williams,

Deputy Assistant Secretary for Headquarters Operations.

The Comptroller of the Currency (OCC)

Table of Contents

TREASURY/COMPTROLLER .100

SYSTEM NAME:

Enforcement Action Report System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and Compliance Division, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are: (1) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who have had enforcement actions taken against them by the OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration;

(2) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who are the subjects of pending enforcement actions initiated by the OCC; and

(3) Individuals who must obtain the consent of the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. 1829 to become or continue as an institution-affiliated party within the meaning of 12 U.S.C. 1813(u) of a federally-insured depository institution, a direct or indirect owner or controlling person of such an entity, or a direct or indirect participant in the conduct of the affairs of such an entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals, their positions or titles with financial institutions, descriptions of offenses and enforcement actions, and descriptions of offenses requiring Federal Deposit Insurance Corporation approval under 12 U.S.C. 1829.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i.

PURPOSE:

This system of records is used by the OCC to monitor enforcement actions and to assist it in its regulatory responsibilities, including review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when the information is relevant to the entity's operations;

(2) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Enforcement and Compliance Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from OCC personnel, OCC-regulated entities, other federal financial regulatory agencies, and criminal law enforcement authorities.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .110

SYSTEM NAME:

Reports of Suspicious Activities—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and Compliance Division, 250 E Street, SW., Washington, DC 20219–0001.

Suspicious Activity Reports (SARs) are managed by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, and stored at the IRS Computing Center in Detroit, Michigan. Information extracted from or relating to SARs or reports of crimes and suspected crimes is maintained in an OCC electronic database. This database, as well as the database managed by FinCEN, is accessible to designated OCC headquarters and district office personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who have been designated as suspects or witnesses in SARs or reports of crimes and suspected crimes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the name of the entity to which a report pertains, the names of individual suspects and witnesses, the types of suspicious activity involved, and the amounts of known losses. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with activities reported in a SAR or a report of crime and suspected crime.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSE:

This system of records is used by the OCC to monitor criminal law enforcement actions taken with respect to known or suspected criminal activities affecting OCC-regulated entities. System information is used to determine whether matters reported in SARs warrant the OCC's supervisory action. Information in this system also may be used for other supervisory and licensing purposes, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The Department of Justice through periodic reports containing the identities of individuals suspected of having committed violations of criminal law;

(2) An OCC-regulated entity if the SAR relates to that institution;

(3) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation and supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Special Supervision Division, Midsize/Community Bank Supervision, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR part 1, subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from CC personnel, OCC-regulated entities, other financial regulatory agencies, criminal law enforcement authorities, and FinCEN.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), and (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .120

SYSTEM NAME:

Bank Fraud Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Bank Supervision Operations, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who submit complaints or inquiries about fraudulent or suspicious financial instruments or transactions or who are the subjects of complaints or inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: The name, address, or telephone number of the individual who submitted a complaint or inquiry; the name, address, or telephone number of the individual or entity who is the subject of a complaint or inquiry; the types of activity involved; the date of a complaint or inquiry; and numeric codes identifying a complaint or inquiry's nature or source. Supporting records may contain correspondence between the OCC and the individual or entity submitting a complaint or inquiry, correspondence between the OCC and an OCC-regulated entity, or correspondence between the OCC and other law enforcement or regulatory bodies. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with complaints or inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSE:

This system of records tracks complaints or inquiries concerning fraudulent or suspicious financial instruments and transactions. These records assist the OCC in its efforts to protect banks and their customers from fraudulent or suspicious banking activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity to the extent that such entity is the subject of a complaint, inquiry, or fraudulent activity;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry, an examination, or an investigation;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically, in card files, and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Special Supervision/Fraud, Bank Supervision Operations, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature. Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities who submit complaints or inquiries, OCC personnel, OCC-regulated entities, criminal law enforcement authorities, and governmental or self-regulatory bodies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .200

SYSTEM NAME:

Chain Banking Organizations System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Core Policy Development, 250 E Street, SW., Washington, DC 20219–0001, and the OCC's district offices, as follows:

(1) Northeastern District Office, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036–7780;

(2) Southeastern District Office, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE, Atlanta, GA 30303–1223;

(3) Central District Office, One Financial Plaza, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605–1073;

(4) Midwestern District Office, 2345 Grand Boulevard, Suite 700, Kansas City, MO 64108–2683;

(5) Southwestern District Office, 500 North Akard Street, Suite 1600, Dallas, TX 75201–3394; and

(6) Western District Office, 50 Fremont Street, Suite 3900, San Francisco, CA 94105–2292.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who directly, indirectly, or acting through or in concert with one or more other individuals, own or control a chain banking organization. A chain banking organization exists when two or more independently chartered financial institutions, including at least one OCC-regulated entity, are controlled either directly or indirectly by the same individual, family, or group of individuals closely associated in their business dealings. Control generally exists when the common ownership has the ability or power, directly or indirectly, to:

(1) Control the vote of 25 percent or more of any class of an organization's voting securities;

(2) Control in any manner the election of a majority of the directors of an organization; or

(3) Exercise a controlling influence over the management or policies of an organization. A registered multibank holding company and its subsidiary banks are not ordinarily considered a chain banking group unless the holding company is linked to other banking organizations through common control.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system contain the names of individuals who, either alone or in concert with others, own or control a chain banking organization. Other information may contain: the name, location, charter number, charter type, and date of last examination of each organization comprising a chain; the percentage of outstanding stock owned or controlled by controlling individuals or groups; and the name of any intermediate holding entity and the percentage of such entity owned or controlled by the individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, 1817(j), and 1820.

PURPOSE:

Information maintained in this system is used by the OCC to carry out its supervisory responsibilities with respect to national banks and District of Columbia banks operating under the OCC's regulatory authority, including the coordination of examinations, supervisory evaluations and analyses, and administrative enforcement actions with other financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when information is relevant to the entity's operation;

(2) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(3) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within the organization's jurisdiction;

(4) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(5) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(6) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(7) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Core Policy Development, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC personnel, other Federal financial regulatory agencies, and individuals who file notices of their intention to acquire control over an OCC-regulated financial institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .210

SYSTEM NAME:

Bank Securities Dealers System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Treasury and Market Risk Division, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who are or seek to be associated with a municipal securities dealer or a government securities broker/dealer that is a national bank, a District of Columbia bank operating under the OCC's regulatory authority, or a department or division of any such bank in the capacity of a municipal securities principal, municipal securities representative, or government securities associated person.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, address history, date and place of birth, social security number, educational and occupational history, certain professional qualifications and testing information, disciplinary history, or information about employment termination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, 1818, and 1820; 15 U.S.C. 78o–4, 78o–5, 78q, and 78w.

PURPOSE:

This system of records will be used by the OCC to carry out its responsibilities under the Federal securities laws relating to the professional qualifications and fitness of individuals who engage or propose to engage in securities activities on behalf of national banks and District of Columbia banks operating under the OCC's regulatory authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH SYSTEMS:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity in connection with its filing relating to the qualifications and fitness of an individual serving or proposing to serve the entity in a securities-related capacity;

(2) Third parties to the extent needed to obtain additional information concerning the professional qualifications and fitness of an individual covered by the system;

(3) Third parties inquiring about the subject of an OCC enforcement action;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become involved in the provider's securities business;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual

capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(9) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to the electronic database is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Treasury and Market Risk Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

Record Source Categories:

Information maintained in this system is obtained from OCC-regulated entities that are: municipal securities dealers and/or government securities brokers/dealers; individuals who are or propose to become municipal securities principals, municipal securities representatives, or government securities associated persons; or governmental and self-regulatory organizations that regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .220

SYSTEM NAME:

Section 914 Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Special Supervision, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who are named in notices filed under 12 CFR 5.51 as proposed directors or senior executive officers of national banks, District of Columbia banks operating under the OCC's regulatory authority, or federal branches of foreign banks (OCC-regulated entities). OCC-regulated entities file notices if they:

(1) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;

(2) Are subject to cease and desist orders, consent orders, or formal written agreements;

(3) Have been determined by the OCC to be in "troubled condition;"

(4) Are not in compliance with minimum capital requirements prescribed under 12 CFR Part 3; or

(5) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan, that such filings are appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this electronic database may contain: the names, charter numbers, and locations of the OCC-regulated entities that have submitted notices pursuant to 5 CFR 5.51; the names, addresses, dates of birth, and social security numbers of individuals proposed as either directors or senior executive officers; and the actions taken by the OCC in connection with these notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 93a, 481, 1817(j), 1818, 1820, and 1831i.

PURPOSE:

Information maintained in this system is used by the OCC to carry out its statutory and other regulatory responsibilities, including other reviews of the qualifications and fitness of individuals who propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity in connection with review and action on a notice filed by that entity pursuant to 12 CFR 5.51;

(2) Third parties to the extent necessary to obtain information that is pertinent to the OCC's review and action on a notice received under 12 CFR 5.51;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC

employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Special Supervision/Fraud, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities, individuals named in notices filed pursuant to 5 CFR 5.51, Federal or State financial regulatory agencies, criminal law enforcement authorities, credit bureaus, and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .340

SYSTEM NAME:

Access Control System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Security Office, Administrative Services Division, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are OCC employees, contractors, agents, and volunteers who have been issued an OCC identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, social security number, picture, and authorizations to use the OCC's fitness facility or its headquarters parking garage, if applicable. This system of records also may contain time records of entrances and exits and attempted entrances and exits of OCC premises.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, and 482; 5 U.S.C. 301.

PURPOSE:

The OCC has an electronic security system linked to identification cards which limits access to its premises to authorized individuals and records the time that individuals are on the premises. This system of records is used to assist the OCC in maintaining the security of its premises and to permit the OCC to identify individuals on its premises at particular times.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to an investigation concerning access to or the security of the OCC's premises;

(2) An appropriate governmental authority if the information is relevant to a known or suspected violation of a law within that organization's jurisdiction;

(3) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(4) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(5) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(6) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management

policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Security Officer, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals and the OCC's official personnel records. Information concerning entry and exit of OCC premises is obtained from identification card scanners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .500

SYSTEM NAME:

Chief Counsel's Management Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are: Individuals who have requested information or action from the OCC; parties or witnesses in civil proceedings or administrative actions; individuals who have submitted requests for testimony and/or production of documents pursuant to 12 CFR Part 4, Subpart C; individuals who have been the subjects of administrative actions or investigations initiated by the OCC, including current or former shareholders, directors, officers, employees and agents of OCC-regulated entities, current, former, or potential bank customers, and OCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of: Banks; requestors; parties; witnesses; current or former shareholders; directors, officers, employees and agents of OCC-regulated entities; current, former or potential bank customers; and current or former OCC employees. These records contain summarized information concerning the description and status of Law Department work assignments. Supporting records may include pleadings and discovery materials generated in connection with civil proceedings or administrative actions, and correspondence or memoranda related to work assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d)(second), 481, 1818, and 1820.

PURPOSE:

This system of records is used to track the progress and disposition of OCC Law Department work assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity involved in an assigned matter;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of an assigned matter;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(9) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Executive Assistant to the Chief Counsel, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals who request information or action from the OCC, individuals who are involved in legal proceedings in which the OCC is a party or has an interest, OCC personnel, and OCC-regulated entities and other entities, including governmental, tribal, self-regulatory, and professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .510

SYSTEM NAME:

Litigation Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, Litigation Division, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are parties or witnesses in civil proceedings or administrative actions, and individuals who have submitted requests for testimony or the production of documents pursuant to 12 CFR Part 4, Subpart C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system are those generated in connection with civil proceedings or administrative actions, such as discovery materials, evidentiary materials, transcripts of testimony, pleadings, memoranda, correspondence, and requests for information pursuant to 12 CFR Part 4, Subpart C.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d) (second), 481, 1818, and 1820.

PURPOSE:

This system of records is used by the OCC in representing its interests in legal actions and proceedings in which the OCC, its employees, or the United States is a party or has an interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to the subject matter of civil proceedings or administrative actions involving the OCC;

(2) The news media in accordance with guidelines contained in 28 CFR 50.2;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

System records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Litigation Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the

form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from: individuals or entities involved in legal proceedings in which the OCC is a party or has an interest; OCC-regulated entities; and governmental, tribal, self-regulatory or professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .600

SYSTEM NAME:

Consumer Complaint and Inquiry Information System—Treasury/ Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Customer Assistance Group, 1301 McKinney Street, Suite 3725, Houston, Texas 77010–3034.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who submit complaints or inquiries about national banks, District of Columbia banks operating under OCC's regulatory authority, federal branches and agencies of foreign banks, or subsidiaries of any such entity (OCC-regulated entities), and other entities that the OCC does not regulate. This includes individuals who file complaints and inquiries directly with the OCC or through other parties, such as attorneys, members of Congress, or other governmental organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: the name and address of the individual who submitted the complaint or inquiry; when applicable, the name of the individual or organization referring a matter; the name of the entity that is the subject of the complaint or inquiry; the date of the incoming correspondence and its receipt; numeric codes identifying the complaint or inquiry's nature, source, and resolution; the OCC office and personnel assigned to review the correspondence; the status of the review; the resolution date; and, when applicable, the amount of reimbursement. Supporting records may contain correspondence between the OCC and the individual submitting the complaint or inquiry, correspondence between the OCC and the regulated entity, and correspondence between the OCC and other law enforcement or regulatory bodies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, and 1820; 15 U.S.C. 41 *et seq.*

PURPOSE:

This system of records is used to administer the OCC's Customer Assistance Program and to track the processing and resolution of complaints and inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity that is the subject of a complaint or inquiry;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry;

(3) The appropriate governmental, tribal, self-regulatory or professional organization if that organization has jurisdiction over the subject matter of the complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Ombudsman, Office of the Comptroller of the Currency, 1301 McKinney Street, Suite 3725, Houston, Texas 77010–3034.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport

or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities filing complaints and inquiries, other governmental authorities, and OCC-regulated entities that are the subjects of complaints and inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .700

SYSTEM NAME:

Correspondence Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street, SW., Washington, DC 20219–0001. Components of this record system are maintained in the Comptroller of the Currency's Office and the Chief Counsel's Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those whose correspondence is submitted to the Comptroller of the Currency or the Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals who correspond with the OCC, information concerning the subject matter of the correspondence, correspondence disposition information, correspondence tracking dates, and internal office assignment information. Supporting records may contain correspondence between the OCC and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1; 5 U.S.C. 301.

PURPOSE:

This system of records is used by the OCC to track the Comptroller of the Currency's or the Chief Counsel's correspondence, including the progress and disposition of the OCC's response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The OCC-regulated entity involved in correspondence;

(2) Third parties to the extent necessary to obtain information that is relevant to the response;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulaiion or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Electronic and other records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESSES:

Deputy to the Chief of Staff, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. Special Assistant to the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR Part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature (such as credit cards). Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–13548 Filed 7–8–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 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 Wednesday, July 27, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Wednesday, July 27, 2005 from 3 p.m. ET to 4 p.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 6, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3657 Filed 7–8–05; 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 TAP will be discussing issues pertaining to lessoning the burden for individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Monday, August 8, 2005.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, August 8, 2005 from 4 p.m. Eastern Time to 5 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: July 6, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3659 Filed 7–8–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel 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 Monday, August 8, 2005, at 2 p.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer 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 Area 5 Taxpayer Advocacy Panel will be held Monday, August 8, 2005, at 2 p.m. Central 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, Stop1006MIL, 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 Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: July 6, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3661 Filed 7–8–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0390]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 10, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, fax (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0390."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0390" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application of Surviving Spouse or Child for REPS Benefits (Restored Entitlement Program for Survivors), VA Form 21–8924.

OMB Control Number: 2900–0390.

Type of Review: Extension of a currently approved collection.

Abstract: Survivors of deceased veteran's complete VA Form 21–8924 to apply for Restored Entitlement Program for Survivors (REPS) benefits. REPS benefits is payable to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as of a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 9, 2005, at pages 11732–11733.

Affected Public: Individuals or households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,800.

Dated: June 27, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 05–13506 Filed 7–8–05; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Philippine Claims Only)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine claimants' eligibility for pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 9, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–New (Philippine Claims Only)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplemental Income Questionnaire (for Philippine Claims Only), VA Form 21–0784.

OMB Control Number: 2900–New (Philippine Claims Only).

Type of Review: New collection.

Abstract: Philippine claimants residing in the Philippine complete VA Form 21–0784 to report their countable family income and net worth. VA uses the information to determine the claimant's entitlement to pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 30 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 120.

Dated: June 29, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 05–13507 Filed 7–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Direct Deposit Enrollment/Change)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 10, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–New (Direct Deposit Enrollment/Change)."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (Direct Deposit Enrollment/Change)" in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Direct Deposit Enrollment/Change, VA Form 29–0309.

OMB Control Number: 2900–New (Direct Deposit Enrollment/Change).

Type of Review: Existing collection in use without an OMB control number.

Abstract: Claimants complete VA Form 29–0309 authorizing VA to initiate or change direct deposit of insurance benefit at their financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 31, 2005, at pages 4919–4920.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: June 27, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–3612 Filed 7–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Apportionment of Beneficiary's Award)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 10, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–New (Apportionment of Beneficiary's Award)."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–New (Apportionment of Beneficiary's Award)" in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Information Regarding Apportionment of Beneficiary's Award, VA Form 21–0788.

OMB Control Number: 2900–New (Apportionment of Beneficiary's Award).

Type of Review: New collection.

Abstract: The data collected on VA Form 21–0788 is used to determine whether a veteran's or beneficiary's compensation and pension benefits may be allocated to his or her dependents. The veteran and the beneficiary use the form to report their income information in order for VA to determine the amount of benefit that may be apportioned to a spouse and children who do not reside with the veteran. A portion of the surviving spouse's benefits may be allocated to children of deceased veterans, who do not reside with the surviving spouse.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 4, 2005, at page 17145.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25,000.

Dated: June 29, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–3613 Filed 7–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0501]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521) this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, fax (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0501."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0501" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Mortgage Life Insurance Inquiry, VA Form 29–0543.

OMB Control Number: 2900–0501.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans whose mortgage is insured under Veterans Mortgage Life Insurance (VMLI) completes VA Form 29–0543 to report any recent changes in the status of their mortgage. VMLI coverage is automatically terminated when the mortgage is paid in full or when the title to the property secured by the mortgage is no longer in the veteran's name.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 4, 2005, at pages 6076–6077.

Affected Public: Individuals or households.

Estimated Annual Burden: 45 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 540.

Dated: June 28, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–3614 Filed 7–8–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 70, No. 131
Monday, July 11, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

Application for a License To Export High-Enriched Uranium

Correction

In notice document E5–3342 beginning on page 37126 in the issue of Tuesday, June 28, 2005, make the following correction:

On page 37127, in the first column, in the third full paragraph, the information under the heading "**NRC Export License Application for High-Enriched Uranium**" should appear as a table reading as follows:

NRC EXPORT LICENSE APPLICATION FOR HIGH-ENRICHED URANIUM

Name of Applicant Date of Application Date Received Application Number Docket Number	Material Type	End Use	Country of Destination
DOE/NNSA–Y12 June 1, 2005	High-Enriched Uranium	The material would be transferred initially to CERCA, in France, where it would be fabricated into fuel. This fuel would then be transferred to Studiecentrum voor Kernergie (SCK) for ultimate use at BR-2 research reactor located in Mol, Belgium from 2008-2011.	Belgium
June 2, 2005 XSNM03404 11005562			

[FR Doc. Z5–3342 Filed 7–8–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 11, 2005

Part II

Environmental Protection Agency

40 CFR Parts 60, 85, 89, et al.
Standards of Performance for Stationary Compression Ignition Internal Combustion Engines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 85, 89, 94, 1039, 1065 and 1068

[OAR–2005–0029, FRL–7934–4]

RIN 2060–AM82

Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes standards of performance for stationary compression ignition (CI) internal combustion engines (ICE). These standards implement section 111(b) of the Clean Air Act (CAA) and are based on the Administrator's determination that stationary CI ICE cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The intended effect of the standards is to require all new, modified, and reconstructed stationary CI ICE to use the best demonstrated system of continuous emission reduction, considering costs, non-air quality health, and environmental and energy impacts, not just with add-on controls, but also by eliminating or reducing the formation of these pollutants. The proposed standards would reduce nitrogen oxides (NO_X) by an estimated 38,000 tons per year (tpy), particulate matter (PM) by an estimated 3,000 tpy, sulfur dioxide (SO_2) by an estimated 9,000 tpy, non-methane hydrocarbons (NMHC) by an estimated 600 tpy, and carbon monoxide (CO) by an estimated 18,000 tpy in the year 2015.

DATES: *Comments.* Submit comments on or before September 9, 2005, or 30 days after date of public hearing if later.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by August 1, 2005, a public hearing will be held on August 23, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2005–0029, 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: Send your comments via electronic mail to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2005–0029.
- Fax: Fax your comments to (202) 566–1741, Attention Docket ID No. OAR–2005–0029.
- Mail: Send your comments to: EPA Docket Center (EPA/DC), EPA, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2005–0029. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington DC, 20460, Attention Docket ID No. OAR–2005–0029. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0029. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. 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).

Public Hearing: If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC or alternate site nearby.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* We also rely on documents in Docket ID No. OAR–2003–0012 and incorporate that docket into the record for this proposed rule. 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 Docket, EPA/DC, EPA West, 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.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy, Combustion Group, Emission Standards Division (MD–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5263; facsimile number (919) 541–5450; electronic mail address "*roy.sims@epa.gov.*"

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information

A. Does This Action Apply to Me?

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC [1]	NAICS [2]	Examples of regulated entities
Any manufacturer that produces or any industry using a stationary internal combustion engine as defined in the proposed rule.	4911	2211	Electric power generation, transmission, or distribution.
	8062	622110	Medical and surgical hospitals.
	3621	335312	Motor and Generator Manufacturing.
	3561	33391	Pump and Compressor Manufacturing.
	3548	333992	Welding and Soldering Equipment Manufacturing.

[1] Standard Industrial Classification.
[2] 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 engine is regulated by this action, you should examine the applicability criteria in § 60.4200 of the proposed rule. 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.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Sims Roy, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2005–0029. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

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

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

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

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

Docket. The docket number for the proposed NSPS is Docket ID No. OAR–2005–0029.

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

II. Background

This action proposes new source performance standards (NSPS) that would apply to new stationary CI ICE. New source performance standards implement section 111(b) of the CAA, and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The standards apply to new stationary sources of emissions, *i.e.*, sources whose construction, reconstruction, or modification begins after a standard for them is proposed. An NSPS requires these sources to control emissions to the level achievable by best demonstrated technology (BDT), considering costs and any non-air quality health and environmental impacts and energy requirements.

III. Summary of the Proposed Rule

A. What Is the Source Category Regulated by the Proposed Rule?

Today's proposed standards apply to stationary CI ICE. A stationary internal combustion engine means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 CFR 1068.30, and is not used to propel a motor vehicle or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines. A CI engine means a type of stationary internal combustion engine that is not a spark ignition (SI) engine. An SI engine means a gasoline, natural gas, or liquefied petroleum gas fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for CI and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are SI engines.

B. What Are the Pollutants Regulated by the Proposed Rule?

The pollutants to be regulated by the proposed standards are NO_X, PM, CO, and NMHC. Emissions of sulfur oxides (SO_X) will also be reduced through the use of lower sulfur fuel. Smoke emissions will also be reduced through the implementation of the proposed standards. Emissions of hazardous air pollutants (HAP) from these engines have been, or will be, regulated in separate rulemakings promulgated under section 112.[1]

C. What Is the Best Demonstrated Technology?

1. Background

Section 111 of the CAA states that a standard of performance "means a standard * * * which reflects the degree of emission limitation achievable through application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated."

The following sections provide additional information by identifying specific technologies (referred to hereafter as "BDT") that EPA anticipates to be used to meet the NSPS. It must be noted, however, that EPA's proposal is that the best system of emissions reduction that has been adequately demonstrated is a set of emissions standards, including an averaging, banking and trading program, that allows for the use of other potential technologies that meet or exceed the standards.

2. Non-Emergency Stationary CI ICE <10 Liters per Cylinder

The EPA expects there will be few, if any, stationary CI ICE less than 50 horsepower (HP). Nevertheless, EPA has established emission standards for these engines for the potential few engines less than 50 HP that may be stationary CI ICE.

For non-emergency engines less than 25 HP, the technologies that are the basis of the proposed standards are expected to be the same as the technologies that are the basis for the nonroad diesel engine standards in this size range. The basis of the proposed PM standards for these engines is a variety of engine-based technologies including combustion optimization and different fuel injection strategies. The EPA expects that manufacturers of smaller engines may also utilize oxidation catalyst control for PM in order to meet the Tier 4 standard for nonroad diesel engines. The EPA expects that manufacturers of stationary CI ICE less than 25 HP will employ engine-based technologies, to meet the proposed NO_X for engines less than 25 HP include advanced in-cylinder technologies and electronic fuel systems.

For non-emergency engines greater than or equal to 25 HP with a displacement of less than 10 liters per cylinder, the technology that is the basis of the proposed PM standards is catalyzed diesel particulate filters (CDPF) used in conjunction with ultra low sulfur diesel (ULSD) fuel. The standards for PM that are based on the use of CDPF and ULSD start as early as 2011 for some engines, but the schedule varies depending on the size of the engine. The CDPF technology is capable of reducing PM, CO, and NMHC emissions from stationary CI ICE by at least 90 percent. The technology basis of the proposed CO and NMHC standards is also CDPF. The technology is currently available but requires ULSD in order to achieve these levels of reductions. Furthermore, engine manufacturers will require time to incorporate the technology on all of their engines. Taking into account when ULSD fuel will be fully available and allowing manufacturers time to incorporate CDPF technology on their stationary engines, EPA believes that the implementation schedule already promulgated for nonroad diesel engines is appropriate for the majority of stationary CI ICE as well.

Prior to the implementation of standards based on the use of CDPF, new stationary CI ICE engines will be required to meet standards based on the use of technology currently required for nonroad engines. Engine manufacturers would be expected to use a variety of engine technologies such as combustion optimization and advanced fuel injection controls to reduce emissions of PM until ULSD fuel is available in sufficient quantities nationwide.

For NO_X emissions from non-emergency engines greater than or equal to 75 HP and less than or equal to 750 HP with a displacement of less than 10 liters per cylinder, and non-emergency generator set (genset) engines greater than 750 HP with a displacement of less than 10 liters per cylinder, the technology that is the basis of the proposed NO_X standards is NO_X adsorber. The NO_X adsorber technology is expected to be able to achieve NO_X reductions of 90 percent or more when applied to stationary CI ICE. The NO_X adsorber technology, which has been demonstrated in laboratory situations, is currently being developed for highway and nonroad engines, and it is expected to be available for nonroad and stationary engines approximately in the year 2011. As with the implementation schedule for CDPF discussed above, EPA believes that, taking into account when ULSD fuel will be fully available and allowing manufacturers time to incorporate NO_X adsorber technology on their stationary engines, the implementation schedule already promulgated for nonroad diesel engines is appropriate for the majority of stationary CI ICE as well.

For non-emergency engines greater than 750 HP with a displacement of less than 10 liters per cylinder that are not genset engines, the technologies that are the basis of the proposed NO_X standards are improved combustion systems and engine-based NO_X control technologies. For the nonroad diesel engine rule, EPA decided to defer a decision on setting

[1] Emissions of HAP from stationary reciprocating internal combustion engines (RICE) located at major sources were the subject of a rule published on June 15, 2004 (69 FR 33473). Emissions of HAP from other stationary RICE will be the subject of another rulemaking that will be promulgated no later than December 20, 2007.

add-on control based emission standards for NO_X for these engines to allow time to resolve issues involved with applying NO_X control technologies to these engines. For stationary CI ICE, EPA believes there may be technologies to allow more stringent standards for engines greater than 750 HP with a displacement of less than 10 liters per cylinder that are not generator sets that could be based on the use of aftertreatment-based controls. The EPA is requesting comments on whether it should have the same BDT for NO_X for all non-emergency stationary CI engines greater than 750 HP with a displacement of less than 10 liters per cylinder.

Both CDPF and NO_X adsorbers require the use of ULSD fuel to achieve maximum levels of emission reduction. The EPA recently promulgated regulations that require sulfur levels for nonroad diesel fuel to be reduced to 500 parts per million (ppm) beginning in late 2007 and 15 ppm beginning in late 2010.[2] Based on an analysis of ULSD availability EPA conducted for stationary CI ICE affected by the NSPS, the EPA believes that ULSD will be available in sufficient supply for stationary CI engines affected by the proposed rule. For information on EPA's fuel availability analysis, please refer to the docket for the proposed rule. For this reason, EPA is proposing that owners and operators of stationary CI engines affected by the proposed rule that use diesel fuel use only ULSD fuel beginning October 1, 2010. Owners and operators that use diesel fuel will be required to only use diesel fuel with a sulfur content of 500 ppm or less beginning October 1, 2007. This is consistent with fuel levels required by the nonroad rule for diesel engines. The use of lower sulfur diesel fuel will reduce emissions of SO_2 and the resulting sulfate PM to the atmosphere.

Prior to the commercial availability of ULSD fuel and NO_X adsorber technology, non-emergency stationary CI engines are expected to use the technologies currently required for nonroad engines. The EPA looked at other control techniques such as selective catalytic reduction (SCR) for non-emergency engines greater than or equal to 75 HP with a displacement of less than 10 liters per cylinder that could reduce emissions until ULSD fuel becomes available in sufficient quantities for stationary engines and before NO_X adsorbers are expected to be commercially available for use. No other add-on control techniques were identified as BDT. Engine manufacturers are currently in the process of developing a variety of engine technologies, such as cooled exhaust gas recirculation (EGR), to meet the Tier 3 nonroad emission standards for NO_X, which are phased in starting from 2006 to 2008. These engine technologies are determined to be the BDT for stationary CI ICE with a displacement of less than 10 liters per cylinder in the Tier 3 timeframe. Engine manufacturers have developed engine technologies such as combustion optimization and advanced fuel injection controls to meet EPA's Tier 2 limits for nonroad diesel engines. These engine technologies are also being applied to stationary engines.[3] The EPA believes that these technologies are the BDT for the time frame of the Tier 2 standards for these engines, except as discussed below for engines manufactured prior to the 2007 model year.

For NO_X emissions from engines below 75 HP, EPA has determined that the BDT is the variety of engine technologies currently being developed and used by engine manufacturers to reduce NO_X. Examples include cooled EGR, uncooled EGR, and advanced in-cylinder technologies relying on electronic fuel systems and turbocharging. The EPA does not believe that the catalyst-based NO_X technologies have matured to a state where we can have substantial assurance that such technologies will provide a path for compliance for engines in this power category and of this displacement.

3. Pre-2007 Model Year Stationary CI ICE

The proposed standards require engine manufacturers to meet the Tier 2 through Tier 4 nonroad diesel engine standards for their 2007 model year and later non-emergency stationary CI ICE less than 10 liters per cylinder. Stationary ICE are almost all manufactured products that are designed in advance that cannot change design without some lead-time. Given that stationary CI ICE are similar to nonroad diesel engines and their emission control strategies would be similar, the EPA believes that 18 months from the date of proposal is appropriate lead-time for engine manufacturers to meet standards equal to those in effect (or coming into effect) for nonroad engines. However, because stationary CI ICE were not subject to these emissions standards until this rule, the EPA cannot immediately require that these engines produce emissions on the same level required for nonroad engines. Sufficient lead-time must be provided to allow engine manufacturers to modify their production to incorporate these emission reduction strategies in all of their stationary CI ICE in order to meet the proposed emission standards.

For pre-2007 model year stationary CI ICE, the BDT was determined to be the nonroad Tier 1 emission levels. As explained, engine manufacturers will require time to design their engines and incorporate the control technologies that are the basis for nonroad diesel engine Tiers 2 through 4. Manufacturers will also need time to generate and provide the requisite data and other information needed to insure that their engines meet these standards. Manufacturers would therefore not necessarily be able to meet the Tier 2, Tier 3, and Tier 4 emission standards for stationary CI ICE immediately after the rule goes into effect. The BDT for these pre-2007 model year engines is therefore the Tier 1 standards for nonroad engines, which do not require as significant a revision to manufacturing processes as the more stringent regulations and which are currently being met by many stationary engines. Furthermore, EPA is not requiring engines manufactured prior to April 1, 2006 to meet the Tier 1 standards, given that even the less substantial requirements needed to meet the Tier 1 standards would be extremely difficult to achieve in the immediate near term for engines that had not previously been manufactured to meet those standards.

4. Non-Emergency Stationary CI ICE ≥10 and <30 Liters per Cylinder

For non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder, the technology that is the basis of the proposed standards is the same technology used by manufacturers of new marine CI engines to meet the emission standards for those engines. Engines with a displacement in this range are generally not used in land-based nonroad applications and are significantly different in design from land-based nonroad engines. Those engines in this displacement range that are currently certified would generally be certified to marine standards, not

[2] The deadlines are different for refineries, wholesalers, retailers, and end users.

[3] An exception to this is stationary engines above 3000 HP with a displacement of less than 10 liters per cylinder. These engines are not as closely related to nonroad engines of that horsepower range as are other stationary engines, and have not necessarily been manufactured using similar technologies. Therefore, we believe that it will take longer for these engines to be able to meet standards equivalent to nonroad engines. We are therefore requiring Tier 1 standards (as opposed to Tier 2 standards, which nonroad engines of that HP will have to meet) for these engines until the 2011 model year.

land based nonroad standards. The EPA believes these engines are similar in design to marine CI engines and is therefore basing the proposed standards for non-emergency stationary CI ICE with a displacement between 10 and 30 liters per cylinder on the technologies that are used to meet the emission standards for marine CI engines. These technologies include timing retard, advanced fuel injection systems, optimized nozzle geometry, and possibly through rate shaping.

5. Stationary CI ICE With a Displacement ≥30 Liters per Cylinder

For non-emergency stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder, the technology that is the basis of the proposed NO_X standards is SCR. This technology is capable of reducing NO_X emissions by 90 percent or more, is currently available, and is a well-proven control technology for larger stationary CI engines.[4] The technology that is the basis of the proposed PM standards for non-emergency stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder is electrostatic precipitators (ESP). The technology is currently available and is capable of reducing PM emissions by 60 percent or more from stationary CI ICE.

6. Low Sulfur Diesel for All Stationary CI ICE

For all stationary CI ICE, the use of lower sulfur fuel was determined to be the BDT for SO_X. Reducing the sulfur content in the diesel fuel directly affects the engine-out levels of SO_X emissions. As mentioned, the proposed rule requires that owners and operators that use diesel fuel begin using 500 ppm sulfur diesel fuel starting October 1, 2007 and 15 ppm sulfur diesel fuel starting October 1, 2010. These fuel requirements are consistent with the requirements of the nonroad diesel rule.

7. Emergency Stationary CI ICE

The EPA also evaluated the BDT for emergency stationary CI ICE. An emergency stationary internal combustion engine is defined as any stationary internal combustion engine whose operation is limited to emergency situations and required testing. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Examples also include stationary ICE used during Federal or State declared disasters and emergencies, and simulations of emergencies by Federal, State, or local governments. Emergency stationary ICE are allowed to be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by the manufacturer, the vendor, or the insurance company associated with the engine. Required testing of such units is limited to 30 hours per year, and owners and operators are required to keep records of this information. There is no time limit on the use of emergency stationary ICE in emergency situations. The use of add-on controls such as CDPF, oxidation catalyst, and NO_X adsorber could not be justified as BDT due to the cost of the technology relative to the emission reduction that would be obtained. This is discussed in more detail later in this preamble and in the documents supporting the proposal. The EPA, therefore, determined that the engine technologies developed by engine manufacturers to meet the Tier 2 and Tier 3 nonroad diesel engine standards, and those Tier 4 standards that do not require aftertreatment, are the BDT for 2007 model year and later emergency stationary CI ICE with a displacement of less than 10 liters per cylinder. These technologies have been discussed previously in this section. As mentioned earlier, stationary CI ICE with a displacement between 10 and 30 liters per cylinder are similar to marine CI engines, and EPA believes it is appropriate to rely on the technologies used to meet Tier 2 emission standards for marine CI engines. Therefore, for 2007 model year and later emergency stationary CI ICE with a displacement of greater than or equal to 10 and less than 30 liters per cylinder, the basis for the BDT are the technologies used to meet Tier 2 emission standards for marine CI engines.

D. What Sources Are Subject to the Proposed Rule?

The affected source for the CI internal combustion engine NSPS is each stationary CI internal combustion engine whose construction, modification or reconstruction commenced after the date the proposed rule is published in the **Federal Register**. The date of construction is the date the engine is ordered by the owner or operator. As discussed earlier, we are proposing that stationary CI ICE manufactured prior to April 1, 2006 that are not fire pump engines will not be subject to Tier 1 standards, unless they are modified or reconstructed after the date of proposal. Stationary fire pump CI ICE manufactured prior to July 1, 2006 will not be subject to Tier 1 standards, unless they are modified or reconstructed after the date of proposal.

E. What Are the Proposed Standards?

1. Overview

The format of the proposed standard is an output-based emission standard for PM, NO_X, CO, and NMHC in units of emissions mass per unit work performed (grams per kilowatt-hour (g/KW-hr)) and smoke standards as a percentage. The emission standards are generally modeled after EPA's standards for nonroad and marine diesel engines. The nonroad diesel engine standards are phased in over several years and have Tiers with increasing levels of stringency. The engine model year in which the Tiers take effect varies for different size ranges of engines. The Tier 1 standards were phased in for nonroad diesel engines beginning in 1996 to 2000. The Tier 2 nonroad CI standards are phased in starting from 2001 to 2006, and the Tier 3 limits are phased in starting from 2006 to 2008. The Tier 3 limits apply for engines greater than or equal to 50 and less than or equal to 750 HP only. Tier 4 limits for nonroad engines are phased in beginning in 2008.

2. Proposed Standards for Engine Manufacturers

Engine manufacturers must meet the emission standards of the proposed rule during the useful life of the engine. a. 2007 Model Year and Later Non-Emergency Stationary CI ICE ≤3,000 HP and With a Displacement <10 Liters per Cylinder. The proposed standards require that engine manufacturers certify their 2007 model year and later non-emergency stationary CI ICE with a maximum engine power less than or equal to 3,000 HP and a displacement of less than 10 liters per cylinder to the Tier 2 through Tier 4 nonroad diesel engine standards as shown in table 1 of this preamble, as applicable, for all pollutants, for the same model year and maximum engine power.

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[4] SCR is also a proven technology for smaller engines and may be used to meet the NO_X standards for those engines. However, it was not determined to be the BDT for smaller engines due to the expected availability of NO_X adsorber, which achieves similar reductions to SCR at a lower cost.

Table 1. NO_x, NMHC, CO, and PM Emission Standards in g/KW-hr (g/HP-hr) for 2007 Model Year and Later Non-Emergency Engines ≤3,000 HP and With a Displacement <10 Liters per Cylinder and 2011 Model Year and Later Non-Emergency Engines >3,000 HP and With a Displacement <10 Liters per Cylinder

Maximum Engine Power	Model Year(s)	NMHC + NO_x	NMHC	NO_x	CO	PM
KW<8 (HP<11)	2007	7.5 (5.6)	-	-	8.0 (6.0)	0.80 (0.60)
	2008+					0.40 (0.30)
8≤KW<19 (11≤HP<25)	2007				6.6 (4.9)	0.80 (0.60)
	2008+					0.40 (0.30)
19≤KW<37 (25≤HP<50)	2007	7.5 (5.6)	-	-	5.5 (4.1)	0.60 (0.45)
	2008-2012					0.30 (0.22)
	2013+	4.7 (3.5)				0.03 (0.02)
37≤KW<56 (50≤HP<75)	2007	7.5 (5.6)	-	-	5.0 (3.7)	0.40 (0.30)
	2008-2012	4.7 (3.5)				0.30 (0.22)
	2013+					0.03 (0.02)

Maximum Engine Power	Model Year(s)	NMHC + NO_x	NMHC	NO_x	CO	PM
56≤KW<75 (75≤HP<100)	2007	7.5 (5.6)	-	-	5.0 (3.7)	0.40 (0.30)
	2008-2011	4.7 (3.5)				
	2012-2013	-	0.19 (0.14)[b]	0.40 (0.30)[b]		0.02 (0.01)
	2014+		0.19 (0.14)	0.40 (0.30)		
75≤KW<130 (100≤HP<175)	2007	4.0 (3.0)	-	-	5.0 (3.7)	0.30 (0.22)
	2008-2011					
	2012-2013		0.19 (0.14)[b]	0.40 (0.30)[b]		0.02 (0.01)
	2014+		0.19 (0.14)	0.40 (0.30)		
130≤KW<560 (175≤HP≤750)	2007-2010	4.0 (3.0)	-	-	3.5 (2.6)	0.20 (0.15)
	2011-2013	-	0.19 (0.14)[b]	0.40 (0.30)[b]		0.02 (0.01)
	2014+		0.19 (0.14)	0.40 (0.30)		
KW>560 (HP>750) Except generator sets	2007-2010	6.4 (4.8)	-	-	3.5 (2.6)	0.20 (0.15)
	2011-2014	-	0.40 (0.30)	3.5 (2.6)		0.10 (0.075)
	2015+		0.19 (0.14)	3.5 (2.6)		0.04 (0.03)
Generator sets 560<KW≤900 (750<HP≤1200)	2007-2010	6.4 (4.8)	-	-	3.5 (2.6)	0.20 (0.15)
	2011-2014		0.40 (0.30)	3.5 (2.6)		0.10 (0.075)
	2015+		0.19 (0.14)	0.67 (0.50)		0.03 (0.02)

Maximum Engine Power	Model Year(s)	NMHC + NO_x	NMHC	NO_x	CO	PM
Generator sets KW>900 (HP>1200)	2007-2010	6.4 (4.8)	-	-	3.5 (2.6)	0.20 (0.15)
	2011-2014		0.40 (0.30)	0.67 (0.50)		0.10 (0.075)
	2015+		0.19[b] (0.14)			0.03 (0.02)

[a] A manufacturer has the option of skipping the 0.30 g/KW-hr PM standard for all 37-56 KW (50-75 HP) engines. The 0.03 g/KW-hr standard would then take effect 1 year earlier for all 37-56 KW (50-75 HP) engines, in 2012. The Tier 3 standard (0.40 g/KW-hr) would be in effect until 2012.

[b] 50 percent of the engines produced have to meet the NOx NMHC standard, and 50 percent have to meet the separate NOx and NMHC limits.

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b. 2007 Model Year and Later Non-Emergency Stationary CI ICE >3,000 HP and With a Displacement <10 Liters per Cylinder. The proposed standards require that engine manufacturers certify their 2007 through 2010 model year non-emergency stationary CI ICE with a maximum engine power greater than 3,000 HP and a displacement of less than 10 liters per cylinder to the emission standards shown in table 2 of this preamble. For 2011 model year and later non-emergency stationary CI ICE with a maximum engine power greater than 3,000 HP and a displacement of less than 10 liters per cylinder, manufacturers must certify these engines to the Tier 4 nonroad diesel engine standards as shown in table 1 of this preamble, as applicable, for all pollutants, for the same model year and maximum engine power.

TABLE 2.—NO_X, NMHC, CO, AND PM EMISSION STANDARDS IN G/KW-HR (G/HP-HR) FOR PRE-2007 MODEL YEAR ENGINES WITH A DISPLACEMENT <10 LITERS PER CYLINDER AND 2007–2010 MODEL YEAR ENGINES >3,000 HP AND WITH A DISPLACEMENT <10 LITERS PER CYLINDER

Maximum engine power	NMHC + NO_X	HC	NO_X	CO	PM
KW<8 (HP<11)	10.5 (7.8)	.....	.....	8.0 (6.0)	1.0 (0.75)
8≤KW<19 (11≤HP<25)	9.5 (7.1)	.....	.....	6.6 (4.9)	0.80 (0.60)
19≤KW<37 (25≤HP<50)	9.5 (7.1)	.....	.....	5.5 (4.1)	0.80 (0.60)
37≤KW<56 (50≤HP<75)	.....	.....	9.2 (6.9)	.....	.....
56≤KW<75 (75≤HP<100)	.....	.....	9.2 (6.9)	.....	.....
75≤KW<130 (100≤HP<175)	.....	.....	9.2 (6.9)	.....	.....
130≤KW<225 (175≤HP<300)	.....	1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)
225≤KW<450 (300≤HP<600)	.....	1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)
450≤KW≤560 (600≤HP≤750)	.....	1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)
KW>560 (HP>750)	.....	1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)

c. 2007 Model Year and Later Non-Emergency Stationary CI ICE with a Displacement ≥10 and <30 Liters per Cylinder. The proposed standards require that engine manufacturers certify their 2007 model year and later non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder to the certification emission standards for new marine CI engines in 40 CFR 94.8, as applicable, for all pollutants, for the same displacement and maximum engine power. These emission standards are shown in table 3 of this preamble.

TABLE 3.—NO_X, THC, CO, AND PM EMISSION STANDARDS IN G/KW-HR FOR 2007 MODEL YEAR AND LATER STATIONARY CI ICE WITH A DISPLACEMENT ≥10 AND <30 LITERS PER CYLINDER

Engine size—liters per cylinder, rated power	THC + NO_X	CO	PM
5.0≤displacement<15.0, All Power Levels	7.8	5.0	0.27

TABLE 3.—NO_X, THC, CO, AND PM EMISSION STANDARDS IN G/KW-HR FOR 2007 MODEL YEAR AND LATER STATIONARY CI ICE WITH A DISPLACEMENT ≥10 AND <30 LITERS PER CYLINDER—Continued

Engine size—liters per cylinder, rated power	THC + NO_X	CO	PM
15.0≤displacement<20.0, <3,300 KW	8.7	5.0	0.50
15.0≤displacement<20.0, ≥3,300 KW	9.8	5.0	0.50
20.0≤displacement<25.0, All Power Levels	9.8	5.0	0.50
25.0≤displacement<30.0, All Power Levels	11.0	5.0	0.50

d. 2007 Model Year and Later Emergency Stationary CI ICE. The proposed standards require that manufacturers certify their 2007 model year and later emergency stationary CI ICE less than or equal to 3,000 HP and with a displacement of less than 10 liters per cylinder that are not fire pump engines to Tier 2 through Tier 3 nonroad CI engine emission standards, and Tier 4 nonroad CI engine standards that do not require add-on control, according to the nonroad diesel engine schedule. Manufacturers must certify their 2007–2010 model year emergency stationary CI ICE greater than 3,000 HP and with a displacement less than 10 liters per cylinder that are not fire pump engines to the emission standards shown in table 2 of this preamble. Manufacturers must certify their 2011 model year and later emergency stationary CI ICE that are greater than 3,000 HP and with a displacement less than 10 liters per cylinder that are not fire pumps to Tier 2 and Tier 3 nonroad CI engine standards, and to Tier 4 nonroad CI engine standards that do not require add-on control. Manufacturers are required to certify their 2007 model year and later emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder to the certification emission standards for new marine CI engines in 40 CFR 94.8. Manufacturers must certify their 2007 model year and later emergency fire pumps to the emission standards shown in table 4 of this preamble.

3. Proposed Standards for Owners and Operators

Owners and operators of stationary CI ICE are required to meet the emission standards in the proposed rule over the entire life of the engine.

a. Stationary CI ICE With a Displacement <30 Liters per Cylinder. Owners and operators that purchase pre-2007 model year stationary CI ICE with a displacement of less than 10 liters per cylinder that are not fire pump engines must meet the emission standards for pre-2007 model year engines, which are shown in table 2 of this preamble. Owners and operators that purchase pre-2007 model year stationary CI ICE with a displacement of greater than or equal to 10 and less than 30 liters per cylinder that are not fire pump engines must meet the emissions standards in 40 CFR 94.8(a)(1). Section 94.8(a)(1) specifies the following NO_X limits: 17.0 g/KW-hr (12.7 g/HP-hr) when the maximum test speed is less than 130 revolutions per minute (rpm); $45.0 \times N^{-0.20}$ when maximum test speed is at least 130 but less than 2000 rpm, where N is the maximum test speed of the engine in rpm; and 9.8 g/KW-hr (7.3 g/HP-hr) when maximum test speed is 2000 rpm or more.

Owners and operators that purchase 2007 model year and later stationary CI ICE with a displacement of less than 30 liters per cylinder that are not fire pump engines must purchase an engine that is certified by the manufacturer according to the provisions of the proposed rule.

b. Stationary CI ICE With a Displacement ≥30 Liters per Cylinder. Owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder are required to reduce NO_X emissions by 90 percent or more, or alternatively they must limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to 0.40 grams per KW-hour (0.30 grams per HP-hour). Owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder are also required to reduce PM emissions by 60 percent or more, or alternatively they must limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.12 grams per KW-hour (0.09 grams per HP-hour).

4. Proposed Standards for Manufacturers and Owners and Operators of Emergency Stationary Fire Pump Engines

The proposed rule requires that owners and operators of emergency fire pump engines meet the emission standards shown in table 4 of this preamble, for all pollutants, for the same model year and maximum engine power. Starting with 2007 model year engines, emergency fire pumps must be certified to the emission standards shown in table 4 of this preamble. Emergency fire pump engines between 50 and 600 HP with a rated speed of greater than 2,650 rpm have been given an additional 3 years to meet the most stringent emission standards. Although the fire pump engine manufacturers and installers have indicated that the provisions of the proposed rule will not reduce the reliability of fire pump engines, we are asking for comments on whether there are any concerns regarding fire pump reliability.

TABLE 4.—NO_X, NMHC, CO, AND PM EMISSION STANDARDS IN G/KW-HR (G/HP-HR) FOR EMERGENCY FIRE PUMP ENGINES

Maximum engine power	Model year(s)	NMHC + NO_X	CO	PM
KW<8 (HP<11)	2010 and earlier	10.5 (7.8)	8.0 (6.0)	1.0 (0.75)
	2011+	7.5 (5.6)		0.40 (0.30)
8≤KW<19 (11≤HP<25)	2010 and earlier	9.5 (7.1)	6.6 (4.9)	0.80 (0.60)
	2011+	7.5 (5.6)		0.40 (0.30)
19≤KW<37(25≤HP<50)	2010 and earlier	9.5 (7.1)	5.5 (4.1)	0.80 (0.60)
	2011+	7.5 (5.6)		0.30 (0.22)
37≤KW<56 (50≤HP<75)	2010 and earlier	10.5 (7.8)	5.0 (3.7)	0.80 (0.60)
	2011+[a]	4.7 (3.5)		0.30 (0.22)
56≤KW<75 (75≤HP<100)	2010 and earlier	10.5 (7.8)	5.0 (3.7)	0.80 (0.60)

TABLE 4.—NO_X, NMHC, CO, AND PM EMISSION STANDARDS IN G/KW-HR (G/HP-HR) FOR EMERGENCY FIRE PUMP ENGINES—Continued

Maximum engine power	Model year(s)	NMHC + NO_X	CO	PM
	2011+[a]	4.7 (3.5)		0.40 (0.30)
75≤KW<130 (100≤HP<175)	2009 and earlier	10.5 (7.8)	5.0 (3.7)	0.80 (0.60)
	2010+[a]	4.0 (3.0)		0.30 (0.22)
130≤KW<225 (175≤HP<300)	2008 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)
	2009+[a]	4.0 (3.0)		0.20 (0.15)
225≤KW<450 (300≤HP<600)	2008 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)
	2009+[a]	4.0 (3.0)		0.20 (0.15)
450≤KW≤560 (600≤HP≤750)	2008 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)
	2009+	4.0 (3.0)		0.20 (0.15)
KW>560 (HP>750)	2007 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)
	2008+	6.4 (4.8)		0.20 (0.15)

[a] Emergency fire pump engines with a rated speed of greater than 2,650 rpm are allowed an additional 3 years to meet these standards.

5. Fuel Requirements

In addition to emission standards, the proposed rule requires that beginning October 1, 2007, owners and operators of stationary CI ICE that use diesel fuel must only use diesel fuel meeting the requirements of 40 CFR 80.510(a), which requires that diesel fuel have a maximum sulfur content of 500 ppm and either a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent. Beginning October 1, 2010, owners and operators stationary CI ICE that use diesel fuel must only use diesel fuel meeting the requirements of 40 CFR 80.510(b), which requires that diesel fuel have a maximum sulfur content of 15 ppm and either a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent. The proposed rule does not contain a standard for SO_2; the use of low sulfur diesel fuel will result in lower emissions of SO_2.

Manufacturers of stationary CI ICE with a displacement of 30 liters per cylinder or more indicated that they are able to operate their engines on 500 ppm sulfur fuel, but they do not have any experience operating their engines on 15 ppm sulfur fuel, and they need to perform testing to ensure there are no problems with the lubricity of the ULSD fuel. The use of ULSD is not required until the year 2010, which will allow adequate time for manufacturers of these large stationary engines to test the operation of the engines on ULSD. The EPA does not expect that the lubricity of the ULSD will be an issue because additives can be added to ULSD to achieve a sufficient lubricity.

F. What Are the Requirements for Sources That Are Modified or Reconstructed?

The proposed standards apply to stationary CI ICE that are modified or reconstructed after the date the proposed rule is published in the **Federal Register**. The guidelines for determining whether a source is modified or reconstructed are given in 40 CFR 60.14 and 40 CFR 60.15, respectively. Stationary CI ICE that are modified or reconstructed must meet the emission standards for the model year in which the engine was originally new, not the year the engine was modified or reconstructed. Therefore, a pre-2007 model year engine modified after 2007 must meet the emission standards for pre-2007 model year engines.

G. What Are the Requirements for Demonstrating Compliance?

1. Engine Manufacturers

Manufacturers of stationary CI ICE must demonstrate compliance with the rule, as proposed, by certifying that their 2007 model year and later stationary CI ICE meet the emission standards in the rule using the certification procedures in subpart B of 40 CFR part 89, subpart C of 40 CFR part 94, or subpart C of 40 CFR part 1039, as applicable, and must test their engines as specified in those parts. Manufacturers of fire pump engines may use the optional test cycle provided in table 4 of the proposed rule. Manufacturers of certified stationary CI ICE must also meet the emission-related warranty requirements of 40 CFR 1039.120; the provisions in 40 CFR 1039.125 and 40 CFR 1039.130, which require the engine manufacturer to provide engine installation and maintenance instructions to buyers; the engine labeling requirements in 40 CFR 1039.135; and the general compliance provisions in 40 CFR part 1068, or the corresponding provisions of 40 CFR part 89 or 40 CFR part 94 for engines that would be covered by that part if they were nonroad (including marine) engines. After the Tier 4 standards take effect, manufacturers of emergency stationary CI ICE that do not meet the standards for non-emergency engines must add to each such emergency engine a permanent label which states that the engine is for emergency use only.

Engine manufacturers that certify an engine family or families to standards under the proposed rule that are identical to standards applicable under 40 CFR part 89, 40 CFR part 94, or 40 CFR part 1039 for that model year may certify any such family that contains both nonroad (including marine) and stationary engines as a single engine family and/or may include any such family containing stationary engines in the averaging, banking and trading (ABT) provisions applicable for such engines under those parts.

EPA has used averaging, banking, and trading often in the context of the nonroad engine program. The averaging provisions basically allow manufacturers to certify certain engine families to emission levels more stringent than required and to certify other engine families to levels less stringent than required, as long as the average emission levels to which the these engine families are certified are at least equal to the appropriate standards. The banking program allow manufacturers to generate credits by certifying engine families to more stringent standards than required in a particular year and to use such credits in later years. The trading provisions allow engine manufacturers to trade credits with other engine manufacturers covered by the same requirements. The ABT provisions include significant restrictions and compliance requirements, including upper limits on the level to which any engine family may certify.

Under the nonroad engine program, the ABT provisions, where applied, are important elements in our

determination of the standards of performance that represent "the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines * * * to which the standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy and safety factors * * *" See Clean Air Act section 213(a)(3) and *Natural Resources Defense Council* v. *Thomas*, 805 F.2d 410, 425 (D.C. Cir. 1986) (upholding EPA regulations allowing manufacturers to meet emission standards for heavy-duty engines by averaging among engine families); see also discussions at 69 FR 38996 (June 29, 2004) and 55 FR 30584, 93–99 (July 26, 1990).

Similarly, we believe that these ABT provisions are essential elements in our determination that the proposed standards reflect best demonstrated technology. The flexibility provided by the ABT provisions allows the manufacturer to adjust its compliance for engine families for which coming into compliance with the standards will be particularly difficult or costly, without special delays or exceptions having to be written into the rule. Emission-credit programs also create an incentive for the early introduction of new technology (for example, to generate credits in early years to create compliance flexibility for later engines), which allows certain engine families to act as trailblazers for new technology. This improves the feasibility of achieving the standards for the entire population of regulated engines. EPA has concluded as a factual matter, as reflected in today's proposed rule, that an ABT program, operated at the level of the manufacturer, represents the best system of emissions reductions, considering all relevant factors.

We believe the proposed ABT provisions are appropriate for this program. The ABT provisions are applicable to engine manufacturers, who manufacture numerous engines for use in all areas of the country, as opposed to the final owner/operators of the units. These standards will apply to hundreds of different engine families that will be used in tens of thousands of different engines. The flexibility provided by the ABT program is an important instrument for manufacturers to use in meeting the stringent standards being proposed in this program affecting a large number of engine families. We welcome comments on the appropriateness of allowing for averaging, banking and trading under this program.

We are proposing minor revisions to several existing mobile source regulations to help incorporate several of these provisions.

EPA is proposing that manufacturers of stationary CI ICE that are seeking certificates of conformity be subject to the same fee provisions as those promulgated for comparable land-based and marine nonroad engines in EPA's most recent fees rulemaking (*see* 69 FR 26222, May 11, 2004) and be required to comply with the fees rule in the same manner as manufacturers already subject to the fees regulations. Because EPA will be providing certificates of conformity to stationary CI ICE manufacturers and, thus is providing a service or thing of value to the manufacturers, the Independent Offices Appropriations Act (31 U.S.C. 9701) authorizes such a fee collection. Having reviewed the recent fees rule for the motor vehicle and engine compliance program, and its associated cost study which examined EPA's incurred cost of compliance services, we believe that the fees provided in that rule are appropriate for the comparable costs of administering the compliance program for the engines associated with today's proposed rule. We have proposed that these engines are to be subject to the same general compliance regime as land-based nonroad CI engines and, for those with a displacement greater than 10 liters per cylinder, marine engines covered by the existing fees rule. We believe fees for each respective request for certification of conformity for stationary CI ICE should have the same fee amount as for those engines.

Under the provisions of the existing fees rule, the initial fees for certification applications received in the 2004 and 2005 calendar years (for example, $1,822 and $826, respectively, for land-based nonroad CI engines and marine engines) are adjusted on an annual basis based on several factors, including any changes in the number of certificates in the respective fee categories. Thus, the number of certificates that EPA issues for the engines covered by today's proposed rule will be included in the respective fee categories when EPA conducts its annual calculation for the purposes of adjusting fees based on the existing regulatory formula. Please note that the fee amounts for calendar year 2006 have slightly increased from the fee amounts for the 2004 and 2005 calendar year fees. See EPA's Guidance Letter CCD–05–05 at *http://www.epa.gov/otaq/cert/dearmfr/dearmfr.htm*. Finally, EPA believes it appropriate to commence the collection of fees immediately for each certification of conformity request once the final rule becomes effective.

2. Owners and Operators

All engines and control devices must be installed, configured, operated, and maintained according to the specifications and instructions provided by the engine manufacturer. Other compliance requirements for owners and operators of stationary CI ICE depend on the displacement and model year of the engine. Owners and operators of pre-2007 model year engines with a displacement less than 30 liters per cylinder can demonstrate compliance by purchasing an engine that is certified to meet the nonroad emission standards for the model year and maximum engine power of the engine. Other information such as performance test results for each pollutant for a test conducted on a similar engine; data from the engine manufacturer; data from the control device vendor; or conducting a performance test can also be used to demonstrate compliance with the emission standards. The owner or operator may also choose to conduct an initial performance test to demonstrate compliance with the emission standards. The records which indicate that the engine is complying with the emission standards of the proposed rule must be kept on file by the owner or operator of the engine and be available for inspection by the enforcing agency. Engine manufacturers and/or control device vendors may provide such information at the time of sale. Manufacturers that provide such information to their customers may also choose to place a label on the engine that indicates the engine meets the applicable standards for stationary CI ICE under 40 CFR part 60, subpart IIII, as long as the label does not violate or otherwise interfere with other labels or requirements mandated by other regulations. If the owner or operator chooses to conduct a performance test to demonstrate compliance with the proposed rule, the test must be conducted according to the in-use testing procedures of 40 CFR 1039, subpart F.

Starting with 2007 model year engines with a displacement of less than 30 liters per cylinder, owners and operators are required to demonstrate compliance by purchasing an engine certified to meet the applicable emission standard for the model year and maximum engine power of the engine.

If in-use testing is conducted, the owner and operator of engines with a displacement of less than 30 liters per cylinder would be required to meet not-

to-exceed (NTE) emission standards instead of the standards in tables 1 and 2 of this preamble. Engines that are complying with the emission standards in 40 CFR part 1039 (Tier 4 standards) must not exceed the NTE standards for the same model year and maximum engine power as required in 40 CFR 1039.101(e) and 40 CFR 1039.102(g)(1), except as specified in 40 CFR 1039.104(d). Engines that are complying with the emission standards in 40 CFR 89.112 (Tier 2/3 standards), and engines that are pre-2007 model year engines must meet the following NTE standards:

NTE = (STD) × (M)

Where:

NTE = The NTE emission standard for each pollutant.

STD = The certification emission standard specified for each pollutant in Table 1 or 2 for the same model year and maximum engine power.

M = 1.25.

Owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder must conduct an initial performance test to demonstrate compliance with the emissions reductions requirements, establish operating parameters and monitor operating parameters continuously, and conduct annual performance tests. The NTE standards do not apply to engines that have a displacement of greater than or equal to 30 liters per cylinder. Testing conducted on these engines must be performed to demonstrate that NO_X and PM emission standards are achieved.

H. What Are the Monitoring Requirements?

Owners and operators of stationary CI ICE that are equipped with CDPF must install a backpressure monitor that will notify the operator when the high backpressure limit of the engine is approached. All emergency stationary CI ICE must have a non-resettable hour meter to track the number of hours operated during non-emergencies.

I. What Are the Reporting and Recordkeeping Requirements?

The owner or operator of non-emergency stationary CI ICE that are greater than 3,000 HP or with a displacement of greater than or equal to 10 liters per cylinder, and non-emergency stationary CI ICE pre-2007 model year engines greater than 175 HP and not certified, must submit an initial notification. The initial notification must contain information identifying the owner or operator, the engine and control device, and the fuel used. As mentioned, engines that are not certified have various options for demonstrating initial compliance, which would be documented in records available on-site. Also, all owners and operators must keep records of all information necessary to demonstrate compliance with the emission standards such as records of all notifications submitted, any maintenance conducted on the engine, any performance tests conducted on the engine (or performance tests conducted on a similar engine that is used to demonstrate compliance), engine manufacturer or control device vendor information, etc. Owners and operators of certified engines must keep records of documentation from the manufacturer that the engine is certified to meet the emission standards. Owners and operators of engines that are equipped with CDPF must install a backpressure monitor and are required to maintain records of any corrective action taken after the backpressure monitor has notified the owner or operator that the backpressure limit is approached. These records must be available for viewing upon request by the enforcing agency. Owners and operators of emergency engines are not required to submit initial notifications. However, these engines must have a non-resettable hour meter. Owners and operators of emergency engines are required to keep records of their hours of operation in non-emergency service. Records of hours of operation during emergencies are not required.

IV. Rationale for Proposed Rule

A. How Did EPA Determine the Source Category for the Proposed Rule?

Under section 111 of the CAA, 42 U.S.C. 7411, the Administrator is required to publish, and periodically update, a list of source categories that in his or her judgement cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. This list appears in 40 CFR 60.16. The list reflects the Administrator's determination that emissions from the listed source categories contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare, and it is intended to identify major source categories for which standards of performance are to be promulgated.

The EPA has determined that for purposes of promulgating NSPS regulations, the stationary internal combustion engine source category should be split into two source categories—CI engines and SI engines. The reason for dividing the source category is that EPA will require more time to develop a regulation for SI engines than for CI engines. At the outset of the proposed rulemaking process, the EPA had more information available for CI engines than for SI engines due to other regulatory actions and information gathering activities for CI engines by EPA, as well as States and groups of States. It will take longer to collect and analyze information for SI engines, and EPA will, therefore, need more time to develop a regulation for SI engines.

B. How Did EPA Select the Pollutants To Be Regulated?

New source performance standards are developed under the authority of section 111 of the CAA. Emissions of criteria pollutants (those pollutants identified under section 110 of the CAA) are generally regulated under section 111, while HAP are regulated under section 112 of the CAA. Emissions from stationary CI ICE contribute significantly to air pollution and cause adverse health and welfare effects associated with ozone, PM, NO_X, SO_X, CO, and NMHC.

Nitrogen oxides are listed as criteria pollutants and are regulated due to their contribution to the formation of ozone. Nitrogen oxides are precursors to ozone formation. Exposure to ozone has been linked to health and welfare impacts. Health and welfare risks include impaired respiratory function, eye irritation, deterioration of materials such as rubber, and necrosis of plant tissue. Nitrogen oxides are one of the major pollutants emitted from stationary ICE and stationary ICE are considered to cause or contribute significantly to nationwide releases of NO_X emissions. By reducing emissions of NO_X, substantial benefits to public health and welfare and the environment will be realized.

Particulate matter is listed as a criteria pollutant and is regulated by this action. Emissions of PM lead to adverse health and welfare effects. Health effects associated with ambient PM include premature mortality, aggravation of respiratory and cardiovascular disease, aggravated asthma, and acute respiratory symptoms. By controlling the emissions of PM, the risk of areas failing to attain or maintain compliance with the National Ambient Air Quality Standards (NAAQS) for PM is reduced.

Sulfur oxides have been identified as criteria pollutants and are addressed in the proposed rule through fuel use requirements. Sulfur dioxide and sulfate PM are emitted as a result of sulfur in the diesel fuel used by stationary CI ICE.

By controlling the sulfur level in diesel fuel, levels of air pollution will be reduced and public health and welfare will be improved. Restrictions on fuel use will also assist areas currently in nonattainment with the SO_2 standard to comply with the NAAQS standard for SO_2.

Emissions of NMHC from stationary CI ICE contribute to the formation of ozone. In addition, emissions of NMHC include air toxics such as benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and acrolein. These substances are known or suspected as being human or animal carcinogens, or having noncancer health effects such as irritation or corrosion of the eyes, nose, throat, and lungs; pulmonary and respiratory problems; and dermatitis and sensitization of the skin and respiratory tract. Stationary CI ICE contribute to nationwide releases of NMHC emissions. Substantial benefits to public health and welfare and the environment will be realized by reducing emissions of NMHC.

Carbon monoxide is a criteria pollutant and is considered harmful to public health and the environment. Carbon monoxide has been linked to increased risk for people with heart disease, reduced visual perception, cognitive functions and aerobic capacity, and possible fetal effects. Stationary CI engines are major contributors to emissions of CO and are considered to contribute to several areas failing to attain the NAAQS for CO. Reductions of CO proposed by the proposed rule will improve public health and welfare.

In addition to the health effects described above, pollution from stationary diesel engines also significantly contributes to visibility effects. Visibility is defined as the degree to which the atmosphere is transparent to visible light. Fine particles are the major contributors to reduced visibility. By implementing emission standards for stationary diesel engines as proposed by the proposed rule, improvements in visibility will be experienced.

Other potential effects associated with these pollutants from stationary diesel engines include acid deposition, eutrophication, soiling, and material damage. Acid deposition, or acid rain occurs when SO_2 and NO_X are released into the atmosphere and react with water, oxygen, and oxidants. Acid rain contributes to damage of the environment including damage to trees, lakes, and streams, in addition to affecting building materials, accelerating the decay of structures. By reducing SO_2 and NO_X emissions, the sulfur and nitrogen acid deposition will also be reduced. Eutrophication is the accelerated production of organic matter, particularly algae in water bodies. The increased level of algae can cause adverse ecological effects, including reduced light and oxygen levels, which affect fish, plants, and other organisms that are habitants in water bodies. Deposition of airborne particles, which can lead to accumulation of particles (soiling) on surfaces can cause structural damage by means of corrosion or erosion. The proposed rule should decrease the levels of soiling by reducing the level of PM that is emitted from stationary diesel engines. The use of CDPF by engines affected by the proposed rule will also result in reductions of gaseous HAP.

C. How Did EPA Determine the Best Demonstrated Technology?

1. Background

To determine the BDT for the proposed rule, EPA first analyzed the emission control strategies selected for the nonroad CI engine rule. The EPA concluded that the level and implementation timing of the nonroad CI engine standards are the most challenging that can be justified.

Engine manufacturers have indicated to EPA that, in many cases, they do not separately design and manufacture CI engines for stationary use. The manufacturers usually sell the same CI engines for use in mobile nonroad equipment as those used in stationary applications. Emissions from stationary CI ICE would, therefore, tend to decline with the implementation of EPA's nonroad diesel engine standards. However, there are certain engine classes produced that are not sold into the nonroad sector but are strictly used for stationary purposes, in particular very large engines. There are also several families of stationary engines that have not been modified to meet nonroad standards, even for smaller engines. Therefore, there will be certain engines that will be used for stationary purposes that have not been certified through the nonroad rule.

The EPA is proposing that stationary engine manufacturers begin certifying stationary CI engines to Tier 2 and Tier 3 nonroad CI engine levels, or Tier 2 marine CI engine levels, where applicable, starting with 2007 model year engines, in order to provide sufficient time for these manufacturers to put the certification regime in place for stationary engines.

2. Stationary CI ICE With a Displacement <10 Liters per Cylinder

The Tier 2 and Tier 3 nonroad CI engine standards are based on engine-based, as opposed to aftertreatment-based, technologies. Technologies being used to meet the Tier 2 limits are combustion optimization and advanced fuel injection controls. At the time that the Tier 3 limits were promulgated, it was believed that technologies being developed for highway diesel engines, especially cooled EGR, would be applied to nonroad engines in order to meet the Tier 3 limits. The Tier 3 limits will be phased in starting in 2006, and EPA has concluded that engine manufacturers will use a variety of engine control techniques to meet the Tier 3 limits. These techniques include charge air cooling, fuel injection rate shaping and multiple injections, injection timing retard, EGR, induced mixing/charge motion, control of air-to-fuel ratio, and control of oil consumption. Since stationary CI engines are similar to nonroad engines, EPA believes that these engine technologies used for the Tier 2 and Tier 3 standards are the BDT during the timeframe of the Tier 2 and Tier 3 rules for 2007 model year and later engines with a displacement of less than 10 liters per cylinder. This determination is applicable for both emergency and non-emergency engines with a displacement of less than 10 liters per cylinder, since the technology is a part of the engine and is the same no matter what the engine will be used for.

In June of 2004, EPA promulgated Tier 4 standards for nonroad diesel engines (69 FR 38957), which begin to take effect in a staged fashion beginning in 2008. The Tier 4 standards are based on the use of advanced emission control technologies for nonroad diesel engines. For PM, CO, and NMHC, EPA projects that CDPF is the technology that will ultimately be used to meet the nonroad diesel engine emission standards for engines greater than or equal to 25 HP and with a displacement less than 10 liters per cylinder. Catalyzed diesel particulate filters have been demonstrated to achieve reductions of greater than 90 percent for PM, CO, and NMHC for stationary CI ICE. The technology requires ULSD fuel in order to achieve those levels of reductions. The CDPF technology also reduces emissions of gaseous HAP. The EPA did not set standards based on the use of CDPF for nonroad diesel engines less than 25 HP. The PM standards for these small engines are based on the use of oxidation catalyst control and engine optimization. The EPA stated that the

reason it did not set more stringent PM standards was due to the cost of implementing CDPF on these engines, especially considering the prerequisite need for electronic fuel control systems to facilitate regeneration. The EPA plans to conduct a technology review for these small engines in the future and make a determination at that time if more stringent standards are appropriate.

For the nonroad CI engine NO_X Tier 4 emission standards for engines greater than or equal to 75 HP, EPA projects that the technology that will be used is NO_X adsorber, a catalyst technology for removing NO_X in a lean exhaust environment. This technology has been demonstrated to be effective in several studies, but is not expected to be used commercially until 2007 at the earliest, in part because the technology can only operate effectively if the engine is using ULSD fuel. Emissions reductions from NO_X adsorbers are expected to be greater than 90 percent for NO_X; however, ULSD fuel is required to achieve these reductions. For nonroad engines smaller than 75 HP, EPA did not set more stringent standards based on the use of NO_X aftertreatment because EPA could not determine that NO_X adsorbers were feasible, considering cost, for these engines.

Applying NO_X adsorbers to all nonroad and stationary diesel engines is complex and will require a high level of engine and aftertreatment integration. Diesel engines greater than 75 HP and with a displacement less than 10 liters per cylinder are similar to highway diesel engines, and the implementation of NO_X adsorbers on highway engines will provide the information on how successful integration will be and is key to how the integration process will work for nonroad and stationary engines. Experience associated with the implementation of advanced controls on smaller nonroad engines (less than 75 HP) is significantly less than the experience already developed for larger engines. The EPA, therefore, did not set standards based on NO_X adsorbers for smaller nonroad diesel engines but relied on on-engine controls. The EPA plans to conduct a technology review in the future for nonroad diesel engines less than 75 HP to assess engine and emission control technologies at that point, and it is expected that the findings of this review will apply to stationary engines as well. Also, the EPA is deferring a decision on setting aftertreatment-based NO_X standards for engines that are larger than 750 HP and not used as generator sets. The delay will provide additional time to evaluate the technical issues involved in adapting NO_X adsorber technology to these applications. The Tier 4 NO_X standard for engines larger than 750 HP not used as generator sets is therefore based on proven engine-based NO_X control technologies, rather than NO_X adsorber.

In addition to the technologies that are the basis for the nonroad engine emission standards, EPA evaluated other currently available add-on emission controls for NO_X, CO, NMHC, and PM. Two other technologies were identified: SCR for NO_X emissions and oxidation catalyst for other emissions. Selective catalytic reduction can reduce NO_X emissions by more than 90 percent, a similar level of performance to NO_X adsorbers. The cost of SCR is significantly higher than for NO_X adsorber. In addition, for the nonroad emission standards, EPA indicated that it had significant concerns with SCR, which is a technology that requires extensive user intervention to operate properly and the lack of the urea delivery infrastructure that is necessary to support the technology. For the nonroad emission standards for diesel engines, EPA concluded that SCR is not likely to be available for general use for the timeframe of the Tier 4 emission standards. However, EPA did not exclude the possibility that certain installations may use SCR to comply with the emission standards, but the feasibility and cost analysis for nonroad diesel engines was not based on the use of SCR. The EPA believes that the conclusions drawn for nonroad diesel engines also apply to stationary diesel engines. It is likely that SCR may be applied more to stationary engines than nonroad engines; however, the limitations that EPA has identified for nonroad diesel engines also affect stationary engines. As with nonroad engines, EPA does not preclude the possibility that certain installations may rely on the use of SCR to comply with the Tier 4 NO_X emission standards. For non-emergency stationary CI engines with a displacement less than 10 liters per cylinder, the EPA, therefore, determined that NO_X adsorber is the BDT for control of NO_X emissions because it achieves similar reductions to SCR at a lower cost.

Oxidation catalysts can achieve the same level of control of CO and NMHC as CDPF, but only reduce PM emissions by approximately 20 to 50 percent when used with 500 ppm sulfur diesel fuel. No other technologies were identified for control of PM. The EPA, therefore, concluded that for non-emergency stationary CI engines greater than or equal to 25 HP and with a displacement less than 10 liters per cylinder, CDPF is the BDT for CO, NMHC, and PM because it achieves the same CO and NMHC emission reduction as oxidation catalyst and achieves a significantly higher PM reduction than oxidation catalyst. The EPA could not justify selecting CDPF or oxidation catalyst as the BDT for emergency engines due to the cost of aftertreatment compared to the amount of pollutant reduced. Further information regarding EPA's analysis is presented in a memorandum included in the docket (Docket ID. No. OAR–2005–0029).

For emergency stationary CI engines, the cost of NO_X adsorber was compared to the amount of NO_X that will be reduced, and it was determined that the relatively high cost as compared to the amount of NO_X reduced did not justify the selection of NO_X adsorber for emergency engines. Emergency stationary CI ICE are only operated for a few hours each year and, therefore, emissions from these engines are relatively low compared to emissions from non-emergency engines. Additional information on EPA's analysis is presented in a memorandum included in the docket (Docket ID. No. OAR–2005–0029).

3. Stationary CI ICE With a Displacement ≥10 and <30 Liters Per Cylinder

Stationary CI ICE with a displacement between 10 and 30 liters per cylinder are more similar to marine CI engines than land-based CI engines. For stationary CI ICE with a displacement of greater than or equal to 10 and less than 30 liters per cylinder, we, therefore, believe it is appropriate to rely on the technologies used to meet the Tier 1 and 2 emission standards for marine CI engines. Marine CI engines of this displacement are categorized as category 2 marine engines. More specifically, category 2 means relating to a marine engine with a specific engine displacement greater than or equal to 5 liters per cylinder but less than 30 liters per cylinder. The EPA expects that category 2 marine diesel engines will use the same technologies that are relied upon for category 1 engines. Category 1 marine engines are those marine engines that are greater than or equal to 37 KW (50 HP) with a displacement of less than 5 liters per cylinder. In general, EPA believes that many of the control technologies that are expected to be used on nonroad CI engines to meet Tier 2 and Tier 3 nonroad CI emission standards and those used on locomotives to meet Tier 2 locomotive emission standards, will also be used on marine engines since marine engines are derived from land-based engines. For category 2 marine engines, EPA expects

that timing retard, advanced fuel injection systems, optimized nozzle geometry, and possibly through rate shaping may be used to meet the Tier 2 marine standards. The EPA also anticipates that manufacturers of category 2 marine engines will increase the use of electronic engine management controls. Additional reductions in NO_X, PM, CO, and HC can be achieved through electronic controls. Furthermore, the EPA expects that category 2 marine engines will be turbocharged and aftercooled. The EPA believes the control strategies relied upon to meet Tier 1 and 2 marine emission standards will be appropriate for stationary CI ICE with a displacement between 10 and 30 liters per cylinder and, therefore, chose the technologies anticipated to be used to comply with Tier 1 and 2 marine emission standards as the BDT for stationary CI ICE of this displacement.

Though EPA is not proposing aftertreatment-based standards for these engines at this time, we are currently reviewing the possibility of promulgating more stringent standards for marine engines similar to the Tier 4 standards promulgated for land based nonroad CI engines. In that context, we will review whether such technologies are appropriate for stationary CI ICE with a displacement between 10 and 30 liters per cylinder. The NSPS for such engines may, therefore, be revised at that time to require more stringent standards in the future.

For emergency stationary CI ICE with a displacement of greater than or equal to 10 and less than 30 liters per cylinder, the basis for the BDT are the same technologies as discussed above that are used to comply with Tier 2 marine emission standards.

4. Stationary CI ICE With a Displacement ≥30 Liters Per Cylinder

For stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder, EPA evaluated currently available control technologies for NO_X and PM. The EPA identified SCR and ESP as feasible control options for these engines. Selective catalytic reduction has been available for several years and is a well-proven technology on stationary ICE using diesel fuel. Information provided by manufacturers of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder indicated that the technology is capable of reducing NO_X emissions by more than 90 percent. The EPA considered NO_X adsorbers; however, the technology is still under development, and its applicability to very large engines is unknown. No other technologies were identified for control of NO_X and SCR was chosen as the BDT for stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder. For PM, the EPA chose ESP as the BDT for engines with a displacement at or above 30 liters per cylinder. Information provided by manufacturers of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder indicated that the technology can reduce PM emissions by at least 60 percent on large industrial applications. The EPA evaluated CDPF but concluded that the feasibility of applying particulate filters to engines of such large displacement, and, in turn, also size, has not been shown. This conclusion is consistent with information gathered from CDPF control technology vendors who believe that it is not possible to apply CDPF to such large engines. No other feasible technologies were identified for the control of PM from these engines, and ESP was selected as the BDT for PM for engines with a displacement greater than or equal to 30 liters per cylinder.

D. How Did EPA Select the Affected Facility for the Proposed Rule?

The choice of the affected facility for an NSPS is based on the Agency's interpretation of section 111 of the CAA. Under section 111, the NSPS provisions must apply to any new source owned or operated in the United States. The "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. Most industrial plants, however, consist of numerous pieces or groups of equipment which emit air pollutants, and which might be viewed as "sources." The EPA uses the term "affected facility" to designate the equipment, within a particular kind of plant, which is chosen as the "source" covered by a given standard.

In choosing the affected facility, the EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards in the particular industrial context involved and in light of the terms and purpose of CAA section 111. One major consideration in this examination is that the use of a broader definition means that replacement equipment is less likely to be regulated under the NSPS; if, for example, an entire plant was designated as the affected facility, no part of the plant would be covered by the standard unless the plant as a whole was "modified." Because the purpose of section 111 is to minimize emissions by the application of the best demonstrated control technology (considering cost, other health and environmental effects, and energy requirements) at all new and modified sources, there is a presumption that a narrower designation of the affected facility is appropriate. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if the Agency concludes that the relevant statutory factors (technical feasibility, cost, energy, and other environmental impacts) point to a broader definition.

For the proposed rule, the EPA did not see any reason to use a broader definition for the affected facility and has, therefore, designated each individual engine as the affected facility. Each engine must meet the certification requirements under this rule. A site or engine manufacturer with multiple engines could have different compliance requirements for each engine, depending on the engine size, age, and application. Use of the broader definition of affected source could require complex aggregate compliance determinations. The EPA feels such complicated compliance determinations to be impractical, and, therefore, has decided to adopt a definition which establishes each individual engine as the affected source.

The EPA is regulating engine manufacturers in the proposed rule by requiring that they certify their 2007 model year and later stationary CI engines to emission standards that have already been promulgated for nonroad CI engines, or to the emission standards for marine CI engines if the engines have a displacement greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder. The vast majority of stationary CI engines are consumer products produced in mass quantities. The EPA estimates that more than 60,000 stationary CI engines will be produced every year starting in 2007 and increasing thereafter. For further information on EPA's stationary CI engine projection estimates, please refer to the docket for the proposed rule. Internal combustion engines have traditionally been regulated through the manufacturer for purposes of meeting mobile source regulations and manufacturers have years, and decades in many cases, of experience complying with such standards. It is infinitely

simpler, more reliable, and comparatively inexpensive to regulate stationary CI engines employing the same regime as for mobile sources than to create a new regime based on testing by every owner and operator, and it is within our authority for establishing standards of performance under CAA section 111 to require manufacturers to meet such standards. Section 111(b) provides EPA with authority to promulgate new source performance standards and nothing in section 111 prevents EPA from applying such new source performance standards to manufacturers, where appropriate. The EPA has previously regulated wood stoves under section 111 of the CAA using similar procedures (53 FR 5860). The EPA, therefore, believes it is appropriate to propose that this section 111 NSPS be primarily directed at regulating engine manufacturers, rather than individual owners and operators.

The EPA is primarily regulating manufacturers of stationary CI engines. However, EPA is also imposing certain requirements on owners and operators of stationary CI engines. Starting with 2007 model year engines, owners and operators are required to buy certified engines. Owners and operators are also required to operate and maintain their stationary CI engines and control devices according to the manufacturer's instructions and guidelines to ensure that the engine functions properly, and that the required emission standards actually occur in use.

E. How Did EPA Select the Proposed Standards?

1. Introduction

The basis for the format of the proposed emission standards is primarily the nonroad CI engine rule. The EPA believes that it is appropriate to base the standards for most stationary CI engines on the nonroad CI engine standards because the design and emissions characteristics of the engines are very similar. In fact, engine manufacturers have indicated to EPA that in most cases they do not separately design and manufacture separate CI engines for stationary use. The engine manufacturers often sell the same CI engine for use in mobile nonroad equipment as they do for use in stationary applications. Most CI engines that are ultimately used in stationary applications are designed and built for use in both stationary and nonroad applications. All engines built for nonroad applications must be certified to meet EPA and California Air Resources Board (CARB) emission standards for nonroad mobile sources. However, there are certain engine classes and families produced that are not sold into the nonroad sector but are strictly used for stationary purposes. These engines would not be certified under the nonroad rule for CI engines. However, even for engines not currently certified to nonroad standards, these engines are very similar in design and in the method of manufacture to comparable nonroad land-based, or in the case of engines with displacement above 10 liters per cylinder, marine-based engines. This is why EPA is proposing that stationary engines be certified under the NSPS, following the certification protocols specified in the nonroad rules for diesel land-based engines, or marine-based engines.

The proposed standards for stationary CI ICE are output-based emission standards and are in units of emissions mass per unit work performed (g/KW-hr). The emission standards are phased in over several years and have Tiers with increasing levels of stringency. Engines are separated into engine power ranges, and some emission standards vary between ranges. The basis for this is EPA's analysis of the applicability of specific emission control strategies for each power range of engines. The Tier 2 and Tier 3 levels are based on the most advanced engine-based technologies available for the various engines classes in the timeframe of the nonroad diesel engine rulemaking. For most engines, the Tier 4 levels represent the emission reductions possible from the application of CDPF and NO_x adsorbers to the expected emission levels for the previous tier engines.

2. Engine Manufacturers

a. 2007 Model Year and Later Non-Emergency Stationary CI ICE With a Displacement <10 Liters per Cylinder. The EPA is proposing that engine manufacturers certify their 2007 model year and later stationary CI engines with a displacement less than 10 liters per cylinder to the certification emission standards for nonroad diesel engines for the same model year and maximum engine power for all pollutants. The EPA believes this requirement is appropriate and expects that engine manufacturers will use advanced engine-based technologies, as previously described, such as combustion optimization, advanced fuel injection controls, and other engine control technologies, similar to the technologies that nonroad engines will rely on, to meet Tier 2 and Tier 3 levels, and advanced aftertreatment controls to meet Tier 4 levels. Engine manufacturers will be required to certify their stationary CI engines to the appropriate tiers following the nonroad diesel engine schedule.

The EPA believes that a certification program that starts with 2007 model year engines will provide engine manufacturers and EPA with sufficient time to develop and implement a program to certify stationary CI ICE. The program will be based on the certification program for nonroad diesel engines for the majority of stationary engines.

The timing of the Tier 4 standards is closely tied to the availability of a sufficient amount of ULSD fuel, which is expected to be available in sufficient quantities for use in both stationary and nonroad engines at the time that the Tier 4 standards take effect for the nonroad CI rule. The Tier 4 rulemaking for nonroad diesel engines contains a two-step sulfur standard for nonroad diesel fuel. The sulfur content in the diesel fuel affects the level of pollution emitted by engines, and EPA expects that ULSD fuel will be necessary in order to meet the Tier 4 emission standards. Engine manufacturers will want the assurance that they will not be liable for emissions from engines that do not use the appropriate fuel for the emission control device. Similarly to nonroad diesel engines, the emission control technologies used on stationary CI engines to meet the Tier 4 limits also must be used with ULSD fuel. Therefore, EPA is proposing a diesel fuel standard for owners and operators of stationary CI engines that corresponds to the requirements for nonroad diesel fuel.

The earliest nonroad Tier 4 engine standards take effect in model year 2008, which is the first full model year for which 500 ppm sulfur will be required. The 2008 Tier 4 standards apply only to engines below 75 HP. Setting Tier 4 standards in 2008 for engines 75 HP and larger would not provide a sufficient period of stability (an element of lead time) between Tiers 2 and 3, which begin between 2006 and 2008, and Tier 4. Phasing in the Tier 4 standards for engines larger than 75 HP beginning in 2011 will provide adequate lead time for engine and equipment manufacturers, as well as diesel refiners. The Tier 4 standards are also phased in over time to allow for the orderly transfer of technology from the highway sector, and to spread the overall workload for engine and equipment manufacturers engaged in redesigning a large number and variety of products. The approach of implementing Tier 4 standards over years 2011–2013 provides 4 to 6 years of real world experience with the new technology in

the highway sector, involving millions of engines.

The EPA believes that engines in the 175 to 750 HP power range will have the most straightforward adaptation of control technologies from the highway sector, and, therefore, these engines are subject to the Tier 4 standards as soon as ULSD is required, *i.e.*, the 2011 model year. The EPA believes that engines 25 to 175 HP or greater than 750 HP may require a greater effort to adapt highway engine control technologies, and, therefore, the Tier 4 standards for these engines begin a year or two later than those for 175 to 750 HP. This phase-in of the limits will also spread the redesign workload for engine and equipment manufacturers.

Engines larger than 750 HP have been given more lead time than engines in other power categories to fully implement the Tier 4 standards, due primarily to the relatively long product design cycles typical of these high-cost, low-sales volume engines. For these large engines, the nonroad engine rule has limits for both genset applications and applications other than generator sets. The final Tier 4 NO_X standards for engines other than generator sets are less stringent than the final Tier 4 NO_X standards for generator sets greater than 750 HP and are not based on the use of add-on control.

The EPA believes it would be inappropriate in general to require Tier 4-level standards for stationary engines earlier (or later) than they are required for nonroad engines. As indicated, the technologies expected to meet the Tier 4 standards require the use of ULSD fuel, which cannot be guaranteed in levels needed to meet the nonroad and stationary engine demand before year 2010. Also, the concerns discussed above regarding phase-in of the Tier 4 standards for nonroad engines are equally true for stationary engines. Additionally, given that nonroad and stationary engines are generally built to the same specifications, it would be needlessly costly and complicated to require different timing for the implementation of the technology for the nonroad and stationary sectors.

However, EPA is requesting comments on one particular issue: whether it should apply the generator sets standards for NO_X for all stationary CI engines greater than 750 HP and with a displacement less than 10 liters per cylinder. As noted above, the final Tier 4 NO_X standards for engines other than generator sets are less stringent than the final Tier 4 NO_X standards for generator sets greater than 750 HP and are not based on the use of add-on control. Given that stationary ICE tend generally to be larger than nonroad engines, the effect of these less stringent standards may be more significant for the stationary engine sector than for the nonroad engine sector. Also, given that some of the concern indicated in the nonroad rule regarding the ability of these engines to use aftertreatment may be related to their mobility, which is obviously not relevant for stationary engines, a more stringent standard may be appropriate for at least some types of non-generator set stationary engines above 750 HP. The EPA believes there may be technologies to allow more stringent standards for engines greater than 750 HP and with a displacement less than 10 liters per cylinder that are not generator sets and is, therefore, requesting public comment on this issue.

The EPA is proposing that engine manufacturers certify their 2007 through 2010 model year stationary CI ICE that are greater than 3,000 HP and less than 10 liters per cylinder in displacement to the emission standards shown in table 2 of this preamble, which are essentially Tier 1 nonroad CI engine standards. Although the nonroad CI engine rule, as proposed, requires engines greater than 1,200 HP to meet Tier 2 emission standards, engine manufacturers indicated to EPA that they are unable to certify their stationary engines greater than 3,000 HP to Tier 2 emission standards according to the nonroad CI engine schedule, which applies to 2006 through 2010 model year engines. Engines greater than 3,000 HP with a displacement of less than 10 liters per cylinder are rarely used in nonroad applications, according to engine manufacturers, and those that are used are substantially different than the stationary engines of that size. These stationary engines have not been subject to the substantial research and development work needed to incorporate nonroad-based technologies. Manufacturers recommended that EPA allow manufacturers to meet Tier 1 standards in the interim years to allow manufacturers to focus on meeting the more stringent, Tier 4 emission standards. The EPA believes that the suggestion from engine manufacturers is appropriate and is, therefore, proposing that stationary CI ICE greater than 3,000 HP and having a displacement less than 10 liters per cylinder be certified to the emission standards shown in table 2 of this preamble, followed by Tier 4 certification as shown in table 1 of this preamble, according to the nonroad CI engine schedule. These engines would not be certified to Tier 2 emission standards, but would go directly from being certified to Tier 1 emission standards to being certified to Tier 4 emission standards.

b. 2007 Model Year and Later Non-Emergency Stationary CI ICE With a Displacement ≥10 and <30 Liters per Cylinder. The EPA is proposing that engine manufacturers who produce 2007 and later model year stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder certify their engines to the emission standards for new marine CI engines, as specified in 40 CFR 94.8. Engines in this displacement range, to the extent they are certified to mobile source standards, are generally certified to nonroad marine CI engine standards, and some to locomotive standards, not to land-based nonroad engine standards. The broadest application for engines in this displacement range is in the marine market, with sales also in the stationary and locomotive market. The engines are also more similar in design to marine engines than to land-based nonroad engines and are operated differently compared to nonroad engines. Additionally, information received from the Engine Manufacturers Association (EMA) indicate that the number of stationary CI ICE with a displacement of greater than 10 liters per cylinder is very small. Only three manufacturers provide engines with such displacement to the stationary market and combined sell about eight such engines for stationary applications in the United States per year, according to EMA. The fraction of new stationary CI ICE of this displacement per year is negligible compared to the total number of new stationary CI ICE sold per year. The EPA, therefore, believes it is appropriate to require manufacturers to certify stationary CI ICE with a displacement between 10 and 30 liters per cylinder to the marine certification standards.

3. Owners and Operators

a. Stationary CI ICE With a Displacement <30 Liters per Cylinder. Owners and operators that purchase 2007 model year and later engines with a displacement of less than 30 liters per cylinder that are not emergency fire pump engines must purchase stationary CI engines that have been certified to the emission standards in 40 CFR part 89, 40 CFR part 94, and 40 CFR part 1039, as applicable, for all pollutants. Owners and operators that purchase pre-2007 model year engines with a displacement of less than 10 liters per cylinder must purchase stationary CI engines that meet the emission standards in table 2 of this preamble. These standards are based on the Tier 1

limits for nonroad CI engines, and they are representative of the current emission levels for many stationary CI ICE. Owners and operators of pre-2007 model year engines with a displacement of greater than or equal to 10 and less than 30 liters per cylinder must meet the emission standards in 40 CFR 94.8(a)(1), which are the Tier 1 emission standards for marine CI engines.

If in-use testing is conducted to demonstrate compliance, the owner and operator of engines with a displacement less than 30 liters per cylinder would be required to meet a less stringent emission standard, an NTE standard, which is 25 to 50 percent higher than the otherwise applicable emission standards. The EPA believes it is appropriate to allow owners and operators to use the NTE standard to help ensure that emissions are controlled over the wide range of speed and load combinations commonly experienced in-use. The EPA has similar NTE standards for nonroad diesel engines, highway heavy-duty diesel engines, CI marine engines, and nonroad SI engines.

b. Stationary CI ICE With a Displacement ≥30 liters per cylinder. Owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder are required to install controls on their engines that will reduce NO_X emissions by at least 90 percent or limit the emissions of NO_X to 0.40 grams per KW-hour (0.30 grams per HP-hour). Emissions of PM must be reduced by at least 60 percent, or alternatively limited to 0.12 grams per KW-hour (0.09 grams per HP-hr). Engines of such displacement are much larger than nonroad engines and are not currently produced by United States engine manufacturers. In addition, these large engines tend to operate several thousands of hours per year and at constant speed and load as opposed to nonroad engines that normally operate for a few hundred hours per year and often at transient conditions. These large engines are not produced in mass quantities, and if any, only a few may be installed in the United States per year. For these reasons, EPA feels it is more appropriate to regulate the owners and operators of these engines and is not requiring manufacturers to certify these engines. The emission reduction requirement of 90 percent or more for NO_X is based on the reduction capabilities of SCR. As previously mentioned, SCR can reduce NO_X emissions by more than 90 percent from stationary CI engines. The NO_X limit of 0.40 grams per KW-hr is based on the NO_X limits set by both the World Bank and the United Kingdom for large diesel engines. Capital and operating and maintenance costs associated with SCR are as noted high, however, EPA feels the high cost of SCR is justified when installed and operated with engines of significantly higher size and cost than nonroad and other stationary engines. A facility with such large engines will generally have the resources to implement and justify expensive add-on controls. Furthermore, power plant facilities typically have permit conditions that require significant emissions reductions. The requirement of 60 percent PM control or more is based on the capabilities of ESP. Information EPA has received from European manufacturers show that 60 to 70 percent PM reduction is possible with ESP control. The PM emission standard of 0.12 grams per KW-hour is based on information provided by vendors of ESP, who indicated that the technology is capable of achieving that level for oil-fired combustion sources. The EPA believes the emission reduction levels proposed are appropriate for engines of high displacement. The EPA did not set different limits for emergency engines in this size class because there are not expected to be any emergency engines with a displacement above 30 liters per cylinder.

c. Emergency Stationary Fire Pump Engines. Owners and operators of fire pump engines are required to meet the emission standards shown in table 4 of this preamble from July 1, 2006. The EPA is providing additional time for fire pumps to meet these emission standards in order to take account of the increased lead time needed to manufacture and certify fire pump engines to the National Fire Protection Association (NFPA) requirements, as discussed below. The EPA is providing between 2 to 3 years of additional time for emergency fire pumps to reach compliance with the Tier 3 emission standards. As previously noted, Tier 4 standards that are based on add-on controls are not required for emergency engines, which include emergency fire pump engines. The NFPA develops requirements associated with the fire protection industry. More specifically, an NFPA specification known as NFPA 20 contains standards for installation of stationary fire pumps for fire protection. Stationary fire pumps must be certified to NFPA 20 standards in order to be installed in buildings and must go through an extensive process of design and development prior to becoming certified to the NFPA requirements. A period of up to 3 years is often necessary to develop a stationary CI engine into an emergency fire pump engine certified to the necessary NFPA requirements. This period includes time the engine manufacturer, as well as the fire pump manufacturer, needs to develop a product that not only meets EPA's emission standards requirements, but that also meets the requirements of NFPA, if it is to be used for fire suppression purposes and life safety. For these reasons, EPA believes it is appropriate to allow emergency fire pumps an additional 2 to 3 years to demonstrate compliance with the Tier 3 emission standards. Emergency fire pumps would be required to meet Tier 3 emission standards starting between the 2008 and 2011 model year, depending on the size of the engines, as indicated in table 4 of this preamble. High speed fire pump engines (those with a rated speed greater than 2,650 rpm) are allowed an additional 3 years to meet the Tier 3 standards. Manufacturers of stationary fire pump engines indicated that high speed engines are needed for applications where engines must run at high speeds to produce a required water pressure, and that additional time is needed to produce high speed engines that meet the Tier 3 emission levels.

F. What Are the Considerations for Modification and Reconstruction?

Under the General Provisions for modification (40 CFR 60.14) and reconstruction (40 CFR 60.15), facilities that are modified or reconstructed after the date of proposal of a standard are subject to the standard. An owner or operator of an existing CI engine who is planning changes to the engine that could be considered modification or reconstruction shall notify the appropriate EPA Regional Office 60 days prior to making the changes or commencing construction, as applicable.

1. Modification

Upon modification of a stationary CI engine, an existing engine becomes an affected engine and, therefore, subject to the standard. With certain exceptions, any physical or operational change to an existing stationary CI engine that would increase the emission rate from that engine of any pollutant covered by the standard would be considered a modification within the meaning of section 111 of the CAA. If a physical or operational change to an existing stationary engine would increase emissions from the engine, the owner or operator either can take appropriate measures to offset the emission increase within the engine such that there is no

overall net increase in emissions from the engine as a result of the physical or operational change, or allow the engine to be classified as an affected facility under the modification criteria and, therefore, meet the requirements of the NSPS.

Under the General Provisions to part 60, the following physical or operational changes are not considered to be modifications even though emissions may increase as a result of the change (*see* § 60.14(e)):

(a) Routine maintenance, repair, and replacement (e.g., lubrication of mechanical equipment; replacement of pumps, motors, and piping; replacement of engine wear parts, such as rings, seals and valves, to return an engine to its original operating condition; cleaning of equipment);

(b) An increase in engine power without a capital expenditure (as defined in § 60.2);

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to proposal of the standard, the existing engine was designed to accommodate that alternative fuel or raw material;

(e) The addition or use of any system or device whose primary function is to reduce air pollutants, except when an emission control system is replaced by a system determined by the EPA to be less environmentally beneficial; and

(f) Relocation or change in ownership of the existing engine.

2. Reconstruction

An existing engine may become subject to NSPS if it is reconstructed. Reconstruction is defined in § 60.15 as the replacement of the components of an existing engine to the extent that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost required to construct a comparable new engine; and (2) it is technically and economically feasible for the engine to meet the applicable standards. Because the EPA considers reconstructed engines to constitute new construction rather than modification, reconstruction determinations are made irrespective of changes in emission rates. If the engine is determined to be reconstructed, it must comply with all of the provisions of the standards of performance applicable to that engine.

Stationary CI ICE that are modified or reconstructed must meet the emission standards for the model year in which the engine was originally new, not the year the engine was modified or reconstructed. Therefore, a pre-2007 model year engine modified after 2007 must meet the emission standards for pre-2007 model year engines.

G. How Did EPA Determine the Compliance Requirements for the Proposed Rule?

Owners and operators of all engines subject to the proposed rule are required to operate and maintain their engine and control device according to the manufacturer's written instructions.

The proposed rule requires that 2007 model year and later stationary CI engines affected by the NSPS be certified to the nonroad, or marine, where applicable, CI engine emission standards. For certified engines, the testing done by the manufacturer will serve to demonstrate compliance with the emission limitations on an initial and ongoing basis until the end of the engine's useful life.

The EPA specified in the proposed rule that the certification testing for emergency fire pump engines can be conducted at the NFPA certified nameplate HP of the engine, provided that the engine manufacturer can certify that the engine will not be used in any application that allows higher HP and provided that the engine is not modified following testing. According to emergency fire pump engine manufacturers, NFPA 20 requires emergency fire pump engines to have 10 percent more power capability than the certified nameplate rating of the engine. This additional power is never used. Therefore, the EPA feels it is appropriate to allow emergency fire pump engines to be tested at the nameplate power instead of the maximum engine power. Manufacturers of emergency fire pump engines are also allowed to use an optional 3-mode test cycle for the certification testing. Emergency fire pump engines do not idle and are never operated without load. The modes in this test cycle are sufficiently representative of the operation of emergency fire pump engines,

For a pre-2007 model year engine having a displacement less than 30 liters per cylinder, the owner or operator has various options for demonstrating compliance with the emission limitations. These options will provide flexibility to the engine owner or operator and provide assurance of compliance at a reasonable cost to the owner or operator.

For owners and operators of stationary CI ICE that have CDPF, a backpressure monitor is required to be installed. This monitor will notify the owner or operator if the high backpressure limit of the engine is approached. The backpressure is an indicator of CDPF performance and can alert the owner or operator when it is time to clean or perform maintenance on the particulate filter. According to CDPF vendors, a backpressure monitor is typically included with the CDPF control device. The owner and operator is required to maintain records of any corrective action that is taken when the monitor is activated indicating a high backpressure. The owner and operator is not required to report each occurrence to the EPA, but must maintain records of corrective action taken, as indicated, and made available to the enforcing agency upon request.

All owners and operators must keep records of any notifications, maintenance conducted on the engine, and compliance materials used to indicate that the engine meets the appropriate emission standards. The EPA is also requiring that emergency engines install a non-resettable hour meter. The owner or operator of the engine is required to keep records that document the number of hours the engine is operated for non-emergency purposes, but is not required to keep records relating to the number of hours operated during emergencies. Requiring documentation of the number of hours spent in non-emergency service ensures that records are available to the enforcing agency to verify that the emergency engine's operation during testing and maintenance is limited to 30 hours per year, which is required by the proposed rule. The EPA does not feel it is necessary for owners and operators to maintain records of operation during emergencies, as operation during true emergencies is not limited by the proposed rule. The EPA believes that most stationary CI ICE come equipped with an hour meter, and expects there to be minimal costs associated with this requirement.

Owners and operators of stationary CI ICE with a displacement greater than or equal to 30 liters per cylinder are required to demonstrate compliance by first conducting an initial performance test to demonstrate that the emissions reductions requirements are met. Then, owners and operators of these engines must establish parameters to be monitored on a continuous basis. Finally, owners and operators of engines with a displacement at or above 30 liters per cylinder must conduct annual performance tests to demonstrate that the reduction requirements for NO_X and PM are being met. As previously discussed in this preamble, engines of this displacement are not certified products and the compliance requirements would necessarily fall on the owner and operator of the engine.

The EPA believes it is appropriate to require initial, followed by subsequent annual performance testing to demonstrate compliance with the proposed rule. Conducting a performance test is the best way to ensure that the emission standards are being met. Monitoring parameters on a continuous basis will ensure that the engine meets the standards at all times.

H. How Did EPA Select the Methods for Performance Testing?

The proposed NSPS for stationary CI ICE do not require the owners or operators to conduct performance tests unless the engine has a displacement greater than or equal to 30 liters per cylinder. The EPA expects that the majority of engines covered by the proposed NSPS will be certified to the nonroad or marine CI engine emission standards. The engine manufacturers guarantee that these engines will meet the certified emission levels throughout the useful life of the engine. The EPA, therefore, does not feel it is necessary to require any performance testing. Certain stationary engines will not be certified to the nonroad CI standards. For these engines with a displacement less than 30 liters per cylinder, EPA is allowing various options for demonstrating compliance as previously described. For such engines that choose to perform an initial performance test, the performance test must be conducted according to the requirements specified in the proposed NSPS. These testing requirements are based on the established program for testing nonroad CI engines. The enforcing agency may at any time at its discretion require that an engine be tested. If so, the performance test must be conducted in accordance with the requirements EPA has specified in the proposed rule. The EPA believes it is appropriate to allow owners and operators of non-certified engines with a displacement less than 30 liters per cylinder to use performance test results for a test conducted on a similar engine or information from the engine manufacturer or control device vendor to demonstrate compliance with the emission standards. The allowance applies only to owners and operators of pre-2007 model year stationary CI ICE. Starting in the 2007 model year, owners and operators are required to purchase certified engines. The allowance would, therefore, only affect a limited number of engines for a short interim period until certified engines are required. Furthermore, allowing owners and operators of pre-2007 model year engines to use the information discussed to demonstrate compliance minimizes the cost burden that would otherwise be associated with each owner and operator conducting a performance test to demonstrate compliance. For these reasons, EPA believes the allowance is appropriate.

For stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder, EPA is requiring that owners and operators conduct performance testing. The performance tests will ensure that the required percent reductions of NO_X and PM are achieved. The EPA is requiring that the concentration of NO_X be measured using Method 7E of 40 CFR part 60, appendix A. Method 5 of 40 CFR part 60, appendix A, must be used to measure the concentration of PM. If the percent reduction option is used, the concentration measurements of NO_X and PM must be taken at the inlet and outlet of the control device in order to calculate the emission reduction. The proposed rule also requires that owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder use Method 1 or 1A for the selection of sampling ports and traverse points, Method 3, 3A, or 3B for determining the oxygen or carbon dioxide concentration, Method 4 for determining the moisture content (if necessary), and Method 19 for emission rates. The EPA feels it is appropriate to require owners and operators to use the test methods mentioned above when demonstrating compliance with the emission reduction requirements of the proposed rule.

I. How Were the Reporting and Recordkeeping Requirements Selected?

The proposed notification, reporting, and recordkeeping requirements are based in part on the General Provisions of 40 CFR part 60 and represent a reasonable level of reporting and recordkeeping.

Owners and operators of non-emergency stationary CI ICE that are greater than 3,000 HP, greater than or equal to 10 liters per cylinder displacement, or pre-2007 model year engines greater than 175 HP and not certified, are required to submit an initial notification. The initial notification must contain the information described in the proposed rule and includes information related to the owner and operator, the engine and control device, and fuel used. If the engine is certified, the owner and operator must keep records from the manufacturer indicating that the engine is certified to meet the applicable standards. All owners and operators are also required to keep records of all notifications submitted to comply with the proposed rule, any maintenance conducted on the engine, records of any performance tests conducted used to demonstrate compliance with the emission standards, engine manufacturer or control device vendor information, operating parameter data that is used to demonstrate continuing compliance, and any other information used to demonstrate compliance.

The proposed rule relies primarily on engine certification to achieve emission reductions from stationary CI ICE. Certified stationary CI engine families must go through rigorous testing and approval procedures and are warranted by the engine manufacturer to continue to achieve the certified engine emission levels for the useful life of the engine. Starting with 2007 model year engines, owners and operators will not be able to purchase a stationary CI engine that is not certified, except for the very largest engine families that have engines with a displacement of 30 liters per cylinder or more, which have conventional emission limitations and are not certified. As a result, initial notification by the owners and operators will not be required for all but the largest certified engines (engines larger than 2,237 KW (3,000 HP) or with a displacement above 10 liters per cylinder) since certified engines have been shown to be able to achieve the intended emission limitations and are warranted by the engine manufacturer for its useful life. However, EPA is requesting comment on whether to require initial notification for smaller engines that are still large enough to be of substantial importance to local air quality management and not so small and numerous that a notification requirement would be a substantial burden on owners and operators, particularly private owners and small entities. If a commenter believes such notification is appropriate for smaller engines, we ask the commenter to address the size at which such notification would be appropriate.

In the transition period, the period between rule proposal and 2007 model year engines, it is expected that owners and operators of as many as 90 percent of the new stationary CI ICE purchased will be able to demonstrate that the engine is in an engine family that is certified for nonroad CI engine purposes. As a result, and for the same reasons as previously discussed for all but the largest certified stationary CI engines, an initial notification is not required. For those stationary CI engine families where there are no certified nonroad CI engines available, an initial notification is required for those stationary CI engines that are relatively large and those engines enforcing

agencies may want to keep track of individually.

In the transition period, we are proposing that all new stationary CI engine families above 175 HP, which are not certified for CI nonroad engine use, provide an initial notification. Since we are not proposing to require certification for stationary engine families with a displacement of 30 liters per cylinder or more, these new engines will have to provide an initial notification.

Owners and operators of stationary CI ICE that have CDPF are required to keep records of any corrective action taken after the backpressure monitor has activated and notified the owner or operator that the backpressure limit has been reached.

Owners and operators of emergency engines are not required to submit an initial notification, but must keep records of the number of hours spent during non-emergencies through the use of a non-resettable hour meter. The EPA believes that maintaining records of these hours is a reasonable requirement and ensures compliance with the 30 hours per year limit for operation during maintenance and testing.

V. Summary of Environmental, Energy and Economic Impacts

A. What Are the Air Quality Impacts?

The proposed rule will reduce NO_X emissions from stationary CI ICE by an estimated 38,000 tpy, PM emissions by about 3,000 tpy, NMHC emissions by about 600 tpy, SO_2 emissions by an estimated 9,000 tpy, and CO emissions by approximately 18,000 tpy in the year 2015. Reductions are presented for the year 2015 because it is the model year for which certified stationary CI ICE would have to meet the final Tier 4 emission standards. The EPA estimates that approximately 81,500 stationary CI ICE will be affected by the proposed rule in the year 2015. Of these, the EPA estimates that 20 percent are used in non-emergency applications. The EPA does not expect there to be any stationary CI ICE with a displacement of 30 liters per cylinder or more, and, therefore, no emissions or emissions reductions have been estimated. A secondary impact of the proposed rule is the reduction of HAP that will result from the use of CDPF. The EPA estimates that emissions of HAP will be reduced by approximately 93 tons in the year 2015.

B. What Are the Cost Impacts?

The total costs of the proposed rule are mostly based on the cost associated with purchasing and installing NO_X adsorber and CDPF controls on non-emergency stationary CI ICE. A smaller portion of the total costs are attributed to the cost of reporting and the cost for performance testing for a portion of the pre-2007 model year engines. The cost of NO_X adsorber and CDPF were based on information developed for the nonroad rule for diesel engines. The EPA does not expect that any stationary CI ICE with a displacement of 30 cylinders or more would be installed in the U.S. and, therefore, no costs have been estimated. However, if stationary CI ICE of such displacement are installed, there would be associated notification and compliance testing costs. Further information on how EPA estimated the total costs of the proposed rule can be found in a memorandum included in the docket (Docket ID. No. OAR–2005–0029).

The total national capital cost for the proposed rule is estimated to be approximately $67 million in the year 2015, with a total national annual cost of $57 million in the year 2015. The year 2015 is model year for which all stationary CI ICE would have to meet the final Tier 4 emission standards.

C. What Are the Economic Impacts?

The proposed rule affects new sources of nonroad stationary diesel engines as part of generator sets and welding equipment, pump and compressor equipment, and irrigation equipment. We performed an economic impact analysis, whose methodology is based on that for the nonroad diesel engine rule promulgated by the Agency last year, that estimates changes in prices and output for affected sources using the annual compliance costs estimated for the proposed rule. All estimates are for year 2015, since this is the year for which the compliance cost impacts are estimated.

The increases in price estimated for this equipment are the following: 2.3 percent—irrigation systems, 4.3 percent—pumps and compressors, and 10.0 percent—generator sets and welding equipment. While these price increases appear substantial, the corresponding reductions in output are quite small. They are: 0.01 percent—irrigation systems, 0.03 percent—pumps and compressors, and 0.42 percent—generator sets and welding equipment. The price increases and reductions in output were larger for smaller sized engines when compared to larger sized ones. These small reductions in output are due to limited change in demand from consumers in response to the estimated price changes as based on market data utilized in the nonroad rule economic impact analysis. The overall total annual social costs, which reflect changes in consumer and producer behavior in response to the compliance costs, are $39.1 million (2002 dollars) or almost identical to the compliance costs.

The economic impacts are relatively small since the change in expected output from affected industries will be quite small. Thus, the industries producing the affected engines and the consumers who would use these engines will experience little or no impact as a result of the proposed rule.

For more information, please refer to the economic impact analysis report that is in the public docket for the proposed rule.

D. What Are the Non-Air Health, Environmental and Energy Impacts?

The EPA does not anticipate any significant non-air health, environmental or energy impacts as a result of the proposed rule.

VI. Solicitation of Comments and Public Participation

The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of the proposed rule from all interested parties. Whenever applicable, full supporting data and detailed analysis should be submitted to allow the EPA to make maximum use of the comments. The Agency invites all parties to coordinate their data collection activities with the EPA to facilitate mutually beneficial and cost-effective data submissions.

Specifically, we request comments on whether we should apply the generator standards for NO_X for non-emergency stationary ICE greater than 750 HP. The proposed standards for non-generators are not based on the use of add-on control and are less stringent than the proposed standards for generator sets. We believe there may be technologies available to allow us to set more stringent standards for non-generators and request public comment on this issue.

We are also requesting comment on the appropriateness of including the exemption provisions of 40 CFR 1068.240, which relate to replacement engines. We do not necessarily believe that an exemption for replacement engines is entirely needed and expect that such an exemption would be more appropriate for nonroad engines. Although we do not anticipate that stationary engines will require this exemption, we are asking the public for comment on this issue. We also ask comment on whether the other exemption provisions of that subpart are appropriate for stationary engines.

We are requesting comment on whether owners and operators of stationary ICE with a displacement of 30 liters per cylinder or more should be required to use ULSD fuel. As indicated earlier in this preamble, we believe that these stationary CI ICE should be able to use ULSD fuel, however, we are asking for public comment on this issue.

We are also requesting comment on the agency's conclusion that the best demonstrated technology for the sources regulated under the proposed rule includes an ABT program with emissions limitations that reflect EPA's understanding of technology. We also invite comments from interested parties on our decision that the limitations should be applied at the manufacturer level to various product lines.

Finally, we request public comment on the proposed emission standards for stationary CI ICE with a displacement of 30 liters per cylinder or greater. We are requesting any PM emissions test data available from stationary CI ICE that are using ESP to reduce emissions. If you submit PM emissions tests data, please submit the full and complete emission test report with these data. The information submitted to EPA should include sections describing the stationary CI engine and its operation during the test as well as identifying the stationary CI engine for purposes of verification, description of the emission control device, fuel used, discussion of the test methods employed and the quality assurance/quality control procedures followed, the raw data sheets, all the calculations, etc.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a 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 obligations 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, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2196.01.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NSPS General Provisions (40 CFR part 60, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule will require maintenance inspections of the control devices but will not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be 145,000 labor hours per year at a total annual cost of $9,593,700. This estimate includes a one-time notification, engine certification, and recordkeeping. There are no capital/start-up costs associated with the monitoring requirements over the 3-year period of the ICR. The operation and maintenance costs for the monitoring requirements over the 3-year period of the ICR are estimated to be $242,300 per year.

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 currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number OAR–2005–0029. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 11, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by August 10, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 not-for-

profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as a small business based on the following Small Business Administration small business size definitions that are based on employee size: NAICS 335312—Motor and Generator Manufacturing—1,000 employees; NAICS 333911—Pump and Pumping Equipment Manufacturing—500 employees; NAICS 333912—Air and Gas Compressor Manufacturing—500 employees; NAICS 333992—Welding and Soldering Equipment Manufacturing—500 employees. In addition, a small governmental jurisdiction is defined as a government of a city, county, town, school district or special district with a population of less than 50,000, and a small organization is defined as 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 proposal on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by the proposed rule are businesses within the NAICS codes mentioned above. There are 104 ultimate parent businesses that will be affected by the proposal. Sixty of these businesses are small according to the SBA small business size standards. Four of these sixty firms will have an annualized compliance cost of more than 1 percent of sales associated with meeting the requirements of the proposed rule, and one of these four will have an compliance cost of more than 3 percent of sales. For more information on the small entity impacts, please refer to the economic impact and small business analyses in the rulemaking docket.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless tried to reduce the impact of the proposed rule on small entities. A majority of the affected facilities are primarily small entities (*e.g.*, small businesses). When developing the proposed rule, EPA took special steps to ensure that the burdens imposed on small entities were reasonable.

The EPA is including the same provisions for small manufacturers and small refiners that the nonroad CI engine rule does. The EPA is helping small entities by providing a lead time for the required emission standards and fuel requirements. Owners and operators of non-emergency stationary CI ICE are subject to minimum reporting and owners and operators of emergency stationary CI ICE do not have to submit any reports. The EPA has also specifically worked with industry to provide special provisions for emergency fire pump engine manufacturers, some of which are small businesses, to develop a proposed rule that is achievable for this segment.

Following the publication of the promulgated rule, copies of the **Federal Register** notice and, in some cases, background documents are mailed to all industries and organizations who have had input during the regulation development and to relevant State and local agencies. Trade Associations distributed copies of the **Federal Register** action to their members. 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.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 the 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 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 proposed rule does 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. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule primarily affects private industry, and does not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to the proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

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 6, 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed rule.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret 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. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

The proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (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. The basis for this determination is provided below.

The economic impact analysis (EIA) estimates changes in prices and production levels for all energy markets (*i.e.*, petroleum, natural gas, electricity, and coal). We also estimate how changes in the energy markets will impact other users of energy, with a focus on those that would employ the non-emergency stationary CI engines affected by the proposed rule. The estimated increase in demand for ultra-low sulfur diesel fuel (ULSD) in 2015 (the year for which the impacts of the proposed rule are estimated) associated with the proposed rule is 63.2 million gallons, or 1,505 million barrels for that year. This amount is equivalent to 4,123 barrels per day additional demand of ULSD. The expected increase in demand for ULSD will not likely be a difficulty for refiners to meet in 2015. Hence, no significant adverse effect on the supply of this fuel is expected from implementation of the proposed rule. All impact estimates for other types of energy are below the thresholds that must be evaluated under this Executive Order, and no adverse effects are expected to the distribution and use of energy. The estimates contained within the EIA thus show that there is no significant adverse effect on the supply, distribution, or use of energy associated with the proposed rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d), 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rule involves technical standards. The EPA cites the standard test procedures in 40 CFR part 1039, subpart F, which in turn cites the procedures in 40 CFR part 1065, 40 CFR 86.1310 for full flow dilution, 40 CFR 89.412 to 418 for raw-gas sampling using steady-state tests, 40 CFR 89.112(c) for partial-flow sampling for gaseous emissions during steady-state tests, California Regulations for New 1996 and Later Heavy-duty Off-Road Diesel Cycle Engines, 40 CFR 89.112 c), 40 CFR part 86 subpart N (7/1/99), and 40 CFR 86.1309 for nonpetroleum diesel fuel. The procedures in 40 CFR part 1065 also allow any CARB or International Organization for Standardization (ISO) standard if shown to be equivalent. Other test methods cited in the proposed rule are EPA Methods 1, 1A, 3, 3A, 3B, 4, 5, and 7E of 40 CFR part 60, appendix A.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these methods. One voluntary consensus standard was found that is potentially applicable to the methods cited. This standard is not acceptable as an alternative as written, but may be acceptable if minor adjustments are made to the procedures. The EPA invites comments on the use of this ISO standard for today's proposed rule.

The voluntary consensus standard ISO 8178–1:1996, "Reciprocating ICE—Exhaust Emission Measurement—Part 1: Test-bed Measurement of Gaseous and Particulate Exhaust Emissions," is not acceptable as an alternative to the test procedures in §§ 60.4212 and 60.4213 of the proposed rule (specifically 40 CFR 86.1310) for the following reasons. Although ISO 8178–1:1996 has many of the features of the EPA test procedures, the ISO standard allows the gaseous measurements to be made in an undiluted sample whereas the EPA procedures in 40 CFR 86.1310 require at least one dilution of the sample. The ISO method does allow the gaseous measurements to be made during the double diluted sampling procedures for particulate matter, but it is not required by the ISO method. Also, in the measurement of hydrocarbons, the ISO method only specifies that the sample lines are to be maintained above 70 °C and advises that the flow capacity of the sample lines is used to prevent condensation. In the EPA procedures in 40 CFR 86.1310, the sample lines must

be maintained at 191 °C during the hydrocarbon tests to prevent condensation.

Sections 60.4212 and 60.4213 of the proposed rule lists the testing methods included in the regulation. Under §§ 60.8 and 60.13 of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 85

Environmental protection, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control.

40 CFR Part 1065

Environmental protection, Administrative practice and procedure, Air pollution control, Imports, Penalties, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: June 29, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

2. Part 60 is amended by adding subpart IIII to read as follows:

Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

Sec.

Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

What This Subpart Covers

§ 60.4200 Am I subject to this subpart?

The provisions of this subpart are applicable to all owners or operators of stationary compression ignition (CI) internal combustion engines (ICE) that commence construction, modification or reconstruction after July 11, 2005 and to manufacturers of 2007 and later model year CI ICE. For the purposes of this subpart, the date of construction is the date the engine is ordered by the owner or operator, except that (a) stationary CI ICE that are not fire pump engines and are manufactured prior to April 1, 2006 shall not be considered constructed after

July 11, 2005; and (b) stationary CI ICE that are fire pump engines and are manufactured prior to July 1, 2006 shall not be considered constructed after July 11, 2005.

Emission Standards for Manufacturers

§ 60.4201 What emission standards must I meet for non-emergency engines if I am a stationary CI internal combustion engine manufacturer?

(a) Stationary CI internal combustion engine manufacturers must certify their 2007 model year and later non-emergency stationary CI ICE with a maximum engine power less than or equal to 2,237 kilowatt (KW) (3,000 horsepower (HP)) and a displacement of less than 10 liters per cylinder to the certification emission standards for new nonroad CI engines in 40 CFR 89.112, 40 CFR 89.113, 40 CFR 1039.101, 40 CFR 1039.102, 40 CFR 1039.104, 40 CFR 1039.105, 40 CFR 1039.107, and 40 CFR 1039.115, as applicable, for all pollutants, for the same model year and maximum engine power.

(b) Stationary CI internal combustion engine manufacturers must certify their 2007 through 2010 model year non-emergency stationary CI ICE with a maximum engine power greater than 2,237 KW (3,000 HP) and a displacement of less than 10 liters per cylinder to the emission standards in table 1 of this subpart, for all pollutants, for the same maximum engine power.

(c) Stationary CI internal combustion engine manufacturers must certify their 2011 model year and later non-emergency stationary CI ICE with a maximum engine power greater than 2,237 KW (3,000 HP) and a displacement of less than 10 liters per cylinder to the certification emission standards for new nonroad CI engines in 40 CFR 1039.101, 40 CFR 1039.102, 40 CFR 1039.104, 40 CFR 1039.105, 40 CFR 1039.107, and 40 CFR 1039.115, as applicable, for all pollutants, for the same maximum engine power.

(d) Stationary CI internal combustion engine manufacturers must certify their 2007 model year and later non-emergency stationary Cl ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder to the certification emission standards for new marine CI engines in 40 CFR 94.8, as applicable, for all pollutants, for the same displacement and maximum engine power.

§ 60.4202 What emission standards must I meet for emergency engines if I am a stationary CI internal combustion engine manufacturer?

(a) Stationary CI internal combustion engine manufacturers must certify their 2007 model year and later emergency stationary CI ICE with a maximum engine power less than or equal to 2,237 KW (3,000 HP) and a displacement of less than 10 liters per cylinder that are not fire pump engines to the certification emission standards for new nonroad CI engines for the same model year and maximum engine power in 40 CFR 89.112 and 40 CFR 89.113 for all pollutants beginning in model year 2007, the first line of table 1 of 40 CFR 1039.101 for all pollutants for engines with a maximum engine power less than 19 KW (25 HP) beginning in the 2015 model year, the second line of table 1 of 40 CFR 1039.101 for NO_X + NMHC and CO for engines with a maximum engine power greater than or equal to 19 KW (25 HP) and less than 56 KW (75 HP) beginning in the 2015 model year, table 1 of 40 CFR 1039.102 for all pollutants for engines with a maximum engine power less than 19 KW (25 HP) from model years 2008 to 2014, the first line of table 2 of 40 CFR 1039.102 for all pollutants for engines with a maximum engine power greater than or equal to 19 KW (25 HP) and less than 37 KW (50 HP) from model years 2008 to 2014 (2008 and all later model years for PM), and the first line of table 3 of 40 CFR 1039.102 for all pollutants for engines with a maximum engine power greater than or equal to 37 KW (50 HP) and less than 56 KW (75 HP) from model years 2012 to 2014 (2008 and all later model years for PM).

(b) Stationary CI internal combustion engine manufacturers must certify their 2007 through 2010 model year emergency stationary CI ICE with a maximum engine power greater than 2,237 KW (3,000 HP) and a displacement of less than 10 liters per cylinder that are not fire pump engines to the emission standards in table 1 of this subpart, for all pollutants, for the same maximum engine power.

(c) Stationary CI internal combustion engine manufacturers must certify their 2011 model year and later emergency stationary Cl ICE with a maximum engine power greater than 2,237 KW (3,000 HP) and a displacement of less than 10 liters per cylinder that are not fire pump engines to the certification emission standards for new nonroad CI engines for engines of the same model year and maximum engine power in 40 CFR 89.112 and 40 CFR 89.113 for all pollutants beginning in model year 2011.

(d) Stationary CI internal combustion engine manufacturers must certify their 2007 model year and later emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder that are not fire pump engines to the certification emission standards for new marine CI engines in 40 CFR 94.8, as applicable, for all pollutants, for the same displacement and maximum engine power.

(e) Stationary CI internal combustion engine manufacturers must certify their 2007 model year and later fire pump stationary CI ICE to the emission standards in table 2 of this subpart, for all pollutants, for the same model year and maximum engine power.

§ 60.4203 How long must my engines meet the emission standards if I am a stationary CI internal combustion engine manufacturer?

Engines manufactured by stationary CI internal combustion engine manufacturers must meet the emission standards as required in §§ 60.4201 and 60.4202 during the useful life of the engines.

Emission Standards for Owners and Operators

§ 60.4204 What emission standards must I meet for non-emergency engines if I am an owner or operator of a stationary CI internal combustion engine?

(a) Owners and operators that purchase pre-2007 model year non-emergency stationary CI ICE with a displacement of less than 10 liters per cylinder must comply with the emission standards in table 1 of this subpart. Owners and operators that purchase pre-2007 model year non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder must comply with the emission standards in 40 CFR 94.8(a)(1).

(b) Owners and operators that purchase 2007 model year and later non-emergency stationary CI ICE with a displacement of less than 30 liters per cylinder must comply with the emission standards for new CI engines in § 60.4201 for their 2007 model year and later stationary Cl ICE, as applicable.

(c) Owners and operators of non-emergency stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Reduce nitrogen oxides (NO_X) emissions by 90 percent or more, or limit the emissions of NO_X in the stationary CI internal combustion

engine exhaust to 0.40 grams per KW-hour (0.30 grams per HP-hour).

(2) Reduce particulate matter (PM) emissions by 60 percent or more, or limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.12 grams per KW-hour (0.09 grams per HP-hour).

§ 60.4205 What emission standards must I meet for emergency engines if I am an owner or operator of a stationary CI internal combustion engine?

(a) Owners and operators that purchase pre-2007 model year emergency stationary CI ICE with a displacement of less than 10 liters per cylinder that are not fire pump engines must comply with the emission standards in table 1 of this subpart. Owners and operators that purchase pre-2007 model year non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder that are not fire pump engines must comply with the emission standards in 40 CFR 94.8(a)(1).

(b) Owners and operators that purchase 2007 model year and later emergency stationary CI ICE with a displacement of less than 30 liters per cylinder that are not fire pump engines must comply with the emission standards for new nonroad CI engines in § 60.4202, for all pollutants, for the same model year and maximum engine power for their 2007 model year and later emergency stationary CI ICE.

(c) Owners and operators that purchase fire pump engines with a displacement of less than 30 liters per cylinder must comply with the emission standards in table 2 of this subpart, for all pollutants.

(d) Owners and operators of emergency stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder must meet the requirements in paragraphs (d)(1) and (2) of this section.

(1) Reduce nitrogen oxides (NO_X) emissions by 90 percent or more, or limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to 0.40 grams per KW-hour (0.30 grams per HP-hour).

(2) Reduce particulate matter (PM) emissions by 60 percent or more, or limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.12 grams per KW-hour (0.09 grams per HP-hour).

§ 60.4206 How long must I meet the emission standards if I am an owner or operator of a stationary CI internal combustion engine?

Owners and operators of stationary CI ICE must operate and maintain stationary CI ICE that achieve the emission standards as required in §§ 60.4204 and 60.4205 according to the manufacturer's written instructions over the entire life of the engine.

Fuel Requirements for Owners and Operators

§ 60.4207 What fuel requirements must I meet if I am an owner or operator of a stationary CI internal combustion engine?

(a) Beginning October 1, 2007, owners and operators of stationary CI ICE that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(a).

(b) Beginning October 1, 2010, owners and operators of stationary CI ICE that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(b).

Other Requirements for Owners and Operators

§ 60.4208 What is the deadline for purchasing stationary CI ICE produced in the previous model year?

(a) Owners and operators may not install pre-2007 model year stationary CI ICE after June 30, 2007.

(b) Owners and operators may not install pre-2008 model year stationary CI ICE with a maximum engine power of less than 19 KW (25 HP) after June 30, 2008.

(c) Owners and operators may not install pre-2013 model year non-emergency stationary CI ICE with a maximum engine power of greater than or equal to 19 KW (25 HP) and less than 56 KW (75 HP) after June 30, 2013.

(d) Owners and operators may not install pre-2012 model year non-emergency stationary CI ICE with a maximum engine power of greater than or equal to 56 KW (75 HP) and less than 130 KW (175 HP) after June 30, 2012.

(e) Owners and operators may not install pre-2011 model year non-emergency stationary CI ICE with a maximum engine power of greater than or equal to 130 KW (175 HP) after June 30, 2011, including those above 560 KW (750 HP).

(f) Owners and operators may not install pre-2015 model year non-emergency stationary CI ICE with a maximum engine power of greater than or equal to 560 KW (750 HP) after June 30, 2015.

(g) The requirements of this section do not apply to owners and operators of stationary CI ICE that have been modified or reconstructed.

§ 60.4209 What are the monitoring requirements if I am an owner or operator of a stationary CI internal combustion engine?

(a) If you are an owner or operator of an emergency stationary CI internal combustion engine, you must install a non-resettable hour meter prior to startup of the engine.

(b) If you are an owner or operator of a stationary CI internal combustion engine equipped with a diesel particulate filter to comply with the emission standards in § 60.4204, the diesel particulate filter must be installed with a backpressure monitor that notifies the owner or operator when the high backpressure limit of the engine is approached.

Compliance Requirements

§ 60.4210 What are my compliance requirements if I am a stationary CI internal combustion engine manufacturer?

(a) Stationary CI internal combustion engine manufacturers must certify their stationary CI ICE with a displacement of less than 10 liters per cylinder to the emission standards specified in §§ 60.4201(a) through (c) and 60.4202(a) through (c) and (e) using the certification procedures required in 40 CFR part 89 subpart B or 40 CFR part 1039 subpart C, as applicable, and must test their engines as specified in those parts.

(b) Stationary CI internal combustion engine manufacturers must certify their stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder to the emission standards specified in § 60.4201(d) and § 60.4202(d) using the certification procedures required in 40 CFR part 94 subpart C, and must test their engines as specified in 40 CFR part 94.

(c) Stationary CI internal combustion engine manufacturers must also meet the requirements of 40 CFR 1039.120, 40 CFR 1039.125, 40 CFR 1039.130, 40 CFR 1039.135, or the corresponding provisions of 40 CFR part 89 or 40 CFR part 94 for engines that would be covered by that part if they were nonroad (including marine) engines. Stationary CI internal combustion engine manufacturers must also meet the requirements of 40 CFR part 1068. Labels on such engines must refer to stationary engines, rather than or in addition to nonroad or marine engines, as appropriate.

(d) An engine manufacturer certifying an engine family or families to standards under this subpart that are identical to standards applicable under parts 89, 94, or 1039 for that model year may certify any such family that

contains both nonroad (including marine) and stationary engines as a single engine family and/or may include any such family containing stationary engines in the averaging, banking and trading provisions applicable for such engines under those parts.

(e) Manufacturers of engine families discussed in paragraph (d) of this section may meet the labeling requirements referred to in paragraph (c) of this section for stationary CI ICE by either adding a separate label containing the information required in paragraph (c) of this section or by adding the words "and stationary" after the word "nonroad" or "marine," as appropriate, to the label.

(f) Starting with the model years shown in table 3 of this subpart, stationary CI internal combustion engine manufacturers must add a permanent label stating that the engine is for emergency use only to each new emergency stationary CI internal combustion engine greater than or equal to 19 KW (25 HP) that meets all the emission standards for emergency engines in § 60.4202 but does not meet all the emission standards for non-emergency engines in § 60.4201. The label must be added according to the labeling requirements specified in 40 CFR 1039.135(b).

(g) Manufacturers of fire pump engines may use the test cycle in table 4 of this subpart for testing fire pump engines. Fire pump engines may test at the National Fire Protection Association (NFPA) certified nameplate HP, provided that the engine manufacturer can certify that the engine will not be used in any application that allows higher HP and provided that the engine is not modified following testing.

§ 60.4211 What are my compliance requirements if I am an owner or operator of a stationary CI internal combustion engine?

(a) If you are an owner or operator and must comply with the emission standards specified in this subpart, you must operate and maintain the stationary CI internal combustion engine and control device according to the manufacturer's written instructions. You must also meet the requirements of 40 CFR part 1068, as they apply to you.

(b) If you are an owner or operator of a pre-2007 model year stationary CI internal combustion engine and must comply with the emission standards specified in §§ 60.4204(a), 60.4205(a), or (c), you must demonstrate compliance according to one of the methods specified in paragraphs (b)(1) through (5) of this section.

(1) Purchasing an engine certified according to 40 CFR part 89 or 40 CFR part 94, as applicable, for the same model year and maximum engine power. The engine must be installed and configured according to the manufacturer's specifications.

(2) Keeping records of performance test results for each pollutant for a test conducted on a similar engine. The test must have been conducted using the same methods specified in this subpart and these methods must have been followed correctly.

(3) Keeping records of engine manufacturer data indicating compliance with the standards.

(4) Keeping records of control device vendor data indicating compliance with the standards.

(5) Conducting an initial performance test to demonstrate compliance with the emission standards according to the requirements specified in § 60.4212, as applicable.

(c) If you are an owner or operator of a 2007 model year and later stationary CI internal combustion engine and must comply with the emission standards specified in §§ 60.4204(b), or 60.4205(b) or (c), you must comply by purchasing an engine certified to the emission standards in §§ 60.4204(b), or 60.4205(b) or (c), as applicable, for the same model year and maximum engine power. The engine must be installed and configured according to the manufacturer's specifications.

(d) If you are an owner or operator and must comply with the emission standards specified in §§ 60.4204(c) or 60.4205(d), you must demonstrate compliance according to the requirements specified in paragraphs (d)(1) through (3) of this section.

(1) Conducting an initial performance test to demonstrate initial compliance with the emission standards as specified in § 60.4213.

(2) Establishing operating parameters to be monitored continuously to ensure the stationary internal combustion engine continues to meet the emission standards. The owner or operator must petition the Administrator for approval of operating parameters to be monitored continuously. The petition must include the information described in paragraphs (d)(2)(i) through (v) of this section.

(i) Identification of the specific parameters you propose to monitor continuously;

(ii) A discussion of the relationship between these parameters and NO_X and PM emissions, identifying how the emissions of these pollutants change with changes in these parameters, and how limitations on these parameters will serve to limit NO_X and PM emissions;

(iii) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the limits on these parameters in the operating limitations;

(iv) A discussion identifying the methods and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

(v) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

(3) For non-emergency engines, conducting annual performance tests to demonstrate continuous compliance with the emission standards as specified in § 60.4213.

(e) Emergency stationary ICE may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 30 hours per year. There is no time limit on the use of emergency stationary ICE in emergency situations.

Testing Requirements for Owners and Operators

§ 60.4212 What test methods and other procedures must I use if I am an owner or operator of a stationary CI internal combustion engine with a displacement of less than 30 liters per cylinder?

Owners and operators of stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests pursuant to this subpart must do so according to paragraphs (a) through (d) of this section.

(a) The performance test must be conducted according to the in-use testing procedures in 40 CFR part 1039, subpart F.

(b) Exhaust emissions from stationary CI ICE that are complying with the emission standards for new CI engines in 40 CFR part 1039 must not exceed the not-to-exceed (NTE) standards for the same model year and maximum engine power as required in 40 CFR 1039.101(e) and 40 CFR 1039.102(g)(1), except as specified in 40 CFR 1039.104(d).

(c) Exhaust emissions from stationary CI ICE that are complying with the emission standards for new CI engines in 40 CFR 89.112 must not exceed the NTE numerical requirements, rounded to the same number of decimal places as the applicable standard in 40 CFR

89.112, determined from the following equation:

NTE requirement for each pollutant = (1.25) × (STD) (Eq. 1)

Where:

STD = The standard specified for that pollutant in 40 CFR 89.112.

(d) Exhaust emissions from stationary CI ICE that are complying with the emission standards for pre-2007 model year engines in §§ 60.4204(a), 60.4205(a), or 60.4205(c) must not exceed the NTE numerical requirements, rounded to the same number of decimal places as the applicable standard in §§ 60.4204(a), 60.4205(a), or 60.4205(c), determined from the equation in paragraph (c) of this section.

Where:

STD = The standard specified for that pollutant in §§ 60.4204(a), 60.4205(a), or (c).

§ 60.4213 What test methods and other procedures must I use if I am an owner or operator of a stationary CI internal combustion engine with a displacement of greater than or equal to 30 liters per cylinder?

Owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder must conduct performance tests according to paragraphs (a) through (d) of this section.

(a) Each performance test must be conducted according to the requirements in § 60.8 and under the specific conditions that this subpart specifies in table 5.

(b) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 60.8(c).

(c) You must conduct three separate test runs for each performance test required in this section, as specified in § 60.8(f). Each test run must last at least 1 hour.

(d) To determine compliance with the percent reduction requirement, you must follow the requirements as specified in paragraphs (d)(1) through (3) of this section.

(1) You must use Equation 2 of this section to determine compliance with the percent reduction requirement:

$$\frac{C_i - C_o}{C_i} \times 100 = R \qquad \text{(Eq. 2)}$$

Where:

C_i = concentration of NO_X or PM at the control device inlet,

C_o = concentration of NO_X or PM at the control device outlet, and

R = percent reduction of NO_X or PM emissions.

(2) You must normalize the NO_X or PM concentrations at the inlet and outlet of the control device to a dry basis and to 15 percent oxygen (O_2) using Equation 3 of this section, or an equivalent percent carbon dioxide (CO_2) using the procedures described in paragraph (d)(3) of this section.

$$C_{adj} = C_d \frac{5.9}{20.9 - \%O_2} \qquad \text{(Eq. 3)}$$

Where:

C_{adj} = Calculated NO_X or PM concentration adjusted to 15 percent O_2.

C_d = Measured concentration of NO_X or PM, uncorrected.

5.9 = 20.9 percent O_2 − 15 percent O_2, the defined O_2 correction value, percent.

$\%O_2$ = Measured O_2 concentration, dry basis, percent.

(3) If pollutant concentrations are to be corrected to 15 percent O_2 and CO_2 concentration is measured in lieu of O_2 concentration measurement, a CO_2 correction factor is needed. Calculate the CO_2 correction factor as described in paragraphs (d)(3)(i) through (iii) of this section.

(i) Calculate the fuel-specific Fo value for the fuel burned during the test using values obtained from Method 19, Section 5.2, and the following equation:

$$F_o = \frac{0.209\ F_d}{F_c} \qquad \text{(Eq. 4)}$$

Where:

F_o = Fuel factor based on the ratio of O_2 volume to the ultimate CO_2 volume produced by the fuel at zero percent excess air.

0.209 = Fraction of air that is O_2, percent/100.

F_d = Ratio of the volume of dry effluent gas to the gross calorific value of the fuel from Method 19, dsm^3/J (dscf/10^6 Btu).

F_c = Ratio of the volume of CO2 produced to the gross calorific value of the fuel from Method 19, dsm^3/J (dscf/10^6 Btu).

(ii) Calculate the CO_2 correction factor for correcting measurement data to 15 percent O_2, as follows:

$$X_{CO_2} = \frac{5.9}{F_o} \qquad \text{(Eq. 5)}$$

Where:

X_{CO2} = CO_2 correction factor, percent.

5.9 = 20.9 percent O_2 − 15 percent O_2, the defined O_2 correction value, percent.

(iii) Calculate the NO_X and PM gas concentrations adjusted to 15 percent O_2 using CO_2 as follows:

$$C_{adj} = C_d \frac{X_{CO_2}}{\%\ CO_2} \qquad \text{(Eq. 6)}$$

Where:

C_{adj} = Calculated NO_X or PM concentration adjusted to 15 percent O_2.

C_d = Measured concentration of NO_X or PM, uncorrected.

$\%CO_2$ = Measured CO_2 concentration, dry basis, percent.

(e) To determine compliance with the NO_X mass per unit output emission limitation, convert the concentration of NO_X in the engine exhaust using Equation 7 of this section:

$$ER = \frac{C_{adj} \times 1.912 \times 10^{-3} \times Q \times T}{\text{KW-hour}} \qquad \text{(Eq. 7)}$$

Where:

ER = Emission rate in grams per KW-hour.

C_{adj} = Calculated NO_X concentration in ppm adjusted to 15 percent O_2.

1.912×10^{-3} = conversion constand for ppm NO_X to grams per standard cubic meter.

Q = Stack gas volumetric flow rate, in standard cubic meter per hour.

T = Time of test run, in hours.

KW-hour = Brake work of the engine, in KW-hour.

(f) To determine compliance with the PM mass per unit output emission limitation, convert the concentration of PM in the engine exhaust using Equation 8 of this section:

$$ER = \frac{C_{adj} \times Q \times T}{\text{KW-hour}} \qquad \text{(Eq. 8)}$$

Where:

ER = Emission rate in grams per KW-hour.

C_{adj} = Calculated PM concentration in grams per standard cubic meter.
Q = Stack gas volumetric flow rate, in standard cubic meter per hour
T = Time of test run, in hours
KW-hour = Energy output of the engine, in KW

Notification, Reports, and Records for Owners and Operators

§ 60.4214 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary CI internal combustion engine?

(a) Owners and operators of non-emergency stationary CI ICE that are greater than 2,237 KW (3,000 HP), or have a displacement of greater than or equal to 10 liters per cylinder, or are pre-2007 model year engines that are greater than 130 KW (175 HP) and not certified must meet the requirements of paragraphs (a)(1) and (2) of this section.

(1) Submit an initial notification as required in § 60.7(a)(1). The notification must include the information in paragraphs (a)(1)(i) through (v) of this section.

(i) Name and address of the owner or operator;

(ii) The address of the affected source;

(iii) Engine information including make, model, engine family, serial number, model year, maximum engine power, and engine displacement;

(iv) Emission control equipment; and

(v) Fuel used.

(2) Keep records of the information in paragraphs (a)(2)(i) through (iv) of this section.

(i) All notifications submitted to comply with this subpart and all documentation supporting any notification.

(ii) Maintenance conducted on the engine.

(iii) If the stationary CI internal combustion is a certified engine, documentation from the manufacturer that the engine is certified to meet the emission standards.

(iv) If the stationary CI internal combustion is not a certified engine, documentation that the engine meets the emission standards.

(b) If the stationary CI internal combustion engine is an emergency stationary internal combustion engine, the owner or operator is not required to submit an initial notification. The owner or operator must keep records of the operation of the engine in non-emergency service that is recorded through the non-resettable hour meter.

(c) If the stationary CI internal combustion engine is equipped with a diesel particulate filter, the owner or operator must keep records of any corrective action taken after the backpressure monitor has notified the owner or operator that the high backpressure limit of the engine is approached.

Special Requirements

§ 60.4215 What requirements must i meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

(a) Stationary CI ICE that are used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands are required to meet the applicable emission standards in § 60.4205. Non-emergency stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder, must meet the applicable emission standards in § 60.4204(c).

(b) Stationary CI ICE that are used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands are not required to meet the fuel requirements in § 60.4207.

Definitions

§ 60.4216 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the CAA and in subpart A of this part.

Combustion turbine means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), and any ancillary components and sub-components comprising any simple cycle combustion turbine, any regenerative/recuperative cycle combustion turbine, the combustion turbine portion of any cogeneration cycle combustion system, or the combustion turbine portion of any combined cycle steam/electric generating system.

Compression Ignition means relating to a type of stationary internal combustion engine that is not a spark ignition engine.

Diesel fuel means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150 to 360 degrees Celsius. One commonly used form is number 2 distillate oil.

Diesel particulate filter means an emission control technology that reduces PM emissions by trapping the particles in a flow filter substrate and periodically removes the collected particles by either physical action or by oxidizing (burning off) the particles in a process called regeneration.

Emergency stationary internal combustion engine means any stationary internal combustion engine whose operation is limited to emergency situations and required testing. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc.

Engine manufacturer means the manufacturer of the engine. See the definition of "manufacturer" in this section.

Fire pump engine means an emergency stationary internal combustion engine certified to NFPA requirements that is used to provide power to pump water for fire suppression or protection.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures a stationary engine for sale in the United States or otherwise introduces a new stationary engine into commerce in the United States. This includes importers who import stationary engines for resale.

Maximum engine power means maximum engine power as defined in 40 CFR 1039.801.

Model year means either:

(1) The calendar year in which the engine was originally produced, or

(2) The annual new model production period of the engine manufacturer if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year. For an engine that is converted to a stationary engine after being placed into service as a nonroad or other non-stationary engine, model year means the calendar year or new model production period in which the engine was originally produced.

Other internal combustion engine means any internal combustion engine, except combustion turbines, which is not a reciprocating internal combustion engine or rotary internal combustion engine.

Reciprocating internal combustion engine means any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work.

Rotary internal combustion engine means any internal combustion engine which uses rotary motion to convert heat energy into mechanical work.

Spark ignition means relating to a gasoline, natural gas, or liquefied petroleum gas fueled engine or any other type of engine with a spark plug

(or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for CI and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

Stationary internal combustion engine means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 CFR 1068.30, and is not used to propel a motor vehicle or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines.

Subpart means 40 CFR part 60, subpart.

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. The values for useful life for stationary CI ICE with a displacement of less than 10 liters per cylinder are given in 40 CFR 1039.101(g). The values for useful life for stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder are given in 40 CFR 94.9(a).

Tables to Subpart IIII of Part 60

Table 1 to Subpart IIII of Part 60.—Emission Standards for Stationary Pre-2007 Model Year Engines With a Displacement of <10 Liters Per Cylinder and 2007–2010 Model Year Engines >2,237 KW (3,000 HP) and With a Displacement of <10 Liters per Cylinder

As stated in §§ 60.4201(b), 60.4202(b), 60.4204(a), and 60.4205(a), you must comply with the following emission standards:

Engine power	Emission standards for stationary pre-2007 model year engines with a displacement of <10 liters per cylinder and 2007–2010 model year engines >2,237 KW (3,000 HP) and with a displacement of <10 liters per cylinder in g/KW-hr (g/HP-hr)				
	NMHC + NO_X	HC	NO_X	CO	PM
KW<8 (HP<11)	10.5 (7.8)			8.0 (6.0)	1.0 (0.75)
8≤KW<19 (11≤HP<25)	9.5 (7.1)			6.6 (4.9)	0.80 (0.60)
19≤KW<37 (25≤HP<50)	9.5 (7.1)			5.5 (4.1)	0.80 (0.60)
37≤KW<56 (50≤HP<75)			9.2 (6.9)		
56≤KW<75 (75≤HP<100)			9.2 (6.9)		
75≤KW<130 (100≤HP<175)			9.2 (6.9)		
130≤KW<225 (175≤HP<300)		1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)
225≤KW<450 (300≤HP<600)		1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)
450≤KW≤560 (600≤HP≤750)		1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)
KW>560 (HP>750)		1.3 (1.0)	9.2 (6.9)	11.4 (8.5)	0.54 (0.40)

Table 2 to Subpart IIII of Part 60.—Emission Standards for Stationary Fire Pump Engines

As stated in §§ 60.4202(e) and 60.4205(c), you must comply with the following emission standards for stationary fire pump engines:

Engine power	Model year(s)	Emission standards for stationary fire pump engines in g/KW-hr (g/HP-hr)		
		NMHC + NO_X	CO	PM
KW<8 (HP<11)	2010 and earlier	10.5 (7.8)	8.0 (6.0)	1.0 (0.75)
	2011+	7.5 (5.6)		0.40 (0.30)
8≤KW<19 (11≤HP<25)	2010 and earlier	9.5 (7.1)	6.6 (4.9)	0.80 (0.60)
	2011+	7.5 (5.6)		0.40 (0.30)
19≤KW<37 (25≤HP<50)	2010 and earlier	9.5 (7.1)	5.5 (4.1)	0.80 (0.60)
	2011+	7.5 (5.6)		0.30 (0.22)
37≤KW<56 (50≤HP<75)	2010 and earlier	10.5 (7.8)	5.0 (3.7)	0.80 (0.60)
	2011+ [1]	4.7 (3.5)		0.30 (0.22)
56≤KW<75 (75≤HP<100)	2010 and earlier	10.5 (7.8)	5.0 (3.7)	0.80 (0.60)
	2011+ [1]	4.7 (3.5)		0.40 (0.30)
75≤KW<130 (100≤HP<175)	2009 and earlier	10.5 (7.8)	5.0 (3.7)	0.80 (0.60)
	2010+ [2]	4.0 (3.0)		0.30 (0.22)
130≤KW<225 (175≤HP<300)	2008 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)
	2009+ [3]	4.0 (3.0)		0.20 (0.15)
225≤KW<450 (300≤HP<600)	2008 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)
	2009+ [3]	4.0 (3.0)		0.20 (0.15)
450≤KW≤ 560 (600≤HP≤750)	2008 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)
	2009+	4.0 (3.0)		0.20 (0.15)
KW>560 (HP>750)	2007 and earlier	10.5 (7.8)	3.5 (2.6)	0.54 (0.40)

Engine power	Model year(s)	Emission standards for stationary fire pump engines in g/KW-hr (g/HP-hr)		
		NMHC + NO_X	CO	PM
	2008+	6.4 (4.8)		0.20 (0.15)

[1] In model years 2011–2013, manufacturers of fire pump stationary CI ICE with a rated speed of greater than 2,650 revolutions per minute (rpm) may certify fire pump stationary CI ICE with a rated speed of greater than 2,650 rpm to the emission limitations for 2010 model year engines.

[2] In model years 2010–2012, manufacturers of fire pump stationary CI ICE with a rated speed of greater than 2,650 rpm may certify fire pump stationary CI ICE with a rated speed of greater than 2,650 rpm to the emission limitations for 2009 model year engines.

[3] In model years 2009–2011, manufacturers of fire pump stationary CI ICE with a rated speed of greater than 2,650 rpm may certify 2009–2011 model year fire pump stationary CI ICE with a rated speed of greater than 2,650 rpm to the emission limitations for 2008 model year engines.

Table 3 to Subpart IIII of Part 60.—Labeling Requirements for New Stationary Emergency Engines

As stated in § 60.4210(f), you must comply with the following labeling requirements for new emergency stationary CI ICE:

Starting power	Starting model year engine manufacturers must label new stationary emergency engines according to § 60.4210(f)
19≤KW<56, (25≤HP<75)	2013
56≤KW<130, (75≤HP<175)	2012
KW≥130, (HP≥175)	2011

Table 4 to Subpart IIII of Part 60.—Optional 3-Mode Test Cycle for Stationary Fire Pump Engines

As stated in § 60.4210(g), manufacturers of fire pump engines may use the following test cycle for testing fire pump engines:

Mode No.	Engine speed [1]	Torque (percent) [2]	Weighting factors
1	Rated	100	0.30
2	Rated	75	0.50
3	Rated	50	0.20

[1] Engine speed: ±2 percent of point.

[2] Torque: NFPA certified nameplate HP for 100 percent point. All points should be ±2 percent of engine percent load value.

Table 5 to Subpart IIII of Part 60.—Requirements for Performance Tests for Stationary CI ICE With a Displacement of ≥30 Liters Per Cylinder

As stated in § 60.4213, you must comply with the following requirements for performance tests for stationary CI ICE with a displacement of ≥30 liters per cylinder:

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary CI Internal combustion engine with a displacement of ≥ 30 liters per cylinder.	a. Reduce NO_X emissions by 90 percent of more.	1. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, appendix A.	(a) Sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device;	(2) Method 3, 3A, or 3B of 40 CFR part 60, appendix A.	(b) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, measure moisture content at the inlet and outlet of the control device; and	(3) Method 4 of 40 CFR part 60, appendix A.	(c) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurements for NO_X concentration.
		iv. Measure NO_X at the inlet and outlet of the control device.	(4) Method 7E of 40 CFR part 60, appendix A.	(d) NO_X concentration must be at 15 percent O_2 dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

For each	Complying with the requirement to	You must	Using	According to the following requirements
	b. Limit the concentration of NO_X in the stationary CI internal combustion engine exhaust.	i. Select the sampling port locations and the number of traverse points;	(1) Method 1 of 1A of 40 CFR part 60, appendix A.	(a) if using control device, the sampling site must be located at the T the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location; and	(2) Method 3, 3A, or 3B of 40 CFR part 60, Appendix A.	(b) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurement for NO_X concentration.
		iii. If necessary measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(3) Method 4 of 40 CFR part 60, appendix A.	(c) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurement for NO_X concentration.
		iv. Measure NO_X at the exhaust of the stationary internal combustion engine.	(4) Method 7E of 40 CFR part 60, appendix A.	(d) NO_X concentration must be at 15 percent O_2 dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
	c. Reduce PM emissions by 60 percent or more.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, appendix A.	(a) Sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device;	(2) Method 3, 3A, or 3B of 40 CFR part 60, appendix A.	(b) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurements for PM concentration.
		iii. If necessary measure moisture content at the inlet and outlet of the control device; and	(3) Method 4 of 40 CFR part 60, appendix A.	(c) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurements for PM concentration.
		iv. Measure PM at the inlet and outlet of the control device.	(4) Method 5 of 40 CFR part 60, appendix A.	(d) PM concentration must be at 15 percent O_2 dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
	d. Limit the concentration of PM in the stationary CI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, appendix A.	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location; and	(2) Method 3, 3A or 3B of 40 CFR part 60, appendix A.	(b) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurements for PM concentration.
		iii. If necessary measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(3) Method 4 of 40 CFR part 60, appendix A.	(c) Measurements to determine O_2 concentration and moisture must be made at the same time as the measurements for PM concentration.
		iv. Measure PM at the exhaust of the stationary internal combustion engine.	(4) Method 5 of 40 CFR part 60, appendix A.	(d) PM concentration must be at 15 percent O_2 dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

PART 85—[AMENDED]

3. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

4. Section 85.2401 is amended by revising paragraphs (a)(6), (a)(11), and (a)(12) and adding paragraph (a)(13) to read as follows:

§ 85.2401 To whom do these requirements apply?

(a) * * *

(6) Nonroad compression-ignition engines (See 40 CFR parts 89 and 1039)

* * * * *

(11) Heavy-duty highway gasoline vehicles (evaporative emissions certification only) (See 40 CFR part 86);

(12) Large nonroad spark-ignition engines (engines > 19 kW) (See 40 CFR part 1048); and

(13) Stationary internal combustion engines (See 40 CFR part 60, subpart IIII).

5. Section 85.2403 is amended by revising the definition for "Federal certificate" in paragraph (a), revising paragraphs (b)(8) and (b)(9), and adding paragraphs (b)(10) and (b)(11) to read as follows:

§ 85.2403 What definitions apply to this subpart?

(a) * * *

* * * * *

Federal certificate is a Certificate of Conformity issued by EPA which signifies compliance with emission requirements in any of the parts specified in paragraph (b) of this section.

* * * * *

(b) * * *

(8) 40 CFR part 1039;

(9) 40 CFR part 1048;

(10) 40 CFR part 1051; and

(11) 40 CFR part 60, subpart IIII.

6. Section 85.2405 is amended by adding paragraph (e) to read as follows:

§ 85.2405 How much are the fees?

* * * * *

(e) Fees for stationary CI internal combustion engine certificate requests shall be calculated in the same manner as for NR CI certificate requests for engines with a displacement less than 10 liters per cylinder, and in the same manner as for marine engine certificate requests for engines with a displacement greater than or equal to 10 liters per cylinder. Fees for certificate requests where the certificate would apply to stationary and mobile engines shall be calculated in the same manner as fees for the certificate requests for the applicable mobile source engines.

PART 89—[AMENDED]

7. The authority citation for part 89 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

8. Section 89.1 is amended by adding paragraph (c) to read as follows:

§ 89.1 Applicability.

* * * * *

(c) This part applies as specified in 40 CFR part 60 subpart IIII, to compression-ignition engines subject to the standards of 40 CFR part 60, subpart IIII.

9. Section 89.115 is amended by adding paragraph (d)(11) to read as follows:

§ 89.115 Application for certificate.

* * * * *

(d) * * *

(11) A statement indicating whether the engine family contains only nonroad engines, only stationary engines, or both.

10. Section 89.201 is revised to read as follows:

§ 89.201 Applicability.

Nonroad compression-ignition engines subject to the provisions of subpart A of this part are eligible to participate in the averaging, banking, and trading program described in this subpart. As specified in 40 CFR part 60, subpart IIII, stationary engines certified under this part and subject to the standards of 40 CFR part 60 subpart IIII, may participate in the averaging, banking, and trading program described in this subpart.

PART 94—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

12. Section 94.1 is amended by adding paragraph (d) to read as follows:

§ 94.1 Applicability.

* * * * *

(d) This part applies as specified in 40 CFR part 60, subpart IIII, to compression-ignition engines subject to the standards of 40 CFR part 60, subpart IIII.

13. Section 94.301 is revised to read as follows:

§ 94.301 Applicability.

Marine engine families subject to the standards of subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart. The provisions of this subpart apply to manufacturers of new engines that are subject to the emission standards of § 94.8. As specified in 40 CFR part 60, subpart IIII, stationary engines certified under this part and subject to the standards of 40 CFR part 60, subpart IIII, may participate in the averaging, banking, and trading program described in this subpart.

PART 1039—[AMENDED]

14. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

15. Section 1039.1 is amended by revising paragraph (c) to read as follows:

§ 1039.1 Does this part apply for my engines?

* * * * *

(c) The definition of nonroad engine in 40 CFR 1068.30 excludes certain engines used in stationary applications. These engines may be required by subpart IIII of 40 CFR part 60 to comply with some of the provisions of this part 1039; otherwise, these engines are only required to comply with the requirements in § 1039.20. In addition, the prohibitions in 40 CFR 1068.101 restrict the use of stationary engines for nonstationary purposes unless they are certified under this part 1039.

* * * * *

16. Section 1039.20 is amended by revising paragraphs (a) and adding paragraph (c) to read as follows:

§ 1039.20 What requirements from this part apply to excluded stationary engines?

* * * * *

(a) You must add a permanent label or tag to each new engine you produce or import that is excluded under § 1039.1(c) as a stationary engine and is not required by 40 CFR 60, subpart IIII, to meet the requirements of this part 1039. To meet labeling requirements, you must do the following things:

(1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.

(2) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(3) Make sure it is durable and readable for the engine's entire life.

(4) Write it in English.

(5) Follow the requirements in § 1039.135(g) regarding duplicate labels if the engine label is obscured in the final installation.

* * * * *

(c) Stationary engines required by 40 CFR 60, subpart IIII, to meet the requirements of this part 1039 must meet the labeling requirements of 40 CFR § 60.4210.

17. Section 1039.205 is amended by revising paragraph (v) to read as follows:

§ 1039.205 What must I include in my application?

* * * * *

(v) State whether your certification is intended to include engines used in stationary applications. State whether your certification is limited for certain engines. If this is the case, describe how you will prevent use of these engines in applications for which they are not certified. This applies for engines such as the following:

(1) Constant-speed engines.

(2) Engines used for transportation refrigeration units that you certify under the provisions of § 1039.645.

(3) Hand-startable engines certified under the provisions of § 1039.101(c).

(4) Engines above 560 kW that are not certified to emission standards for generator-set engines.

* * * * *

18. Section 1039.705 is amended by revising paragraph (c) to read as follows:

§ 1039.705 How do I generate and calculate emission credits?

* * * * *

(c) In your application for certification, base your showing of compliance on projected production volumes for engines whose point of first retail sale is in the United States. As described in § 1039.730, compliance with the requirements of this subpart is determined at the end of the model year based on actual production volumes for engines whose point of first retail sale is in the United States. Do not include any of the following engines to calculate emission credits:

(1) Engines exempted under subpart G of this part or under 40 CFR part 1068.

(2) Exported engines.

(3) Engines not subject to the requirements of this part, such as those excluded under § 1039.5.

(4) Engines in families that include only stationary engines, except for engines in families certified to standards that are identical to standards applicable under this part 1039 to nonroad engines of the same type for the same model year.

(5) Any other engines, where we indicate elsewhere in this part 1039 that they are not to be included in the calculations of this subpart.

PART 1065—[AMENDED]

19. The authority citation for part 1065 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

20. Section 1065.1 is amended by adding paragraph (a)(5) to read as follows:

§ 1065.1 Applicability

(a) * * *

(5) Stationary compression-ignitions engines certified using the provisions of 40 CFR part 1039, as indicated under 40 CFR part 60, subpart IIII, the standard-setting part for these engines.

PART 1068—[AMENDED]

21. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

22. Section 1068.1 is amended by adding paragraph (a)(4) to read as follows:

§ 1068.1 Does this part apply to me?

(a) * * *

(4) Stationary compression-ignitions engines certified under 40 CFR part 60, subpart IIII.

* * * * *

23. Section 1068.310 is amended by revising paragraph (b) to read as follows:

§ 1068.310 What are the exclusions for imported engines?

* * * * *

(b) *Stationary engines.* The definition of nonroad engine in 40 CFR 1068.30 does not include certain engines used in stationary applications. Such engines may be subject to the standards of 40 CFR part 60. Engines that are excluded from the definition of nonroad engine in this part and not subject to the standards of 40 CFR part 60 are not subject to the restrictions on imports in § 1068.301(b), but only if they are properly labeled. Section 1068.101 restricts the use of stationary engines for non-stationary purposes.

* * * * *

[FR Doc. 05–13338 Filed 7–8–05; 8:45 am]

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Federal Register

Vol. 70, No. 131

Monday, July 11, 2005

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FEDERAL REGISTER PAGES AND DATE, JULY

37985–38570	1
38571–38750	5
38751–39172	6
39173–39410	7
39411–39638	8
39639–39904	11

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12735 (See EO 13382) 38567
12938 (Amended by EO 13382) 38567
13094 (See EO 13382) 38567
13382 38567
Administrative Orders:
Memorandums:
Memorandum of June 29, 2005 39173

7 CFR

4274 38571
Proposed Rules:
319 39194
868 39199
2902 38612

10 CFR

110 37985
625 39364

12 CFR

201 39411
Proposed Rules:
Ch. VII 39202

13 CFR

Proposed Rules:
106 39667

14 CFR

23 37994
36 38742
39 ..... 38573, 38575, 38578, 38580, 38751, 38753, 38755, 39412, 39559, 39639, 39642, 39644, 39647, 39651
71 ..... 37997, 38740, 39175
73 38740
91 38742
93 39610
97 39652
Proposed Rules:
39 ..... 38625, 38627, 38630, 38632, 38636, 38817, 38819, 38821, 38823, 39204, 39433, 39435
71 ..... 38053, 38055, 38056, 38826

15 CFR

Proposed Rules:
303 38828

16 CFR

Proposed Rules:
23 38834

17 CFR

270 39390
Proposed Rules:
36 39672
37 39672
38 39672
39 39672
40 39672

18 CFR

35 38757

19 CFR

Proposed Rules:
101 38637
122 38637

20 CFR

404 38582
Proposed Rules:
416 39689

23 CFR

Proposed Rules:
630 39692

26 CFR

1 39653
Proposed Rules:
1 ..... 38057, 39695
31 38057

27 CFR

9 ..... 37998, 38002, 38004
Proposed Rules:
4 38058

28 CFR

Proposed Rules:
16 39696
45 39206

29 CFR

Proposed Rules:
1404 39209
1610 38060

30 CFR

Proposed Rules:
934 38639

31 CFR

Ch. V 38256

32 CFR

321 38009

33 CFR

100 ..... 38010, 39654, 39656
117 ..... 38593, 38594
165 ..... 38013, 38015, 39176

Proposed Rules:
100.....39697
167.....38061

34 CFR
230.....38017

36 CFR
7.....38759

37 CFR
2.....38768
7.....38768
201.....38022
251.....38022
252.....38022
257.....38022
258.....39178
259.....38022

38 CFR

Proposed Rules:
3.....39213

40 CFR
51.....39104, 39413
52.....38023, 38025, 38028, 38029, 38774, 38776, 39658
63.....38554, 38780, 39426, 39662
81.....38029
180.....38780, 38785, 38786
300.....38789, 39180
799.....39624, 39630

Proposed Rules:
52.....38064, 38068, 38071, 38073, 38837, 38839, 38840
55.....38840
60.....39870
63.....38554, 39441, 39457
81.....38073, 39215
85.....39870
89.....39870
94.....39870
194.....38642
300.....38845, 39217
1039.....39870
1065.....39870
1068.....39870

41 CFR

Proposed Rules:
51-2.....38080
51-3.....38080
51-4.....38080

42 CFR
414.....39022

Proposed Rules:
1001.....38081

44 CFR
64.....38038

Proposed Rules:
67.....39457

45 CFR
2510.....39562
2520.....39562
2521.....39562
2522.....39562
2540.....39562
2550.....39562

46 CFR

Proposed Rules:
Ch. I.....39699

47 CFR
1.....38794, 38795
15.....38800
20.....38794
43.....38794
63.....38795
64.....38795
73.....39182

Proposed Rules:
15.....38845
73.....39217
76.....38848

49 CFR
209.....38804
213.....38804
214.....38804
215.....38804
216.....38804
217.....38804
218.....38804
219.....38804
220.....38804
221.....38804
222.....38804
223.....38804
225.....38804
228.....38804
229.....38804
230.....38804
231.....38804
232.....38804
233.....38804
234.....38804
235.....38804
236.....38804
238.....38804
239.....38804
240.....38804
241.....38804
244.....38804
571.....38040
573.....38805
577.....38805

50 CFR
622.....39187
648.....39190, 39192
660.....38596
679.....38052, 38815, 39664

Proposed Rules:
17.....38849, 39227
223.....38861, 39231
224.....39231
600.....39700

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 11, 2005

AGRICULTURE DEPARTMENT
National Agricultural Statistics Service
Agency information collection activities; proposals, submissions, and approvals; published 5-5-05

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Hydropower procedural regulations modification; published 6-10-05

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Hazardous waste combustors; published 7-11-05
Air programs:
Ambient Air quality standards, national—
Fine particulate matter and ozone; interstate transport control measures; published 5-12-05

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Michigan; published 6-8-05
Nebraska; published 6-8-05

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Fish slough milk-vetch; published 6-9-05

NUCLEAR REGULATORY COMMISSION
Byproduct material; domestic licensing:
Portable gauges; security requirements; published 1-12-05

PERSONNEL MANAGEMENT OFFICE
Health benefits; Federal employees:
New enrollments or enrollment changes; published 6-10-05

SMALL BUSINESS ADMINISTRATION
Organization, functions, and authority delegations:
Hearings and Appeals Office and Freedom of Information Act and Privacy Acts Office; address changes; published 5-25-05

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; published 6-24-05
Turbomeca, S.A.; published 6-24-05
Standard instrument approach procedures; published 7-11-05

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for dealers in precious metal, stones, or jewels; published 6-9-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Milk marketing orders:
Appalachian and Southeast; comments due by 7-19-05; published 5-20-05 [FR 05-09962]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Wheat importation; flag smut-related prohibitions; proposed removal; comments due by 7-19-05; published 5-20-05 [FR 05-10094]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Extra long staple cotton; prices; comments due by 7-20-05; published 6-20-05 [FR 05-12034]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Emergency closure due to presence of toxin causing paralytic shellfish poisoning; comments due by 7-18-05; published 6-16-05 [FR 05-12030]
Marine mammals:
Commercial fishing authorizations; incidental taking—
Atlantic Large Whale Take Reduction Plan; comments due by 7-21-05; published 6-21-05 [FR 05-11847]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Acquisition regulations:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans:
Preparation, adoption and submittal—
Delaware and New Jersey; comments due by 7-19-05; published 6-28-05 [FR 05-12706]
Air quality implementation plans; approval and promulgation; various States:
Virginia; comments due by 7-20-05; published 6-20-05 [FR 05-12077]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Alternaria destruens Strain 059; comments due by 7-18-05; published 5-18-05 [FR 05-09903]
Aminopyridine, etc.; comments due by 7-18-05; published 5-18-05 [FR 05-09776]
Dimethyl ether; comments due by 7-18-05; published 5-18-05 [FR 05-09475]
Fludioxonil; comments due by 7-18-05; published 5-18-05 [FR 05-09778]
Pinene polymers; comments due by 7-18-05; published 5-18-05 [FR 05-09479]

due by 7-21-05; published 6-21-05 [FR 05-12148]

Duncan Aviation Inc.; Raytheon 300 King Air airplane; comments due by 7-22-05; published 6-22-05 [FR 05-12363]

Class E airspace; comments due by 7-18-05; published 6-22-05 [FR 05-12378]

Commercial space transportation:

Miscellaneous changes; comments due by 7-18-05; published 5-19-05 [FR 05-09705]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Attaching child restraints to the LATCH system for the suppression test; comments due by 7-18-05; published 5-19-05 [FR 05-09924]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous materials transportation:

Infectious substances; United Nations recommendations harmonization; comments due by 7-18-05; published 5-19-05 [FR 05-09717]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Livermore Valley, Alameda County, CA; comments due by 7-18-05; published 5-19-05 [FR 05-10006]

San Antonio Valley, Monterey County, CA; comments due by 7-18-05; published 5-19-05 [FR 05-10008]

San Francisco Bay and Central Coast, CA; comments due by 7-18-05; published 5-19-05 [FR 05-10007]

Wahluke Slope, Grant County, WA; comments due by 7-18-05; published 5-19-05 [FR 05-10009]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 483/P.L. 109–16

To designate a United States courthouse in Brownsville, Texas, as the "Reynaldo G. Garza and Filemon B. Vela United States Courthouse". (June 29, 2005; 119 Stat. 338)

S. 643/P.L. 109–17

To amend the Agricultural Credit Act of 1987 to reauthorize State mediation programs. (June 29, 2005; 119 Stat. 339)

H.R. 1812/P.L. 109–18

Patient Navigator Outreach and Chronic Disease Prevention Act of 2005 (June 29, 2005; 119 Stat. 340)

H.R. 3021/P.L. 109–19

TANF Extension Act of 2005 (July 1, 2005; 119 Stat. 344)

H.R. 3104/P.L. 109–20

Surface Transportation Extension Act of 2005, Part II (July 1, 2005; 119 Stat. 346)

Last List July 5, 2005

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This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–056–00001–4)	5.00	Jan. 1, 2005
2	(869–056–00002–2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–056–00004–9)	10.00	[4] Jan. 1, 2005
5 Parts:			
1–699	(869–056–00005–7)	60.00	Jan. 1, 2005
700–1199	(869–056–00006–5)	50.00	Jan. 1, 2005
1200–End	(869–056–00007–3)	61.00	Jan. 1, 2005
6	(869–056–00008–1)	10.50	Jan. 1, 2005
7 Parts:			
1–26	(869–056–00009–0)	44.00	Jan. 1, 2005
27–52	(869–056–00010–3)	49.00	Jan. 1, 2005
53–209	(869–056–00011–1)	37.00	Jan. 1, 2005
210–299	(869–056–00012–0)	62.00	Jan. 1, 2005
300–399	(869–056–00013–8)	46.00	Jan. 1, 2005
400–699	(869–056–00014–6)	42.00	Jan. 1, 2005
700–899	(869–056–00015–4)	43.00	Jan. 1, 2005
900–999	(869–056–00016–2)	60.00	Jan. 1, 2005
1000–1199	(869–056–00017–1)	22.00	Jan. 1, 2005
1200–1599	(869–056–00018–9)	61.00	Jan. 1, 2005
1600–1899	(869–056–00019–7)	64.00	Jan. 1, 2005
1900–1939	(869–056–00020–1)	31.00	Jan. 1, 2005
1940–1949	(869–056–00021–9)	50.00	Jan. 1, 2005
1950–1999	(869–056–00022–7)	46.00	Jan. 1, 2005
2000–End	(869–056–00023–5)	50.00	Jan. 1, 2005
8	(869–056–00024–3)	63.00	Jan. 1, 2005
9 Parts:			
1–199	(869–056–00025–1)	61.00	Jan. 1, 2005
200–End	(869–056–00026–0)	58.00	Jan. 1, 2005
10 Parts:			
1–50	(869–056–00027–8)	61.00	Jan. 1, 2005
51–199	(869–056–00028–6)	58.00	Jan. 1, 2005
200–499	(869–056–00029–4)	46.00	Jan. 1, 2005
500–End	(869–056–00030–8)	62.00	Jan. 1, 2005
11	(869–056–00031–6)	41.00	Jan. 1, 2005
12 Parts:			
1–199	(869–056–00032–4)	34.00	Jan. 1, 2005
200–219	(869–056–00033–2)	37.00	Jan. 1, 2005
220–299	(869–056–00034–1)	61.00	Jan. 1, 2005
300–499	(869–056–00035–9)	47.00	Jan. 1, 2005
500–599	(869–056–00036–7)	39.00	Jan. 1, 2005
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–056–00038–3)	50.00	Jan. 1, 2005
13	(869–056–00039–1)	55.00	Jan. 1, 2005
14 Parts:			
1–59	(869–056–00040–5)	63.00	Jan. 1, 2005
60–139	(869–056–00041–3)	61.00	Jan. 1, 2005
140–199	(869–056–00042–1)	30.00	Jan. 1, 2005
200–1199	(869–056–00043–0)	50.00	Jan. 1, 2005
1200–End	(869–056–00044–8)	45.00	Jan. 1, 2005
15 Parts:			
0–299	(869–056–00045–6)	40.00	Jan. 1, 2005
300–799	(869–056–00046–4)	60.00	Jan. 1, 2005
800–End	(869–056–00047–2)	42.00	Jan. 1, 2005
16 Parts:			
0–999	(869–056–00048–1)	50.00	Jan. 1, 2005
1000–End	(869–056–00049–9)	60.00	Jan. 1, 2005
17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
*200–239	(869–056–00052–9)	58.00	Apr. 1, 2005
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–056–00054–5)	62.00	Apr. 1, 2005
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
*1–140	(869–056–00056–1)	61.00	Apr. 1, 2005
141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–056–00058–8)	31.00	Apr. 1, 2005
20 Parts:			
1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
500–End	(869–056–00061–8)	63.00	Apr. 1, 2005
21 Parts:			
1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
*§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 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
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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	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
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	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
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190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
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	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
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600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
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[1] Because Title 3 is on 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.

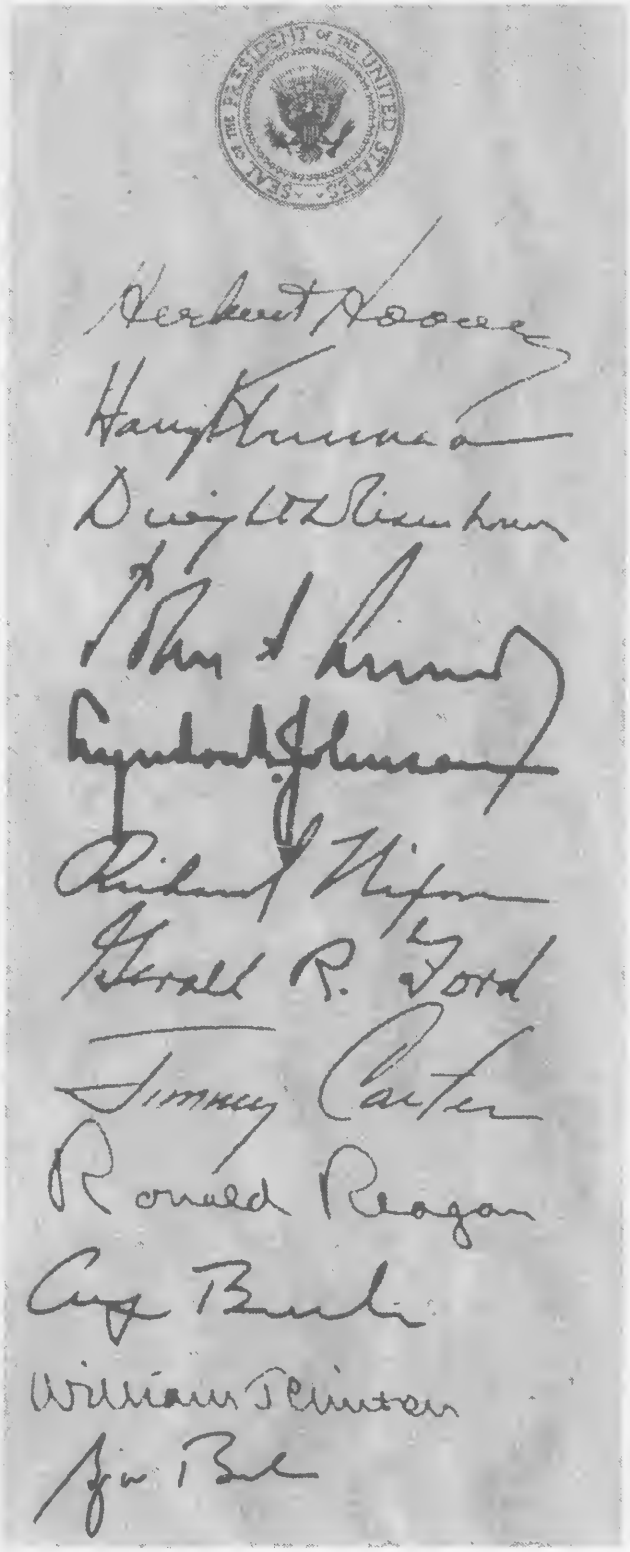
[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.



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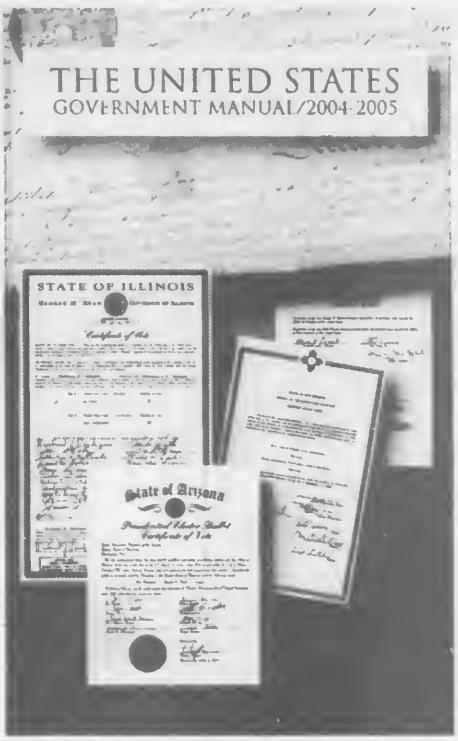

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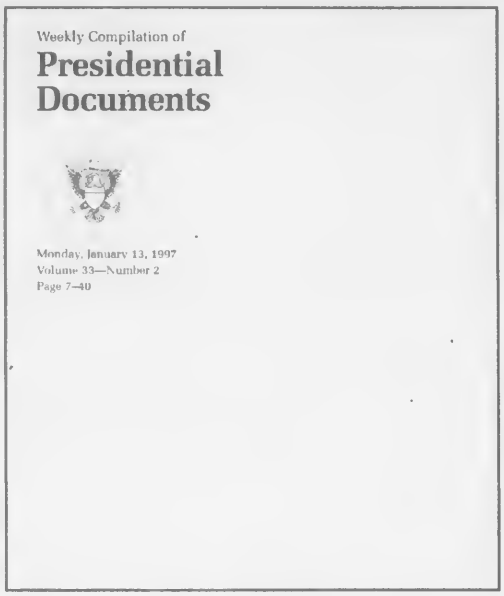

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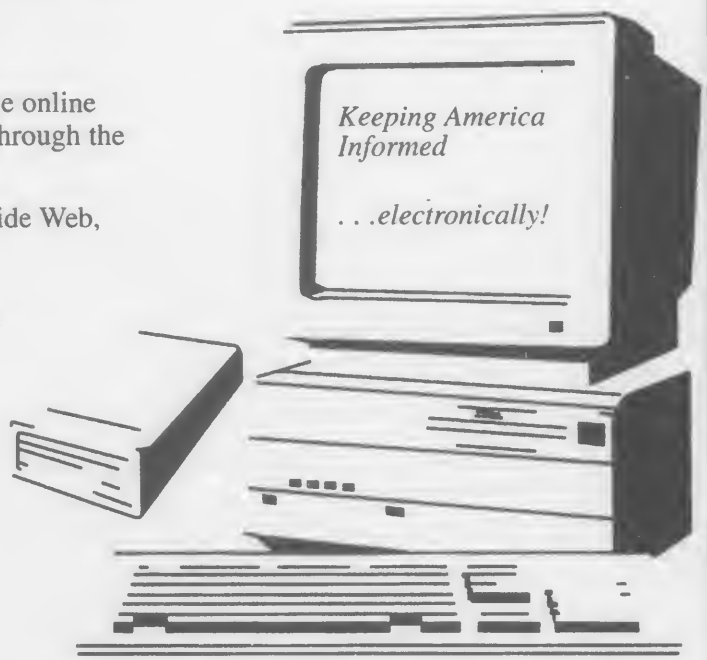

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