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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 AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service; Rural Utilities Service

Farm Service Agency

7 CFR Part 1902

Disbursement of Funds; Correction

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Wednesday, October 12, 2005.

DATES: December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Renita Bolden, Management Analyst, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742; Telephone: 202–692–0035.

SUPPLEMENTARY INFORMATION:

Background

In FR rule document 05–20357 published October 12, 2005 (70 FR 59224), the Agencies published a final rule revising their disbursement of funds regulations to reflect current disbursement methodologies.

Need for Correction

As published, the final rule contained an incorrect reference that may prove to be misleading. This action will correct the error to insure that the accurate information is received.

List of Subjects in 7 CFR Part 1902

Accounting, banks, banking, grant programs-housing and community development, loan programs-agriculture, loan programs-housing and community development.

■ For reasons set forth in the preamble, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1902–SUPERVISED BANK ACCOUNTS

■ 1. The authority citation for part 1902 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 6991, *et seq.*; 42 U.S.C. 1480; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

Subpart A—Supervised Bank Accounts of Loan, Grant, and Other Funds

■ 2. Section 1902.4 is amended by revising paragraph (a)(5) to read as follows:

§ 1902.4 Establishing MFH reserve accounts in a supervised bank account.

(a) * * *

(5) *Financial institutions.* The reserve account must be maintained in authorized financial institutions set out in 7 CFR part 3560, subpart G; e.g., banks, savings associations, credit unions, brokerage firms, mutual funds. Generally, any financial institution may be used provided invested or deposited funds are insured to protect against theft and dishonesty. The reserve account funds need not be Federally insured, but must be otherwise covered by non-Federal insurance against theft and dishonesty.

* * * * *

Dated: December 6, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–23886 Filed 12–9–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23214; Directorate Identifier 2001–NM–338–AD; Amendment 39–14399; AD 2005–25–06]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Fokker Model F27 Mark 050 series airplanes. The existing AD currently requires using a torque wrench to repetitively tighten the screws for the attachment of the leading edges of the elevators, rudder, and ailerons. This new AD requires the same actions as those of the existing AD, but with reductions in the intervals for repetitive actions. This AD also requires modifying the elevator, rudder, and aileron leading edge attachments with additional locking devices. This AD results from a report of an in-flight vibration caused by a loose leading edge section of the elevator. We are issuing this AD to prevent binding of the flight controls caused by loose attachment screws, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective December 27, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 27, 2005.

On January 21, 2000 (65 FR 695, January 6, 2000), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the regulations.

We must receive comments on this AD by February 10, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

On December 28, 1999, we issued AD 99–27–13, amendment 39–11494 (65 FR 695, January 6, 2000), for all Fokker Model F27 Mark 050 series airplanes. That AD requires using a torque wrench to repetitively tighten the screws for the attachment of the leading edges of the elevators, rudder, and ailerons. That AD resulted from an issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We issued that AD to prevent loose attachment screws on the leading edges of the elevators, rudder, and ailerons due to vibration, which could result in interference with adjacent structure and consequent reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 99–27–13, the Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an additional further unsafe condition may exist on all Fokker Model F27 Mark 050 airplanes. The CAA–NL advises that an operator reported in-flight vibration, which was caused by one loose elevator leading edge section. The airplane was found to have been inspected only seven months before the incident, which was within the original 12-month inspection interval of the existing AD. Further investigation by the manufacturer showed that the self-locking properties of the attachment screws gradually decrease when tightened repeatedly as required by the procedures in the existing AD. This condition, if not corrected, could result in binding of the flight controls caused by loose attachment screws, which could cause reduced controllability of the airplane.

Relevant Service Information

Fokker Services B.V. has issued bulletins in the following table.

FOKKER SERVICE BULLETINS

Fokker Services Bulletin—	Describes procedures for—
SBF50–55–007, Revision 2, dated June 17, 2002.	Tightening the attachment screws of the elevators' leading edges.
SBF50–55–008, Revision 3, dated June 17, 2002.	Modifying the elevator attachments by installing additional locking devices for the elevators' leading edges.
SBF50–55–009, Revision 2, dated June 17, 2002.	Tightening the attachment screws for the rudder's leading edge.
SBF50–55–010, Revision 2, dated June 17, 2002.	Modifying the rudder attachments by installing additional locking devices for the rudder's leading edge.
SBF50–57–020, Revision 2, dated June 17, 2002.	Tightening the attachment screws for the ailerons' leading edges.
SBF50–57–021, Revision 2, dated June 17, 2002.	Modifying the aileron attachments by installing additional locking devices for the ailerons' leading edges.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive 2000–131/2, dated July 31, 2002, to ensure the continued airworthiness of these airplanes in the Netherlands.

Fokker Service Bulletin SBF50–55–010, Revision 2, refers to Fokker Service Bulletin SBF50–55–011, dated October 29, 2001, as an additional source of service information for modifying the rudder attachments.

Fokker Service Bulletin SBF50–57–021, Revision 2, refers to Fokker Service Bulletin SBF50–57–025, dated October 29, 2001, as an additional source of service information for modifying the aileron attachments.

FAA's Determination and Requirements of this AD

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

Therefore, we are issuing this AD to prevent binding of the flight controls caused by loose attachment screws, which could result in reduced controllability of the airplane. This AD requires accomplishing the actions specified in the service information described previously.

This AD supersedes AD 99–27–13. This AD continues to require the same actions as the existing AD, but at reduced repetitive intervals. This AD also requires a new modification for the elevators, rudder, and aileron attachments, which terminates the repetitive inspection requirements of this AD. This AD requires accomplishing the actions specified in the service bulletins described previously.

Change To Existing AD

This AD will retain all requirements of AD 99–27–13. Since AD 99–27–13 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers

have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 99–27–13	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).

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.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane
Tightening (required by AD 99–27–13)	12	$65	None	$780, per inspection cycle
Modification (new action)	37	65	$1,025 to 3,372	$3,430 to 5,777

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2005–23214; Directorate Identifier 2001–NM–338–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

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 the regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11494 (65 FR 695, January 6, 2000) and by adding the following new airworthiness directive (AD):

2005-25-06 Fokker Services B.V.: Amendment 39-14399. Docket No. FAA-2005-23214; Directorate Identifier 2001-NM-338-AD.

Effective Date

(a) This AD becomes effective December 27, 2005.

Affected ADs

(b) This AD supersedes AD 99-27-13.

Applicability

(c) This AD applies to all Fokker Model F27 Mark 050 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of an in-flight vibration caused by a loose leading edge section of the elevator. We are issuing this AD to prevent binding of the flight controls caused by loose attachment screws, which could result in reduced controllability of the airplane.

Compliance

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

Restatement of the Requirements of AD 99-27-13

Repetitive Corrective Action

(f) Within 30 days after January 21, 2000 (the effective date of AD 99-27-13), use a torque wrench to tighten the screws for the attachment of the leading edges of the elevators in accordance with Fokker Service Bulletin SBF50-55-007, dated June 5, 1998; or Revision 2, dated June 17, 2002. After the effective date of this AD, only Revision 2 may be used. Repeat the tightening thereafter at intervals not to exceed 12 months until the initial tightening required by paragraph (i) of this AD is accomplished.

(g) Within 24 months after January 21, 2000, use a torque wrench to tighten the screws for the attachment of the leading edges of the rudder in accordance with Fokker Service Bulletin SBF50-55-009, Revision 1, dated July 23, 1999; or Revision 2, dated June 17, 2002. After the effective date of this AD, only Revision 2 may be used. Repeat the tightening thereafter at intervals not to exceed 4,000 flight hours, or 24 months, whichever occurs first, until the initial tightening required by paragraph (j) of this AD is accomplished.

(h) Within 6 months after January 21, 2000, use a torque wrench to tighten the screws for the attachment of the leading edges of the ailerons in accordance with Fokker Service Bulletin SBF50-57-020, Revision 1, dated July 23, 1999; or Revision 2, dated June 17, 2002. After the effective date of this AD, only Revision 2 may be used. Repeat the tightening thereafter at intervals not to exceed 12 months until the initial tightening required by paragraph (k) of this AD is accomplished.

New Requirements of This AD

New Repetitive Intervals

(i) Within 6 months after the effective date of this AD or 12 months after accomplishing the action in paragraph (f) of this AD, whichever occurs earlier: Use a torque wrench to tighten the screws for the attachment of the leading edges of the elevators in accordance with Fokker Service Bulletin SBF50-55-007, Revision 2, dated June 17, 2002. Repeat the tightening thereafter at intervals not to exceed 6 months until the modification required by paragraph (l) of this AD is accomplished. Doing the actions in this paragraph terminates the repetitive actions of paragraph (f) of this AD.

(j) Within 12 months after the effective date of this AD or 24 months after accomplishing the action in paragraph (g) of this AD, whichever occurs earlier: Use a torque wrench to tighten the screws for the attachment of the leading edge of the rudder in accordance with Fokker Service Bulletin SBF50-55-009, Revision 2, dated June 17, 2002. Repeat the tightening thereafter at intervals not to exceed 12 months until the modification required by paragraph (l) of this AD is accomplished. Doing the actions in this paragraph terminates the repetitive actions of paragraph (g) of this AD.

(k) Within 6 months after the effective date of this AD or 6 months after accomplishing the action in paragraph (h) of this AD, whichever occurs earlier: Use a torque wrench to tighten the screws for the attachment of the leading edges of the ailerons in accordance with Fokker Service Bulletin SBF50-57-020, Revision 2, dated June 17, 2002. Repeat the tightening thereafter at intervals not to exceed 6 months until the modification required by paragraph (l) of this AD is accomplished. Doing the actions in this paragraph terminates the repetitive actions of paragraph (h) of this AD.

Terminating Modification

(l) At the earlier of the times in paragraph (l)(1) and (l)(2) of this AD, modify the elevator, rudder, and aileron leading edge attachments by installing additional locking devices in accordance with the Accomplishment Instructions of the service bulletins in Table 1 of this AD. Doing the modifications terminates the applicable repetitive actions in paragraphs (f), (g), (h), (i), (j), and (k) of this AD, as specified in Table 1.

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

(2) Within 180 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness.

TABLE 1.—FOKKER SERVICE BULLETINS FOR TERMINATING MODIFICATION

Fokker service bulletin	Location	Terminates the actions required in paragraph—
SBF50-55-008, Revision 3, dated June 17, 2002	Elevator leading edge	(f) and (i).
SBF50-55-010, Revision 2, dated June 17, 2002	Rudder leading edge	(g) and (j).
SBF50-57-021, Revision 2, dated June 17, 2002	Aileron leading edge	(h) and (k).

Note 1: Fokker Service Bulletin SBF50-55-010, Revision 2, refers to Fokker Service Bulletin SBF50-55-011, dated October 29, 2001, as an additional source of service information for modifying the rudder attachments. Fokker Service Bulletin SBF50-57-021, Revision 2, refers to Fokker Service Bulletin SBF50-57-025, dated October 29, 2001, as an additional source of service information for modifying the aileron attachments.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, ANM-116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(n) Dutch airworthiness directive 2000-131/2, dated July 31, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(o) You must use the service information that is specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—ALL MATERIAL INCORPORATED BY REFERENCE

Fokker service bulletin	Revision level	Date
SBF50-55-007	Original	June 5, 1998.

TABLE 2.—ALL MATERIAL INCORPORATED BY REFERENCE—Continued

Fokker service bulletin	Revision level	Date
SBF50–55–007	2	June 17, 2002.
SBF50–55–008	3	June 17, 2002.
SBF50–55–009	1	July 23, 1999.
SBF50–55–009	2	June 17, 2002.
SBF50–55–010	2	June 17, 2002.
SBF50–57–020	1	July 23, 1999.
SBF50–57–020	2	June 17, 2002.
SBF50–57–021	2	June 17, 2002.

(1) The incorporation by reference of the service bulletins in Table 3 of this AD is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3.—NEW MATERIAL INCORPORATED BY REFERENCE

Fokker service bulletin	Revision level	Date
SBF50–55–007	Revision 2	June 17, 2002.
SBF50–55–008	Revision 3	June 17, 2002.
SBF50–55–009	Revision 2	June 17, 2002.
SBF50–55–010	Revision 2	June 17, 2002.
SBF50–57–020	Revision 2	June 17, 2002.
SBF50–57–021	Revision 2	June 17, 2002.

(2) The incorporation by reference of the service bulletins in Table 4 of this AD was approved previously by the Director of the Federal Register as of January 21, 2000, (65 FR 695, January 6, 2000).

TABLE 4.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Fokker service bulletin	Revision level	Date
SBF50–55–007	Original	June 5, 1998.
SBF50–55–009	Revision 1	July 23, 1999.
SBF50–57–020	Revision 1	July 23, 1999.

(3) Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for copies of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23779 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20712; Directorate Identifier 2005–CE–15–AD; Amendment 39–14400; AD 2005–25–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company, Model 390, Premier 1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon), Model 390, Premier 1 airplanes. For certain airplanes, this AD requires you (unless already done) to replace the plastic cover over the air conditioning motor module with a metallic cover and modify the air conditioning compressor motor module electromagnetic interference-radio frequency interference (EMI–RFI) filter located under the cover and reidentify the module part number. For all airplanes, the AD limits future installations of the cover for the air conditioner and the air conditioning compressor motor module. This AD results from reports that the plastic cover over the air conditioning motor module was found melted or burned and that the overheating of the EMI–RFI filter assembly located under the cover caused this damage. We are issuing this AD to prevent the melting or burning of the plastic cover. The burning of the plastic cover could result in a fire.

DATES: This AD becomes effective on January 23, 2006.

As of January 23, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Raytheon Aircraft Company,

P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–20712; Directorate Identifier 2005–CE–15–AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, ACE–119W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received reports that the plastic cover over the air conditioning motor module for certain Raytheon Aircraft Company (Raytheon), Model 390, Premier 1 airplanes was found melted or burned. The overheating of the electromagnetic interference-radio frequency interference (EMI–RFI) filter assembly located under the plastic cover caused this damage.

Raytheon has developed two partial fixes that together remedy the problem. In February 2005, Raytheon implemented a partial fix to the problem with a service bulletin for the replacement of the plastic cover with a manufactured or a field fabricated metal cover. Raytheon, in June 2005, issued a service bulletin for the modification of the EMI–RFI filter assembly.

What is the potential impact if FAA took no action? The burning of the plastic cover could result in a fire.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 390, Premier 1 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 23, 2005 (70 FR 49217). The NPRM proposed for certain airplanes to require you (unless already done) to replace the plastic cover over the air conditioning motor module with a metallic cover and modify the air conditioning compressor motor module electromagnetic interference-radio frequency interference (EMI–RFI) filter located under the cover and reidentify the module part number. For all airplanes, the NPRM proposed to limit future installations of the cover for the air conditioner and the air conditioning compressor motor module.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the one comment received on the proposal and FAA's response to the comment:

Comment Issue: Include Parts Manufacture Approval (PMA) Parts Approved by Identicality in the Replacement Parts

What is the commenter's concern? The commenter, the Modification and Replacement Parts Association (MARPA), states:

"The proposed action requires replacing a plastic EMI–RFI filter cover with a metallic cover P/N 390–555015–0001. The problem with requiring the installation of a specific part number to the exclusion of all other part numbers is that such a requirement conflicts with 14 CFR 21.303 (PMA)."

The MARPA requests that the final action include the phrase "or other FAA-approved equivalent part" after the part number.

What is FAA's response to the concern? We agree with the MARPA. The FAA will add the phrase "or FAA-approved equivalent part number", and add language to cover the PMA replacement parts.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains information relating to this subject in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov*.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 100 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the replacement of the plastic cover with a new manufactured metallic cover (P/N 390–555015–0001 or FAA-approved equivalent part number) that you buy:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 = $65	$600	$665	$66,500

We estimate the following costs to do the field fabrication of the metallic cover (P/N 390–555015–0001 or FAA-approved equivalent part number) if you choose not to buy a new metallic cover and the labor for the replacement of the plastic cover:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 work hour × $65 = $1,040	$20	$1,060	$106,000

We estimate the following costs to modify the air conditioning compressor motor module EMI-RFI filter and reidentify the module part number:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work hours × $65 = $130	$600	$730	$73,000

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20712; Directorate Identifier 2005–CE–15–AD" in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–25–07 Raytheon Aircraft Company: Amendment 39–14400; Docket No. FAA–2005–20712; Directorate Identifier 2005–CE–15–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 23, 2006.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

(1) *Group 1:* Raytheon Aircraft Company, Model 390, Premier 1 Airplanes, serial numbers RB–1, RB–4 through RB–101, RB–103 through RB–119, and RB–121, that have not replaced the plastic cover over the compressor motor module with a metallic one (part number (P/N) 390–555015–0001 or FAA-approved equivalent part number).

(2) *Group 2:* Raytheon Aircraft Company, Model 390, Premier 1 Airplanes, serial numbers RB–1, RB–4 through RB–101, RB–103 through RB–119, and RB–121, that have installed the metallic cover (P/N 390–555015–0001 or FAA-approved equivalent part number).

(3) *Group 3:* Raytheon Aircraft Company, Model 390, Premier 1 Airplanes, serial numbers RB–120 and RB–122 through RB–129.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports that the plastic cover over the air conditioning motor module was found melted or burned and that the overheating of the electromagnetic interference-radio frequency interference (EMI-RFI) filter assembly located under the cover caused this damage. The actions specified in this AD are intended to prevent the melting or burning of the plastic cover. The burning of the plastic cover could result in a fire.

Note: 14 CFR 21.303 allows for replacement parts through parts manufacturer approval (PMA). The phrase "or FAA-approved equivalent part number" in paragraphs (e), (f), and (g) of this AD is intended to signify those parts that are PMA parts approved through identicality to the design of the replacement parts to correct the unsafe condition. Equivalent replacement parts to correct the unsafe condition under PMA (other than identicality) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.

What Must I Do To Address This Problem?

(e) *What actions must I do to address this problem for Group 1 airplanes?* To address this problem for Group 1 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) *Air Conditioning Motor Module Cover Replacement:* Replace the plastic cover over the air conditioning motor module with a new or fabricated metallic cover. Use Raytheon part number (P/N) 390–555015–0001 or an FAA-approved equivalent part number.	Within 30 days after January 23, 2006 (the effective date of this AD), unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(2) *Air Conditioning Compressor Motor Module EMI–RFI Filter Modification:* Modify the air conditioning motor module EMI–RFI filter and reidentify the module part number with a P/N 390–385026–0003 module.	Within 30 days after January 23, 2006 (the effective date of this AD), unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3733, dated June 2005, and Enviro Systems, Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005.
(3) *Future Installations—Cover for Air Conditioner:* You must only install a metal cover, P/N 390–555015–0001 or FAA-approved equivalent part number, over the air conditioning motor module. This is mandatory equipment.	As of January 23, 2006 (the effective date of this AD).	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(4) *Future Installations—Air Conditioning Compressor Motor Module:* Do not install any compressor motor module, P/N 390–385026–0001 or FAA-approved equivalent part number.	As of January 23, 2006 (the effective date of this AD).	Not Applicable.

(f) *What actions must I do to address this problem for Group 2 airplanes?* To address this problem for Group 2 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) *Air Conditioning Compressor Motor Module EMI–RFI Filter Modification:* Modify the air conditioning motor module EMI–RFI filter and reidentify the module part number with a P/N 390–385026–0003 module.	Within 60 days after January 23, 2006 (the effective date of this AD), unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3733, dated June 2005; and Enviro Systems Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005.
(2) *Future Installations—Cover for Air Conditioner:* You must only install a metal cover, P/N 390–555015–0001 or FAA-approved equivalent part number, over the air conditioning motor module. This is mandatory equipment.	As of January 23, 2006 (the effective date of this AD).	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(3) *Future Installations—Air Conditioning Compressor Motor Module:* Do not install any compressor motor module, P/N 390–385026–0001 or FAA-approved equivalent part.	As of January 23, 2006 (the effective date of this AD).	Not Applicable.

(g) *What actions must I do to address this problem for Group 3 airplanes?* To address this problem for Group 3 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) *Air Conditioning Compressor Motor Module EMI–RFI Filter Modification:* Modify the air conditioning motor module EMI–RFI filter and reidentify the module part number with a P/N 390–385026–0003 module.	Within 60 days after January 23, 2006 (the effective date of this AD), unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3733, dated June 2005; and Enviro Systems Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005.
(2) *Future Installations—Cover for Air Conditioner:* You must only install a metal cover, P/N 390–555015–0001 or FAA-approved equivalent part number, over the air conditioning motor module. This is mandatory equipment.	As of January 23, 2006, (the effective dae of this AD).	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(3) *Future Installations—Air Conditioning Compressor Motor Module:* Do not install any compressor motor module, P/N 390–385026–0001 or FAA-approved equivalent part number.	As of January 23, 2006 (the effective date of this AD).	Not Applicable.

May I Request an Alternative Method of Compliance?

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Philip Petty, Aerospace Engineer, ACE–119W, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(i) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005; Raytheon Aircraft Company Service Bulletin No. SB 21–3733, dated June 2005; and Enviro Systems Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005. The Director of the **Federal Register** approved the incorporation by reference of these service bulletins in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–20712; Directorate Identifier 2005–CE–15–AD.

Issued in Kansas City, Missouri, on November 30, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23773 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21787; Directorate Identifier 2005–CE–34–AD; Amendment 39–14401; AD 2005–25–08]

RIN 2120–AA64

Airworthiness Directives; Shadin ADC–2000 Air Data Computers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Shadin ADC–2000 air data computers (ADC) installed on airplanes. This AD requires you to replace affected ADC–2000 units with a modified unit. This AD results from reports that certain ADC–2000 units display incorrect altitude information on the Electronic Flight Information System (EFIS) to the pilot. We are issuing this AD to prevent ADC–2000 units, part numbers (P/Ns) 962830A–1–S–8, 962830A–2–S–8, and 962830A–3–S–8, configurations B, C, and D, from displaying incorrect altitude information. This could cause the flight crew to react to this incorrect flight information and possibly result in an unsafe operating condition.

DATES: This AD becomes effective on January 23, 2006.

As of January 23, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Shadin, 6831 Oxford Street, St. Louis Park, Minnesota 55426–4412; telephone: (800) 388–2849 or (952) 927–6500; facsimile: (952) 924–1111; e-mail: *http://www.shadin.com*.

To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–21787; Directorate Identifier 2005–CE–34–AD.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kuen, Aerospace Engineer, Chicago Aircraft Certification Office (ACO), FAA, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7125; facsimile: (847) 294–7834; e-mail address: *jeffrey.kuen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? We received reports that the pressure altitude output of certain Shadin ADC–2000 air data computers (ADC) drift outside Technical Standard Order (TSO) tolerance.

Shadin ADC–2000 units, part numbers (P/Ns) 962830A–1–S–8, 962830A–2–S–8, and 962830A–3–S–8, configurations B, C, and D (labeled with TSO–C106 and TSO–C44a), provide altitude information that is displayed on the Electronic Flight Information System (EFIS) to the pilot. The ADC/EFIS combination is used to display primary altitude information to the pilot.

The maximum altitude error allowed by TSO–C106 and TSO–C44a is 25 feet at ground level. Shadin ADC–2000 units, P/Ns 962830A–1–S–8, 962830A–2–S–8, and 962830A–3–S–8, configurations B, C, and D have shown errors from 100 to 8,000 feet from the correct altitude.

The errors are caused by the ADC–2000 altitude measurement system. A pressure transducer in the ADC measures the altitude from the airplane static pressure system. The pressure transducer converts static pressure to an electrical signal.

We determined that the electrical output from the pressure transducer in the affected ADCs changes over time resulting in the display of misleading altitude information to the pilot.

What is the potential impact if FAA took no action? If this situation occurs while the flight crew is making critical flight decisions, the display of incorrect altitude information could cause the flight crew to react to this incorrect flight information and possibly result in an unsafe operating condition.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Shadin ADC–2000 air data computers (ADC) installed on airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 17, 2005 (70 FR 48333). The NPRM proposed to require you to replace affected ADC–2000 units with a modified unit.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: AD Should Apply to Only Airplanes Operating Under IFR

What is the commenter's concern? The commenter is concerned that 14 CFR 43.7 does not allow part 135 operators to do the preflight check required in paragraph (e)(1) of the proposed AD. This would require a maintenance mechanic to be hired to do the preflight check before each flight.

The commenter requests that airplanes flown under part 135 VFR operations be excluded from complying with the AD by changing the Compliance column from "before each flight" to "before each IFR flight."

What is FAA's response to the concern? We do not agree with the commenter. Under 14 CFR 43.7, paragraph (e), part 135 operators are allowed to return an airplane to service.

To avoid confusion, which could result in unnecessarily grounding some of the affected airplanes, we are removing the reference to 14 CFR 43.7 from the Procedures column in paragraph (e)(1) of the proposed AD.

Comment Issue No. 2: Remove All Affected ADCs Until Upgraded

What is the commenter's concern? The commenter states that the ADC provides input into the Terrain Awareness and Warning System (TAWS).

To prevent the possibility of incorrect ADC data being input into the TAWS, the commenter wants FAA to require removal of all affected ADCs until they are upgraded.

What is FAA's response to the concern? We do not agree with the commenter. The Shadin ADC altitude error has occurred over a long period of time. We do not have justification to require removing the affected ADCs before further flight.

We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 25 hours TIS will give the owners or operators of the affected airplanes enough time to have the actions required by this AD done without compromising the safety of the airplanes.

The altimetry system checks provided as an interim solution to the actions required in paragraph (e)(2) is a normal aircraft preflight check.

We are not changing the final rule AD action based on this comment.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains information relating to this subject in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800-647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.*

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 457 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work hours X $65 per hour = $130	Not applicable	$130	$130 X 457 = $59,410.

Shadin will reimburse the owner/operators for labor to remove and replace the ADC and shipping costs to Shadin Repair Facility to the extent specified in the service bulletin.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "Docket No. FAA–2005–21787;

Directorate Identifier 2005–CE–34–AD" in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–25–08 SHADIN: Amendment 39–14401; Docket No. FAA–2005–21787; Directorate Identifier 2005–CE–34–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 23, 2006.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected By This AD?

(c) This AD affects Shadin ADC–2000 air data computers (ADC), part numbers (P/N) 962830A–1–S–8, 962830A–2–S–8, 962830A–3–S–8, configurations B, C, and D, that are installed in, but not limited to, the following aircraft (all serial numbers), and are certificated in any category:

Manufacturer	Model
Alliance Aircraft Group, LLC.	H–250
B–N Group Ltd	BN2A
Bombardier Inc	DHC–3, DHC–6
Cessna Aircraft Company.	172, 180, 180E, 185, 206, 206E, 206F, 206G 208, 210L, 310
deHavilland Inc	DHC–2
The New Piper Aircraft, Inc.	PA–28–180, PA–28–181, PA–31–350, PA–32–300, PA–32–301, PA–32R–300, PA–34–200T

What is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports that certain ADC–2000 units display incorrect altitude information on the Electronic Flight Information System (EFIS) to the pilot. The actions specified in this AD are to prevent ADC–2000 units, P/Ns 962830A–1–S–8, 962830A–2–S–8, and 962830A–3–S–8, configurations B, C, and D, from displaying incorrect altitude information. This could cause the flight crew to react to this incorrect flight information and possibly result in an unsafe operating condition.

What Must I do to Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) To ensure the air data computer (ADC) and the Electronic Flight Information System (EFIS) altimetry accuracy, do the normal preflight check. If the altitudes, altimeter, and elevation differ by more than 75 feet, do not fly the airplane in Instrument Meterological Conditions (IMC)/Instrument Flight Rules (IFR).	Within the next 25 hours time-in-service (TIS) after January 23, 2006 (the effective date of this AD) and thereafter before each flight until the ADC is upgraded as specified in paragraph (e)(2) of this AD.	Follow the Interim Procedures contained in Shadin Service Bulletin SB28–05–002, Rev C, dated June 29, 2005. The owner/operator holding at least a private pilot certificate may do the check specified in paragraph (e)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Return all Shadin ADC–2000s, part numbers 962830A–1–S–8, 962830A–2–S–8, 962830A–3–S–8, Configurations B, C, and D, to the Shadin Repair Facility for upgrade. Contact the Shadin Technical Support department for a Return Merchandise Authorization (RMA) number. Until the ADC–2000 is modified, returned, and reinstalled, only fly the airplane if equipment requirements for that airplane are still met.	Within the next 15 months after January 23, 2006 (the effective date of this AD).	Follow Shadin Service Bulletin SB28–05–002, Rev C, dated June 29, 2005.
(3) Do not install any Shadin ADC–2000, part number 962830A–1–S–8, 962830A–2–S–8, or 962830A–3–S–8, Configurations B, C, and D, unless it has been upgraded as specified in paragraph (e)(2) of this AD.	As of January 23, 2006 (the effective date of this AD).	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Chicago Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Jeffrey Kuen, Aerospace Engineer, Chicago ACO, FAA, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7125; facsimile: (847) 294–7834; e-mail address: *jeffrey.kuen@faa.gov*.

Does This AD Incorporate Any Material By Reference?

(g) You must do the actions required by this AD following the instructions in Shadin Service Bulletin SB28–05–002, Rev C, dated June 29, 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Shadin, 6831 Oxford Street, St. Louis Park, Minnesota 55426–4412; telephone: (800) 388–2849 or (952) 927–6500; facsimile: (952) 924–1111; e-mail: *http://www.shadin.com*. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW.,

Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–21787; Directorate Identifier 2005–CE–34–AD.

Issued in Kansas City, Missouri, on November 30, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23771 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–66–AD; Amendment 39–14402; AD 2005–25–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) PW4000 series turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This AD modifies the airworthiness limitations section of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program by adding eddy current inspections for front compressor hubs installed in PW 4000–94" engine models. This AD also adds the PW4062A engine to the applicability. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective June 12, 2006.

ADDRESSES: You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7146, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a new AD, applicable to (PW) PW4000 series turbofan engines. We published the proposed AD in the **Federal Register** on August 18, 2004 (69 FR 51200). We proposed to modify the airworthiness limitations section of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to add eddy current inspections for front compressor hubs installed in PW 4000–94" engine models (Engine Manuals 50A443, 50A605, and 50A22). We also proposed to add the PW4062A engine to the applicability.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

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

Request To Change Costs of Compliance

Four commenters request we change the costs of compliance to include the investment they have to make in equipment, to perform these inspections. We do not agree. This AD does not require operators to invest in equipment or to hire more personnel to comply with the AD. The AD requires revisions to the engine manufacturer's TLS to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. Operators can choose to buy equipment to perform the inspections or send the parts to an approved service provider for inspection.

Request for Lead Time To Purchase Eddy Current Inspection Equipment

Three commenters request lead time of an additional 6-to-8 months, as they want to purchase eddy current inspection equipment. We agree. We changed the effective date of the AD to be 180 days after the date of publication.

Request for Special Eddy Current Inspection Instructions

Two commenters request we provide special eddy current inspection instructions in the AD, as equipment sensitivity to surface finish, and to worn or previously repaired parts may cause "liftoff" resulting in false indications. We do not agree. The AD does not contain specific inspection instructions. The AD requires revisions to the engine manufacturer's TLS to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. The engine manufacturer and the suppliers of the eddy current inspection equipment provide the special inspection procedures and requirements.

Request To Allow Use of Equivalent Inspection Equipment

One commenter requests we allow use of equivalent inspection equipment to perform the eddy current inspections, as some operators have already invested in equivalent eddy current inspection equipment. Using the single-source equipment specified by the engine manufacturer will cause an undue cost burden. We do not agree. The AD does not specify only one source of equipment for the inspections. The engine manufacturer developed validated inspection procedures using specific equipment that provides acceptable inspection methods. However, operators can seek approval to use equivalent equipment, using the Alternative Methods of Compliance procedures referenced in paragraph (h) of this AD or, they can send the part to an approved service provider for inspection.

Conclusion

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

Costs of Compliance

About 2,625 Pratt & Whitney PW4000 series turbofan engines of the affected design are in the worldwide fleet. We estimate 600 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate it will take about 10 work hours per engine to perform the inspections, and the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part

costs are involved. Based on these figures, the total additional cost per engine per shop visit is estimated to be $650. Based on the current PW4000 engine shop visit rate, the total additional cost for the PW4000 fleet is estimated to be $123,000 per year.

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 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 98–ANE–66–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 39–12649, (67 FR 7061, June 4, 2002) and by adding a new airworthiness directive, Amendment 39–14402, to read as follows:

2005–25–09 Pratt & Whitney: Amendment 39–14402. Docket No. 98-ANE–66–AD.

Effective Date

(a) This AD becomes effective June 12, 2006.

Affected ADs

(b) This AD supersedes AD 2002–03–08.

Applicability

(c) This AD applies to Pratt & Whitney (PW) Models PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4650, PW4164, PW4168, PW4168A, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090–3, PW4090D, and PW4098 turbofan engines. These engines are installed on but not limited to, Airbus A300, A310, and A330 series, Boeing 747, 767, and 777 series, and McDonnell Douglas MD–11 series airplanes.

Unsafe Condition

(d) This AD results from the need to add additional inspection requirements for PW4000–94" engine models only, and to add the PW4062A engine to the applicability. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to 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.

(f) Within the next 60 days after the effective date of this AD, revise the Time Limits Section (TLS) of the Engine Manuals (EMs), part numbers 50A443, 50A605, 50A822, 51A342, 51A345, and 51A751, as applicable, for PW Models PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4650, PW4164, PW4168, PW4168A, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090–3, PW4090D, and PW4098 turbofan engines, and for air carriers, revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the PW4000 series Engine Cleaning, Inspection and Repair (CIR) Manuals:

For Engine Manuals 50A443, 50A605, and 50A822, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Hub, Front Compressor	ALL	72–31–07	Insp/Check–02	51A357
Hub, Turbine, Front Assy (Stage 1)	ALL	72–52–05	Insp/Check–02	51A357
Hub, Turbine, Intermediate Rear (Stage 2)	ALL	72–52–06	Insp/Check–02	51A357

For Engine Manual 51A342, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Hub, LPC Assembly	ALL	72–31–07	Insp/Check–02	51A357
Hub, Turbine, Front Assembly (Stage 1)	ALL	72–52–05	Insp/Check–02	51A357
Seal—Air, HPT Stage 2	ALL	72–52–22	Insp/Check–02	51A357
Hub, Turbine, Rear (Stage 2)	ALL	72–52–06	Insp/Check–02	51A357

For Engine Manuals 51A345 and 51A751, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Hub, LPC Assembly	ALL	72–31–07	Insp/Check–02	51A750
Seal—Air, HPT Stage 1	ALL	72–52–19	Insp/Check–02	51A750
Hub, Turbine, Front Assembly (Stage 1)	ALL	72–52–05	Insp/Check–02	51A750
Seal—Air, HPT Stage 2 Assemply	ALL	72–52–22	Insp/Check–02	51A750
Hub, Turbine Rear Assembly (Stage 2)	ALL	72–52–06	Insp/Check–02	51A750

For Engine Manuals 50A443, 50A605, and 50A822, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
HPC Stage 5 Disk	ALL	72–35–06	Insp/Check–02	51A357
HPC Front Drum Rotor	ALL	72–35–07	Insp/Check–02	51A357
HPC Rear Drum Rotor	ALL	72–35–08	Insp/Check–02	51A357
HPC Rear Drum Rotor	ALL	72–35–10	Insp/Check–02	51A357

For Engine Manual 51A342, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
HPC Stage 5 Disk	ALL	72–35–06	Insp/Check–02	51A357
HPC Front Drum Rotor	ALL	72–35–07	Insp/Check–02	51A357
HPC Rear Drum Rotor	ALL	72–35–10	Insp/Check–02	51A357

For Engine Manuals 51A345 and 51A751, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
HPC Stage 5 Disk	ALL	72–35–06	Insp/Check–02	51A750
HPC Front Drum Rotor	ALL	72–35–07	Insp/Check–02	51A750
HPC Rear Drum Rotor	ALL	72–35–10	Insp/Check–02	51A750
HPC Stage 15 Disk	ALL	72–35–92	Insp/Check–02	51A750
HPT Stage 1 Airseal	ALL	72–52–19	Insp/Check–02	51A750
HPT Front Hub	ALL	72–52–05	Insp/Check–02	51A750
HPT Stage 2 Airseal	ALL	72–52–22	Insp/Check–02	51A750
HPT Rear Hub	ALL	72–52–06	Insp/Check–02	51A750

For Engine Manuals 50A443, 50A605 and 50A822, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	ALL	72–53–13	Insp/Check–02	51A357
Stage 4 LPT Disk	ALL	72–53–14	Insp/Check–02	51A357
Stage 5 LPT Disk	ALL	72–53–15	Insp/Check–02	51A357
Stage 6 LPT Disk	ALL	72–53–16	Insp/Check–02	51A357

For Engine Manual 51A342, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	ALL	72–53–13	Insp/Check–02	51A357
Stage 4 LPT Disk	ALL	72–53–14	Insp/Check–02	51A357
Stage 5 LPT Disk	ALL	72–53–15	Insp/Check–02	51A357

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Stage 6 LPT Disk	ALL	72–53–16	Insp/Check–02	51A357
Stage 7 LPT Disk	ALL	72–53–61	Insp/Check–02	51A357

For Engine Manual 51A345, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	ALL	72–53–13	Insp/Check–02, Config–1	51A750
Stage 4 LPT Disk	ALL	72–53–14	Insp/Check–02	51A750
Stage 5 LPT Disk	ALL	72–53–60	Insp/Check–02	51A750
Stage 6 LPT Disk	ALL	72–53–16	Insp/Check–02, Config–1	51A750
Stage 7 LPT Disk	ALL	72–53–72	Insp/Check–02	51A750
Stage 8 LPT Disk	ALL	72–53–62	Insp/Check–02, Config–1	51A750
Stage 9 LPT Disk	ALL	72–53–63	Insp/Check–02	51A750

For Engine Manual 51A751, add the following table data:

Part nomenclature	Part number	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	ALL	72–53–13	Insp/Check–02, Config–2. See Note (1).	51A750
Stage 4 LPT Disk	ALL	72–53–14	Insp/Check–02	51A750
Stage 5 LPT Disk	ALL	72–53–60	Insp/Check–02	51A750
Stage 6 LPT Disk	ALL	72–53–16	Insp/Check–02, Config–2. See Note (1).	51A750
Stage 7 LPT Disk	ALL	72–53–72	Insp/Check–02	51A750
Stage 8 LPT Disk	ALL	72–53–62	Insp/Check–02, Config–2. See Note (1).	51A750
Stage 9 LPT Disk	ALL	72–53–63	Insp/Check–02	51A750

(1) FPI method only.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on December 5, 2005.

Carlos Pestana,

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

[FR Doc. 05–23828 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–48–AD; Amendment 39–14398; AD 2005–25–05]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for

Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This AD modifies the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to add an eddy current inspection. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective June 12, 2006.

ADDRESSES: You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed airworthiness directive (AD). The proposed AD applies to PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines. We published the proposed AD in the **Federal Register** on August 18, 2004 (69 FR 51203). That action proposed to require modifying the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

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

Request To Change the Effective Date

One commenter asks us to change the effective date to six to eight months. The commenter states the change will allow additional time to order, fabricate, and install automated inspection equipment. It will also allow more time to train employees on using the new equipment. We agree. We have extended the effective date 180 days to allow operators to set up their inspection process.

Concern the Costs To Comply Are Too Low

One commenter suggests the NPRM fails to recognize the substantial up-front investment to get the equipment needed for the eddy current inspection (ECI). In addition, the commenter states we should increase the Costs of Compliance because the complex inspections will require several full-time, specially trained operators. We don't agree. The AD doesn't require air carriers to invest in tooling and equipment or hire more personnel to comply with the proposed AD. The AD requires adding the new ECI to the TLS of the engine manufacturer's manual, and to the air carriers' approved maintenance manuals. Operators can choose to buy equipment to perform the inspection, or they may send the disk to an approved service provider. We have not changed the AD.

Request To Change the ECI for Repaired Parts to Fluorescent Penetrant Inspection (FPI)

The same commenter asks us to change the inspection method for parts previously repaired with bushings from an automated eddy current method to a fluorescent penetrant method. The commenter states that one cannot perform an automated ECI with the bushings installed. The commenter states that removing the bushings to perform the automated ECI would leave score marks because of the tight fit. We don't agree. The operators don't need to remove the bushings. The instructions for Section 72–33–31, Inspection –05, and Section 72–33–33, Inspection –03, state that holes with bushings installed are not subject to the ECI. Holes with bushings installed are subject to FPI and an additional visual inspection within the ECI instructions. We have not changed the AD.

Request To Perform an FPI If the Part Fails the ECI

The same commenter suggests that service-run parts that fail the automated ECI should be subjected to an FPI. If the part fails the FPI, then the part is scrap. If the part passes the FPI, then it would be acceptable to perform the bushing repair. The commenter states that there is a possibility of false readings due to worn or oblong, but not cracked, holes that cause "liftoff" of the probe. We don't agree. The inspection instructions provide an opportunity to clean and reinspect the part. If the part fails again, the operator may return the disk to the manufacturer for a third opinion before determining if the part is acceptable or if it is scrap. The operator may propose other alternatives through the Alternative Method of Compliance process. We have not changed the AD.

Request for Clear Direction for Preparing the Surface of a Hole

The same commenter asks us to provide clear direction for preparing the surface of a hole that is worn, oblong, or scored from removing a bushing. The commenter states the automated ECI equipment is extremely sensitive to surface finish. It might be necessary to machine the surface to provide an acceptable surface finish for the inspection. The commenter further states this is not desirable since the machining operation might mask or remove crack indications. We do not agree that we need to provide clearer instructions. The manufacturer has provided instructions to prepare the part for ECI. This AD does not allow any machining operations, although it does allow certain cleaning operations. Bushings are not subject to the ECI and must not be removed. We have not changed the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the 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 6,085 Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines of the affected design in the worldwide fleet. We estimate that this AD will affect 3,236 engines installed on airplanes of U.S. registry. We also estimate that it will take about 8 work

hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,682,720.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 98–ANE–48–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 39–12867, (67 FR 55108 August 28, 2002), and by adding a new airworthiness directive, Amendment 39–14398, to read as follows:

2005–25–05 Pratt & Whitney: Amendment 39–14398. Docket No. 98–ANE–48–AD.

Effective Date

(a) This AD becomes effective June 12, 2006.

Affected ADs

(b) This AD supersedes AD 2002–17–02.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines. These engines are installed on, but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of PW JT8D series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to 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.

(f) Within the next 30 days after the effective date of this AD, (1) revise the Time Limits Section (TLS) of the manufacturer's Engine Manual, Part Number 481672, as appropriate for PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines, and

(2) for air carriers, revise the approved mandatory inspections section of the continuous airworthiness maintenance program, by adding the following:

"Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section has the definitions for individual engine piece parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece parts in paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(3) The inspections specified in this paragraph do not replace or make not necessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection:

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Section	Inspection Number
Hub (Disk), 1st Stage Compressor:		
Hub Detail—All P/Ns	72–33–31	–02, –03, –04, –05
Hub Assembly—All P/Ns	72–33–31	–02, –03, –04, –05
2nd Stage Compressor:		
Disk—All P/Ns	72–33–33	–02, –03
Disk Assembly—All P/Ns	72–33–33	–02, –03
Disk, 13th Stage Compressor—All P/Ns	72–36–47	–02
HP Turbine Disk, First Stage w/integral Shaft—All P/Ns	72–52–04	–03
HP Turbine, First Stage, w/separable Shaft:		
Rotor Assembly—All P/Ns	72–52–02	–04
Disk—All P/Ns	72–52–02	–03
Disk, 2nd Stage Turbine—All P/Ns	72–53–16	–02
Disk, 3rd Stage Turbine—All P/Ns	72–53–17	–02
Disk (Separable), 4th Stage Turbine—All P/Ns	72–53–15	–02
Disk (Integral Disk/Hub), 4th Stage Turbine—All P/Ns	72–53–18	–02"

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These recordkeeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the recordkeeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on December 1, 2005.

Peter A. White,

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

[FR Doc. 05–23897 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–50–AD; Amendment 39–14403; AD 2005–25–10]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 Propeller Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Dowty Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies. That AD currently requires initial and repetitive ultrasonic inspections of propeller hubs, part number (P/N) 660709201. This AD requires the same initial and repetitive ultrasonic inspections, but makes some needed corrections. This AD results from comments received on AD 2005–20–12. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

DATES: Effective December 27, 2005. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of July 27, 2004 (69 FR 34560, June 22, 2004) and October 28, 2005 (70 FR 59647, October 13, 2005).

We must receive any comments on this AD by February 10, 2006.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–50–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

Contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001, for the service information referenced in this AD.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: On September 26, 2005, we issued AD 2005–20–12, Amendment 39–14306 (70 FR 59647, October 13, 2005). That AD requires initial and repetitive ultrasonic inspections of propeller hubs, P/N 660709201. That AD was the result of a report of a hub separation on a CASA 212 airplane. That condition, if not corrected, could result in propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

Comments

We provided the public the opportunity to comment on AD 2005–20–12. We have considered the comments received.

Allow Use of Appendix D

One commenter, the manufacturer, requests we allow operators and inspectors to also use Appendix D of the referenced service bulletins. We agree and added the use of Appendix D to this AD.

Request To Include Flight Cycle Limit

The same commenter requests we include a flight cycle limit in the repetitive inspection compliance for R334/4–82–F/13 propeller assemblies, to be consistent with the service bulletin. We agree and changed the repetitive ultrasonic inspection compliance to "within 300 flight hours time-since-last-inspection or 300 flight cycles-since-last inspection, whichever occurs sooner".

Request To Correct the Manufacturer's Name

The same commenter requests we correct their former name of Dowty Aerospace Propellers, to their current name of Dowty Propellers. We agree and made the name change.

Request To Clarify Initial Inspection Compliance

The same commenter requests we revise paragraph (h) of AD 2005–20–12 to clarify that operators that previously complied with the initial inspection in paragraph (f) do not have to comply a second time to that initial inspection. We agree. For clarification, we revised the paragraph, moved it closer to the Compliance heading, and codified it as paragraph (f).

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

Special Flight Permits Paragraph Removed

Paragraph (l) of the current AD, AD 2005–20–12, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Relevant Service Information

We have reviewed and approved the technical contents of Dowty Propellers Alert MSB No. 61–1119, Revision 4, dated September 14, 2005, that specifies initial and repetitive ultrasonic inspections of the rear wall of the rear half of the propeller hub for cracks on Type R334/4–82–F/13 propeller assemblies used on CASA 212 airplanes. The CAA classified this service bulletin as mandatory and issued CAA UK AD No. G–2005–0027, dated September 8, 2005, to assure the airworthiness of these Dowty Propellers in the U.K.

Differences Between This AD and the Service Information

Although Appendix A of Alert MSB No. 61–1119, Revision 4, dated September 14, 2005, requires reporting the inspection data to Dowty Propellers, this AD requires that you report the data to the Boston Aircraft Certification Office of the FAA.

Bilateral Airworthiness Agreement

These propeller models are manufactured in the U.K. and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Dowty Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies of the same type design. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane. This AD requires:

- Within 10 flight hours (FH) time-in-service (TIS) or 20 days after the effective date of this AD, whichever occurs earlier, performing an initial ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R334/4–82–F/13 propeller assemblies, and;
- Within 50 FH TIS or 60 days after the effective date of this AD, whichever occurs earlier, performing an initial ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R321/4–82–F/8, R324/4–82–F/9, and R333/4–82–F/12 propeller assemblies, and;
- Within 300 FH time-since-last-inspection (TSLI) or 300 flight cycles-since-last-inspection, whichever occurs sooner, performing a repetitive ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R334/4–82–F/13 propeller assemblies, and;
- Within 1,000 FH TSLI performing a repetitive ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R321/4–82–F/8, R324/4–82–F/9, and R333/4–82–F/12 propeller assemblies, and;
- If not already done, performing an ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies that are in storage before installing the propeller assembly onto an airplane.

You must use the service information specified in Table 2 of this AD to perform the inspections required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2001–NE–50–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

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 the regulation:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2001–NE–50–AD" in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14306 (70 FR 59647, October 13, 2005), and by adding a new airworthiness directive, Amendment 39–59647, to read as follows:

2005–25–10 Dowty Propellers: Amendment 39–14403. Docket No. 2001–NE–50–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 27, 2005.

Affected ADs

(b) This AD supersedes AD 2005–20–12, Amendment 39–14306.

Applicability

(c) This AD applies to Dowty Propellers Type R321/4–82–F/8, and R324/4–82–F/9, R333/4–82–F/12 propeller assemblies with propeller hubs part number (P/N) 660709201, installed on, but not limited to, British Aerospace Regional Aircraft Jetstream Models 3101 and 3201, Fairchild Aircraft, Inc., Merlin IIIC, and Merlin IVC/Metro III airplanes, and to Type R334/4–82–F/13 propeller assemblies with hubs P/N 660709201, installed on Construcciones Aeronauticas, S.A. (CASA) 212 airplanes.

Unsafe Condition

(d) This AD results from comments received on AD 2005–20–12. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

Compliance

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

(f) Propeller hubs, P/N 660709201, previously inspected using Dowty Mandatory Service Bulletins (MSBs) listed in Table 1 or an earlier issue of those MSBs, are already in compliance with paragraph (g) of this AD and do not need another initial inspection.

TABLE 1.—APPLICABLE MSB FOR PROPELLER TYPE

Propeller assembly type	Initial inspection within the earlier of * * *	Repeat inspection within * * *	Applicable MSB
(1) R334/4–82–F/13	10 flight hours (FH) time-in-service (TIS) or 20 days after the effective date of this AD.	300 FH time-since-last-inspection (TSLI) or 300 flight cycles-since-last-inspection, whichever occurs sooner.	Alert MSB No. 61–1119, Revision 4, dated September 14, 2005.
(2) R321/4–82–F/8 ..	50 FH TIS or 60 days after the effective date of this AD.	1,000 FH TSLI	MSB No. 61–1125, Revision 1, dated October 9, 2002.
(3) R324/4–82–F/9 ..	50 FH TIS or 60 days after the effective date of this AD.	1,000 FH TSLI	MSB No. 61–1126, Revision 1, dated October 9, 2002.
(4) R333/4–82–F/12	50 FH TIS or 60 days after the effective date of this AD.	1,000 FH TSLI.	MSB No. 61–1124, Revision 1, dated October 8, 2002.

Initial Ultrasonic Inspections

(g) Perform an initial ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks within the compliance time specified in the following Table 1. Use Appendix A or Appendix D of the applicable Dowty Mandatory Service Bulletin (MSB) listed in Table 1 of this AD.

(h) For hubs and propellers in storage, perform an initial ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks, before placing in service. Use Appendix A or Appendix D of the applicable Dowty MSB listed in Table 1 of this AD.

Repetitive Ultrasonic Inspections

(i) Thereafter, perform a repetitive ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks within the compliance time specified in Table 1 of this AD. Use Appendix A or Appendix D of the applicable Dowty Mandatory Service Bulletin (MSB) listed in Table 1 of this AD.

Inspection Reporting Requirements

(j) Within 10 days after each inspection, record the inspection data on a copy of Appendix B of the applicable MSB listed in Table 1 of this AD. Report the findings to the Manager, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299. The Office of Management and Budget (OMB) approved the reporting requirements and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

(k) The Manager, Boston Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Documents That Have Been Incorporated by Reference

(l) You must use the service information specified in Table 2 to perform the inspections required by this AD. The Director of the Federal Register previously approved the incorporation by reference of Dowty Mandatory Service Bulletin (MSB) No. 61–1124, Revision 1, dated October 8, 2002; MSB No. 61–1125, Revision 1, dated October 9, 2002, MSB 61–1126 and Revision 1, dated October 9, 2002 as of July 27, 2004 (69 FR 34560, June 22, 2004), and Dowty Alert (MSB) No. 61–1119, Revision 4, dated September 14, 2005, as of October 28, 2005 (70 FR 59647, October 13, 2005), in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001 for a copy of this service information. You may

review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at 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/cfr/ibr-locations.html.*

TABLE 2.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
Alert MSB No. 61–1119	All	4	September 14, 2005.
Appendix A	1	1	November 27, 2001.
	2	Original	November 1, 2001.
	3–6	1	November 27, 2001.
Appendix B	1	Original	November 1, 2001.
Appendix C	All	Original	November 27, 2001.
Appendix D	All	Original	December 6, 2001.
Total pages: 30			
MSB No. 61–1124	1	1	October 8, 2002.
	2–3	Original	May 7, 2002.
Appendix A	All	Original	May 7, 2002.
Appendix B	All	Original	May 7, 2002.
Appendix C	All	Original	May 7, 2002.
Appendix D	All	Original	May 7, 2002.
Total pages: 30			
MSB No. 61–1125	1	1	October 9, 2002.
	2–3	Original	May 7, 2002.
Appendix A	All	Original	May 7, 2002.
Appendix B	All	Original	May 7, 2002.
Appendix C	All	Original	May 7, 2002.
Appendix D	All	Original	May 7, 2002.
Total pages: 30			
MSB No. 61–1126	1	1	October 9, 2002.
	2–3	Original	May 7, 2002.
Appendix A	All	Original	May 7, 2002.
Appendix B	All	Original	May 7, 2002.
Appendix C	All	Original	May 7, 2002.
Appendix D	All	Original	May 7, 2002.
Total pages: 30			

Related Information

(m) United Kingdom (U.K.) Civil Aviation Authority (CAA) airworthiness directives No. G–2005–0027, dated September 8, 2005; CAA UK AD No. 009–05–2002, dated April 15, 2003; CAA UK AD No. 010–05–2002, dated April 15, 2003; and CAA UK AD No. 011–05–2002, dated April 15, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on December 2, 2005.

Peter A. White,

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

[FR Doc. 05–23826 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30469; Amdt. No. 3144]

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 December 12, 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 December 12, 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 December 2, 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 19 January 2006*

Macon, GA, Middle Georgia Regional, VOR RWY 23, Amdt 3

** * * Effective 16 February 2006*

Arctic Village, AK, Arctic Village, RNAV (GPS) RWY 2, Orig
Arctic Village, AK, Arctic Village, RNAV (GPS) RWY 20, Orig
Arctic Village, AK, Arctic Village, Takeoff Minimums and Textual DP, Orig
Nikolai, AK, Nikolai, RNAV (GPS) RWY 4, Orig
Nikolai, AK, Nikolai, RNAV (GPS) RWY 22, Orig
Nikolai, AK, Nikolai, Takeoff Minimums and Textual DPs, Orig
El Dorado, AR, South Arkansas Regional at Goodwin Field, RNAV (GPS) RWY 4, Orig
El Dorado, AR, South Arkansas Regional at Goodwin Field, RNAV (GPS) RWY 22, Orig
El Dorado, AR, South Arkansas Regional at Goodwin Field, VOR/DME RWY 4, Amdt 10
El Dorado, AR, South Arkansas Regional at Goodwin Field, GPS RWY 22, Orig-B, CANCELLED
Byron, CA, Byron, Takeoff Minimums and Textual DP, Amdt 1
LaVerne, CA, Brackett Field, Takeoff Minimums and Textual DP, Amdt 5
Vandalia, IL, Vandalia Muni, RNAV (GPS) RWY 18, Orig
Vandalia, IL, Vandalia Muni, RNAV (GPS) RWY 36, Orig
Hill City, KS, Hill City Muni, RNAV (GPS) RWY 17, Orig
Hill City, KS, Hill City Muni RNAV (GPS) RWY 35, Orig

Hill City, KS, Hill City Muni Takeoff Minimums and Textual DP, Orig
Wichita, KS, Colonel James Jabara, VOR/DME RNAV RWY 18, Amdt 3A, CANCELLED
Medina, OH, Medina Municipal, VOR RWY 27, Amdt 2
Waverly, OH, Pike County, NDB RWY 25, Amdt 1
Clinton, OK, Clinton Regional, RNAV (GPS) RWY 17, Orig
Clinton, OK, Clinton Regional, RNAV (GPS) RWY 35, Amdt 1
Clinton, OK, Clinton Regional, VOR/DME–A, Orig
Clinton, OK, Clinton Regional, NDB RWY 35, Amdt 7, CANCELLED
Guthrie, OK, Guthrie Muni, NDB RWY 16, Amdt 5A, CANCELLED
Comanche, TX, Comanche County-City, RNAV (GPS) RWY 17, Orig
Comanche, TX, Comanche County-City, Takeoff Minimums and Textual DP, Orig

[FR Doc. 05–23850 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (FTC or Commission) amends the Rules and Regulations under the Textile Fiber Products Identification Act (Textile Rules) pursuant to the Miscellaneous Trade and Technical Corrections Act of 2004, enacted December 3, 2004. That Act imposes specific requirements for the disclosure of country of origin of socks included within certain Harmonized Tariff Schedule subheadings. For the affected socks, the country of origin label must be on the front of the package, adjacent to the size designation. The amendments announced herein conform the Textile Rules to the amended Textile Fiber Products Identification Act (Textile Act). Because the amendments are technical in nature and merely incorporate the statutory change, the Commission finds that notice and comment are not required. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

EFFECTIVE DATE: The amended Rules are effective on March 3, 2006.

ADDRESSES: Requests for copies of the amended Rules should be sent to the Consumer Response Center, Room 202, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The notice announcing the amendments is available on the Internet at the Commission's Web site: *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, Attorney, *cjennings@ftc.gov*, or Stephen Ecklund, Senior Investigator, *secklund@ftc.gov*, (202) 326–2996, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Textile Act, 15 U.S.C. 70, and Commission rules pursuant to the Act, 16 CFR Part 303, require that sellers of covered textile products mark each product to show: (1) The fiber content, (2) the country of origin, and (3) the identity of the manufacturer or another business responsible for marketing or handling the item. The general requirements for affixing textile labels and the arrangement of information on labels are set forth in 16 CFR 303.15 and 303.16.

The Miscellaneous Trade and Technical Corrections Act of 2004, Public Law No. 108–429, 118 Stat. 2594, amends the Textile Act by adding a new subsection, 15 U.S.C. 70b(k), which imposes special requirements for the country of origin labeling of socks that are included within subheadings 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, and 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003. For those socks, the country of origin marking must always be placed on the front of the package. If size information for the product also appears on the front of the package, the country of origin marking must be adjacent to the size information for the product. If no size information appears on the package or if the size information appears on the back of the package, the country of origin marking must still be placed on the front of the package. The information must be set forth in a manner that is clearly legible, conspicuous, and readily accessible to the consumer. In addition, the marking must be as indelible or permanent as the nature of the article or package will permit. For socks that are not fully enclosed in a package, but are banded together by a label or hangtag, the information must be placed on the front of the label or tag.

There is an exception to this requirement for socks included in a package that also contains other types of goods (for example, a baby outfit that includes socks as well as other items of clothing). However, such packages of multiple items must comply with other relevant subsections of the Textile Rules. *See, e.g.*, 16 CFR 303.28 (products contained in packages) and 303.29 (labeling of pairs or products containing two or more units).

List of Subjects in 16 CFR Part 303

Labeling, Textile fiber products identification, Trade Practices.

■ For the reasons set forth above, the Commission amends 16 CFR Part 303 as follows:

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

■ 1. The authority citation for Part 303 continues to read as follows:

Authority: 15 U.S.C. 70 *et seq.*

■ 2. Section 303.15 is amended by adding paragraph (d) to read as follows:

§ 303.15 Required label and method of affixing.

* * * * *

(d) Socks provided for in subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall be marked, as legibly, indelibly, and permanently as the nature of the article or package will permit, to disclose the English name of the country of origin. This disclosure shall appear on the front of the package, adjacent to the size designation of the product, and shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the ultimate consumer. *Provided, however,* any package that contains several different types of goods and includes socks classified under subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall not be subject to the requirements of this subsection.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–23883 Filed 12–9–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Federal Trade Commission is amending the premerger notification rules, which require the parties to certain mergers or acquisitions to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("DOJ") and to wait a specified period of time before consummating such transactions, pursuant to Section 7A of the Clayton Act ("the Act"). The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in Federal court to prevent consummation. If either agency determines during the waiting period that further inquiry is necessary, it can issue a Request for Additional Information and Documentary Materials ("second request"), which extends the waiting period for a specified period after all parties have complied with the request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies). The Commission is amending the Notification and Report Form and its Instructions ("the Form and Instructions") to relieve some of the burden when complying with Items 4(a) and (b). Currently, paper copies of annual reports, annual audit reports and regularly prepared balance sheets and copies of certain documents, such as 10Ks filed with the Securities and Exchange Commission ("SEC"), must be provided in response to these Items. The modification of paragraph 803.2(e) will allow filing persons to provide an operative Internet address linking directly to the documents required by Items 4(a) and (b) in lieu of providing paper copies. The Commission is also amending the rules to specify that an acquiring person's notification, and an acquired person's notification in certain types of transactions, shall expire after eighteen months if a second request to either person remains outstanding. In addition, the Commission is making technical corrections to certain rules and to the Form and Instructions to address minor oversights in the final rules promulgated in connection with the treatment of unincorporated entities.[1]

DATES: These final rules are effective January 11, 2006.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, or B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

On August 15, 2005, the Commission published a Notice of Proposed Rulemaking and Request for Public Comment.[2] The proposed rules would allow Internet links to be used for responses to Items 4(a) and (b) of the Notification and Report Form, and would provide an expiration date for premerger notification when a second request remains outstanding. The comment period closed on October 14, 2005. No public comments were received, and the Commission, with the concurrence of the Assistant Attorney General, therefore is adopting the proposed rules as final with minor changes for clarification. The unrelated technical corrections are minor in nature and are described in the sections below.

Part 801—Coverage Rules

Section 801. Definitions

Example 3 to Paragraph 801.1(b)(2) is amended to properly reflect the application of the control test for nonprofit corporations.

Paragraph 801.1(f)(1)(i), the definition of voting securities, is amended to reflect the changes to the control test for unincorporated entities in 801.1(b). The reference to unincorporated entities having individuals exercising similar functions to directors of a corporation should have been deleted to be consistent with the test for control of unincorporated entities.

Section 801.11 Annual Net Sales and Total Assets

Section 801.11 is amended by adding a reference to an acquisition of non-corporate interests in Paragraph (e). This will allow the exclusion of cash to be used in the acquisition of non-corporate interests and the value of any securities or assets of the acquired person already held by an acquiring person with no regularly prepared balance sheet. Paragraph (e) currently already accords this treatment to acquisitions of assets or voting securities.

Section 801.14 Aggregate Total Amount of Voting Securities and Assets

Section 801.14 is amended by the addition of new Paragraph (c) that corrects an inadvertent omission of a reference to non-corporate interests. For example, if an acquiring person is acquiring controlling interests in two unincorporated entities from the same acquired person, Section 801.14(c) will require that the value of the non-corporate interest in both entities be aggregated to determine the value of the transaction.

Part 803—Transmittal Rules

Section 803.2 Instructions Applicable to Notification and Report Form

In response to Items 4(a) and (b) of the Form, filing parties currently must provide paper copies of annual reports, annual audit reports and regularly prepared balance sheets, and copies of certain documents, such as 10K's, filed with the SEC. Many of these documents are routinely available via the Internet on company Web sites or other Web sites. Responses to these items may often be voluminous and can account for the bulk of documents submitted with the Form.

In view of the ease with which the antitrust agencies can access these documents via the Internet, the modification of paragraph 803.2(e) and Instructions to the Form will allow filing parties to provide an Internet address linking directly to the documents required by Items 4(a) and 4(b) in lieu of providing paper copies. Note that the Internet link must not require payment for access. Incorporating documents by reference to Internet Web pages only applies to Items 4(a) and 4(b) and will not be available for responding to other items on the Form.

It remains the filer's duty to ensure that the filing is accurate and complete, as attested by the filer's certification signature. Accordingly, Section 803.2 is amended to provide that if an Internet link submitted is, or becomes inoperative, or the document it is linked to is incomplete such that the documents required by Items 4(a) or 4(b) are not available for review by the FTC and DOJ, the filer shall make the document(s) available by referencing an operative Internet link(s) or provide paper copies of the relevant document(s) by 5 p.m. on the business day following any request by the FTC or the DOJ. Failure to provide requested documents by the close of the next business day will result in notice of a deficient filing under Section 803.10(c)(2). Given the ability to incorporate such documents by linking, the previous option to cite the date and place of filing if copies are not readily available is no longer necessary, and is

[1] 70 FR 11502 (March 8, 2005).

[2] 70 FR 47733 (August 15, 2005).

accordingly deleted from the Instructions.

Section 803.7 Expiration of Notification

The Commission and the DOJ have encountered instances where, after parties make premerger notification filings and after second requests are issued, the parties make no effort to comply with the second requests. Generally this occurs when the parties have decided not to go forward with the proposed acquisition. In nearly all of these instances, the parties have voluntarily withdrawn their premerger notification filings. The agency is then able to close its investigation, as there no longer is a transaction pending with a waiting period.

In some instances, however, the parties have refused to withdraw their notifications, even though they lack a present intention to undertake the acquisition. In such instances, the agency's investigation remains open indefinitely because the waiting period is suspended, and would only begin to run for the final 30 days if and when there were compliance with the second requests.

The information contained in the parties' notifications becomes stale with the passage of time. In order to conduct the meaningful review contemplated by the Act, the agencies require current information pertaining to the competitive implications of transactions. Indeed, since the rules' inception in 1978, Section 803.7 has provided that notification with respect to an acquisition shall expire one year following expiration of the waiting period. As the Statement of Basis and Purpose ("SBP") states, "If the acquisition is to be consummated after that time, the possibility of changed circumstances warrants a fresh review by the enforcement agencies." 43 FR 33450, 33512 (July 31, 1978). Fresh review of a proposed acquisition cannot be assured when the information contained in the parties' notification has become outdated.

Further, Section 803.21 requires that all additional information or documentary material sought via a second request (or partial submission accompanied by a Section 803.3 statement of reasons for noncompliance) "be supplied within a reasonable time." Although the SBP accompanying the promulgation of Section 803.21 states that the rule was "designed primarily to prevent an acquired person in a transaction subject to Section 801.30 from frustrating the acquisition[,]"[3] the wording of the rule does not limit its application to certain types of transactions or persons.

While Section 803.21 requires compliance with all second requests "within a reasonable time[,]" it does not define "a reasonable time" and does not expressly provide the consequences for noncompliance. The Commission believes however, that there would come a point when the agency would have sound legal basis under Section 803.21 for disregarding, rejecting or deeming withdrawn or expired a notification where the party had failed to comply with a second request.

The Commission believes that it is preferable and would improve the certainty of the premerger notification process to clearly identify the specific time at which an acquiring person's notification (or an acquired person's notification in a non-Section 801.30 transaction) will expire if a second request remains outstanding to that person. Such date will be 18 months from the date of the initial notification (which typically would be approximately 17 months from the issuance of the second request). The Commission is not aware of any second request compliance ever having taken that long. Even in instances where the parties may have reason to delay their second request response for some period of time,[4] eighteen months should provide them ample time. Beyond that time, the Commission believes that a more up-to-date notification should be provided, triggering a new waiting period.

This 18-month requirement is contained in Section 803.7, entitled "Expiration of Notification." Section 803.7 now has two subsections: (a) addressing expiration of notification when the waiting period has expired, and (b) addressing expiration of notification due to failure to comply with a second request.

The Commission is modifying Section 803.7 rather than Section 803.21 because the "stale filings" situations that the agencies have encountered are separate and distinct from the problem, addressed by the "reasonable time" requirement of Section 803.21, where an acquired person in a Section 801.30 transaction is trying to frustrate an acquisition. Indeed, the new rule excludes acquired persons in Section 801.30 transactions so as not to recreate the problem that Section 803.21 was designed to address. The new rule also fits well within the caption of Section 803.7, because it deals with expiration of notification.

This amendment applies to transactions with notification pending with the agencies on the effective date of this final rulemaking. Thus, for example, if there are any pending transactions in which the acquiring person (or the acquired person in a non-Section 801.30 transaction) has failed to comply with a second request within 18 months of that person's notification, that notification will expire upon adoption of the rule.

Appendix: Premerger Notification and Report Form

The Commission is also amending the Form and its Instructions to correct inadvertently omitted references to non-corporate interests and to allow the incorporation by reference to an Internet link in Items 4(a) and (b).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the amendments on small businesses, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, the 2000 amendments to the Act were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less.[5] Further, none of the rule amendments expand the coverage

[3] 43 FR 33450, 33516 (July 31, 1978). The SBP goes on to state that absent Section 803.21, "an uncooperative acquired person could delay the expiration of the waiting period indefinitely by not responding" to a second request. Section 801.30 transactions are essentially non-consensual transactions, including tender offers, purchases from third parties, and open market purchases. While the Act addresses this problem in the context of tender offers by providing that a second request to an acquired person in a tender offer does not extend the waiting period, the problem would exist for other types of non-consensual, Section 801.30 transactions without Section 803.21. "Rather than extend [tender offer] treatment to all other Section 801.30 transactions, the Commission opted to impose a general obligation on all recipients to respond within a reasonable time." *Id.*

[4] For example, the transaction may be subject to approval by a regulatory agency, which might take longer than HSR review. In that situation, the parties may not want their notification to expire before the expected regulatory agency approval is received. In such an extreme instance, the parties could also help themselves by delaying making their HSR filings to coincide more closely with the regulatory agency approval.

[5] That figure is now $53.1 million, adjusted for the change in the Gross Domestic Product, and will be adjusted annually.

of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–3518, requires agencies to submit "collections of information" to the Office of Management and Budget ("OMB") and to obtain clearance before instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The information collection requirements in the HSR rules and Form have been reviewed and approved by OMB under OMB Control No. 3084–0005. The current clearance expires on May 31, 2007.

The Commission's revisions to the Form and Rules do not "substantive[ly] or material[ly] modify" the existing terms of the currently approved collection of information (OMB Control Number 3084–0005) to necessitate OMB's further review and approval. See 44 U.S.C. 3507(h)(3); 5 CFR 1320.5(g). It is highly unlikely that a Notification that expires under the rule change would need to be re-filed by the parties because the rule changes are intended to apply to situations in which the parties have abandoned the transaction.

List of Subjects in 16 CFR Parts 801 and 803

Antitrust.

■ For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR parts 801 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by revising example 3 to paragraph (b)(2) and by revising paragraph (f)(1)(i) to read as follows:

§ 801.1 Definitions.

* * * * *

(b) *Control* * * *

(2) * * *

Examples. * * *

3. "A" is a nonprofit charitable foundation that has formed a partnership joint venture with "B," a nonprofit university, to establish C, a nonprofit hospital corporation that does not issue voting securities. Pursuant to its charter "A" and "B" are each entitled to appoint three of C's six directors. "A" and "B" would each be deemed to control C, pursuant to § 801.1(b)(2) because each is deemed to have the contractual power presently to designate 50 percent or more of the directors of a not-for-profit corporation.

* * * * *

(f) * * *

(1) * * *

(i) *Voting securities.* The term voting securities means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer, or of an entity included within the same person as the issuer.

* * * * *

■ 3. Amend § 801.11 by revising paragraph (e)(1)(ii) to read as follows:

§ 801.11 Annual net sales and total assets.

* * * * *

(e) * * *

(1) * * *

(ii) Less all cash that will be used by the acquiring person as consideration in an acquisition of assets from, or in an acquisition of voting securities issued by, or in an acquisition of non-corporate interests of, that acquired person (or an entity within that acquired person) and less all cash that will be used for expenses incidental to the acquisition, and less all securities of the acquired person (or an entity within that acquired person); and

* * * * *

■ 4. Amend § 801.14 by adding paragraph (c) to read as follows:

§ 801.14 Aggregate total amount of voting securities and assets.

* * * * *

(c) The value of all non-corporate interests of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(c).

PART 803—TRANSMITTAL RULES

■ 5. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 6. Amend § 803.2 by revising paragraph (e) to read as follows:

§ 803.2 Instructions applicable to Notification and Report Form.

* * * * *

(e) A person filing notification may incorporate by reference:

(1) To a previous filing, only documentary materials required to be filed in response to items 4(a) and 4(b) of the Notification and Report Form, which were previously filed by the same person and which are the most recent versions available; except that when the same parties file for a higher threshold no more than 90 days after having made filings with respect to a lower threshold, each party may incorporate by reference in the subsequent filing any documents or information in its earlier filing provided that the documents and information are the most recent available;

(2) To an Internet address directly linking to the document, only documents required to be filed in response to item 4(a) and in response to item 4(b) of the Notification and Report Form. If an Internet address is inoperative or becomes inoperative during the waiting period, or the document that is linked to it is incomplete, or the link requires payment to access the document, upon notification by the Commission or Assistant Attorney General, the parties must make these documents available to the agencies by either referencing an operative Internet address or by providing paper copies to the agencies as provided in § 803.10(c)(1) by 5 p.m. on the next regular business day. Failure to make the documents available, by the Internet or by providing paper copies, by 5 p.m. on the next regular business day, will result in notice of a deficient filing pursuant to § 803.10(c)(2).

■ 7. Revise § 803.7 to read as follows:

§ 803.7 Expiration of notification.

(a) *One year after waiting period expired.* Notification with respect to an acquisition shall expire 1 year following the expiration of the waiting period. If the acquiring person's holdings do not, within such time period, meet or exceed the notification threshold with respect to which the notification was filed, the requirements of the act must thereafter be observed with respect to any notification threshold not met or exceeded.

Example: "A" files notification that in excess of $100 million (as adjusted) of the voting securities of corporation B are to be acquired. One year after the expiration of the waiting period, "A" has acquired less than $100 million (as adjusted) of B's voting securities. Although § 802.21 will permit "A" to purchase any amount of B's voting securities short of $100 million (as adjusted) within 5 years from the expiration of the waiting period, A's holdings may not meet or exceed the $100 million (as adjusted) notification threshold without "A" and "B" again filing notification and observing a waiting period.

(b) *Upon failure to comply with request for additional information.* An acquiring person's notification and, in the case of an acquisition to which § 801.30 does not apply, an acquired

person's notification, shall expire eighteen months following the date of receipt of such person's notification if a request for additional information or documentary material remains outstanding to such person (or entities included therein, officers, directors, partners, agents or employees thereof), without a certification as required by § 803.6(b), on such date. If either person's notification expires pursuant to this paragraph, both parties must file a new notification in order to carry out the transaction.

Example: A files notification on January 15 of Year 1 to acquire voting securities of B. On February 15 of Year 1, prior to expiration of the waiting period, requests for additional information or documentary material are issued to A and B. Before A supplies the information and documentary material requested, business conditions change, and A and B decide not to go forward with the transaction. A does not withdraw its filing and takes the position that it will comply with the request for additional information and documentary material if and when the proposed transaction is ever revived. A's notification expires July 15 of Year 2, eighteen months following the date of receipt of its notification. If A and B wish to revive their transaction, both parties must file a new notification and observe the waiting period in order to carry out the transaction.

■ 8. Revise pages III and IV of the Instructions, and pages 2 and 3 of the Notification and Report Form For Certain Mergers and Acquisitions, in the Appendix to part 803 to read as follows:

Appendix to Part 803

Item 1(d)-Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(e)-Put an X in the appropriate box to indicate if this Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) of the Form.

Item 1(f)-If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets, voting securities or non-corporate interests of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interest held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).

Item 1(g)-Print or type the name and title, firm name, address, telephone number, fax number and e-mail address of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 1(h)-Foreign filing persons print or type the name and title, firm name, address, telephone number, fax number and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

ITEM 2

Item 2(a)-Give the names of all ultimate parent entities of acquiring and acquired person which are parties to the acquisition whether or not they are required to file notification.

Item 2(b)-Put an X in all the boxes that apply to this acquisition.

Item 2(c)-*Acquiring persons* put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1(h)): $50 million (as adjusted), $100 million (as adjusted), $500 million (as adjusted), 25% (if value of voting securities to be held is greater than $1 billion, as adjusted), or 50%. The notification threshold selected should be based on voting securities only that will be held as a result of the acquisition.

Item 2(d)-*Assets and voting securities held as a result of the acquisition* (to be completed by both acquiring and acquired persons). State:

Item 2(d)(i)-the value of voting securities;

Item 2(d)(ii)-the percentage of voting securities;

Item 2(d)(iii)-the value of assets;

Item 2(d)(iv)-the value of non-corporate interests;

Item 2(d)(v)-the aggregate total amount of voting securities, assets and non-corporate interests of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

Item 2(e)-Acquiring persons must provide the name(s) of the person(s) who performed any fair market valuation used to determine the aggregate total value of the transaction reported in Item 2(d)(v).

ITEM 3

Item 3(a)-*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification. Indicate for each party whether assets or voting securities (or both) are to be acquired. Also indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.

If the voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons involved in tender offers should describe the terms of the offer.

Item 3(b)(i)-*Assets to be acquired.* This Item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction, giving dollar values thereof.

Give the total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

Item 3(b)(ii)-*Assets held by acquiring person.* (To be completed by acquiring persons). If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 3(b)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 3(b)(iii) –*Assets held by unincorporated entities.* This item is to be completed only to the extent that the transaction is an acquisition of non-corporate interests. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction. For examples of general classes of assets refer to Item 3(b)(i).

Item 3(c)-*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition: (If, as a result of the acquisition, the acquiring person will hold 100 percent of the voting securities of the acquired issuer or if the acquisition is a merger or consolidation (see § 801.2(d)), the parties may so state and provide the total dollar value of the transaction instead of responding to Items 3(c)(i)-3(c)(vi).

Item 3(c)(i)-List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

Item 3(c)(ii)-Total number of shares of each class of securities listed which will be outstanding after the acquisition has been completed;

Item 3(c)(iii)-Total number of shares of each class of securities listed which will be acquired in this acquisition. If there is more than

one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(iv)-Identity of each person acquiring any securities of any class listed. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(v)-Dollar value of securities of each class listed to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made);

Item 3(c)(vi)-Total number of each class of securities listed which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(d)-Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (Do not attach these documents to the Answer Sheets.)

ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

Item 4(a)-all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition); the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed; if the acquisition is a tender offer, Schedule TO. Alternatively, the person filing notification may incorporate a document by reference to an internet address directly linking to the document (see §803.2(e)(2));

NOTE: In response to Item 4(a), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

Item 4(b)-the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recently regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person. Alternatively, the person filing notification may incorporate a document by reference to an internet address directly linking to the document (see §803.2(e)(2));

Item 4(c)-all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

ITEMS 5 through 8

NOTE: For Items 5 through 8, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be sold, in the case of an acquisition of non-corporate interests, to the unincorporated entity being acquired, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. A person filing as both acquiring and acquired may be required to provide a separate response to these items in each capacity so that it can properly limit its response as an acquired person. (See § 803.2(b) and (c).)

Items 5(a)-5(c): These items request information regarding dollar revenues and lines of commerce at three NAICS levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must also be submitted at the 7-digit product class level and 10-digit product code level (NAICS-based codes). Where certain published NAICS industry codes contain only 5 digits, the filing person should add a zero (0) after the fifth (5th) digit.

NOTE: See "References" listed in the General Instructions to the Form. Refer to the *2002 NAICS Manual* for the 6-digit industry codes and the *2002 Numerical List of Manufactured and Mineral Products (2002 Numerical List)* for the 7-digit product classes and 10-digit product codes. Report revenues for the 7-digit NAICS product classes and 10-digit NAICS product codes using the codes in the columns labeled "Product code" in the *2002 Numerical List.*

Nondepository credit intermediation (NAICS Industry Group Code 5222); securities, commodity contracts, and other financial investments (NAICS Subsector 523); funds, trusts, and other financial vehicles (NAICS Subsector 525); real estate (NAICS Subsector 531); lessors of nonfinancial intangible assets, except copyright works (NAICS Subsector 533); and management of companies and enterprises (NAICS Subsector 551) should identify or explain the revenues reported (e.g. dollar sales receipts).

Persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 2002). For example, if the person filing notification acquired an entity in 1998, it must include that entity's 2002 revenues in items 5(a) and 5(b)(i). It must also include that entity's most recent year's revenues in Item 5(b)(iii) and/or Item 5(c).

Item 5(a)-*Dollar revenues by industry.* Provide aggregate 6-digit NAICS industry data for 2002.

Item 5(b)(i)-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 2002 for each 10-digit NAICS product of the person in NAICS Sectors 31-33 (manufacturing industries).

NOTE: Where the *2002 Numerical List* denotes footnote 1 at the end of a specific Subsector, refer to Appendices A, and then B for

NAME OF PERSON FILING NOTIFICATION	DATE

1(e) PUT AN X IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF ENTITY FILING NOTIFICATION *(if other than ultimate parent entity)*

☐ NA ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4. ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME OF ENTITY FILING NOTIFICATION	ADDRESS

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

1(g) IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (See § 803.20(b)(2)(iii))

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

2(b) THIS ACQUISITION IS *(put an X in all the boxes that apply)*

☐ an acquisition of assets
☐ a merger (see § 801.2)
☐ an acquisition subject to § 801.2(e)
☐ a formation of a joint venture or other corporation or unincorporated entity (see § 801.40 or § 801.50)
☐ an acquisition subject to § 801.30 (*specify type*)
☐ other (*specify*) _____
☐ a consolidation (see § 801.2)
☐ an acquisition of voting securities
☐ a secondary acquisition
☐ an acquisition subject to § 801.31
☐ acquisition of non-corporate interests

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED *(acquiring person only in an acquisition of voting securities)*

☐ $50 million (as adjusted) ☐ $100 million (as adjusted) ☐ $500 million (as adjusted) ☐ 25% (see Instructions) (as adjusted) ☐ 50%

2(d)(i) VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(ii) PERCENTAGE OF VOTING SECURITIES	(iii) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION	(iv) VALUE OF NONCORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION	(v) AGGREGATE TOTAL VALUE
$	%	$	$	$

NAME OF PERSON FILING NOTIFICATION	DATE

2(e) If aggregate total value in 2(d)(v) is based in whole or in part on a fair market valuation pursuant to § 801.10(c)(3), identify the person or persons responsible for making the valuation *(acquiring persons only)*.

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

FTC FORM C4 (rev. 11/29/05)

[FR Doc. 05–23884 Filed 12–9–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

17 CFR Part 420

Large Position Reporting

CFR Correction

In Title 17 of the Code of Federal Regulations, part 240 to end, revised as of April 1, 2005, on page 1015, § 420.3 is corrected by revising paragraphs (c)(1), (2), and (3) to read as follows:

§ 420.3 Reporting.

* * * * *

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position in the order specified, as follows:

(i) Net trading position, and each of the following items that together comprise the net trading position:

(A) Cash/immediate net settled positions,

(B) Net when-issued positions for to-be-issued and reopened issues,

(C) Net forward settling positions, including next-day settling,

(D) Net positions in futures contracts requiring delivery of the specific security, and

(E) Net holdings of STRIPS principal components of the specific security;

(ii) Gross financing position and each of the following items that comprise the gross financing position:

(A) Securities received through reverse repurchase agreements by maturity classification:

(1) Overnight and open, and

(2) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities received through bonds borrowed, and as collateral for financial derivatives and other financial transactions.

(iii) Net fails position; and

(iv) Total reportable position.

(2) The large position report must include the following two additional memorandum items:

(i) The total gross par amounts of securities delivered through:

(A) Repurchase agreements by maturity classification:

(1) Overnight and open, and

(2) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities loaned, and as collateral for financial derivatives and other securities transactions.

(ii) The gross par amount of "fails to deliver" in the security. This total must also be included in Net Fails Position, Line 3.

(3) An illustration of a sample report is contained in Appendix B.

Each of the net trading position components shall be netted and reported as a positive number (long position), a negative number (short position), which should be shown in parenthesis, or zero (flat position). The total net trading position shall also be reported as the applicable positive or negative number (or zero). Each of the components of the gross financing position shall be reported. The total gross financing position, which is the sum of the gross financing position components, shall also be reported. The net fails position should be reported as a single entry. If the amount of the net fails position is zero or less, report zero. The total reportable position, which is the sum of the net trading position, gross financing position, and net fails position, must be reported. Each component of Memorandum 1 shall be reported. The total of Memorandum 1, which is the sum of its components, shall also be reported. Memorandum 2, which is the gross par amount of fails to deliver, shall also be reported. All of these positions should be reported in the order specified above. All position amounts should be reported on a trade date basis and at par in millions of dollars.

* * * * *

[FR Doc. 05–55520 Filed 12–9–05; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[0790–ZA05]

DoD Freedom of Information Act (FOIA) Program (DoDD 5400.7)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule conforms to the requirements of the Electronic Freedom of Information Act Amendments of 1996. It promotes public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with DoD responsibility to protect national security and other DoD interests as provided by applicable law. It also allows a requester to obtain Agency records from the Department of Defense that are available through other public information services without invoking the FOIA.

EFFECTIVE DATE: This rule is effective October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Maier, 703–695–6428.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This regulatory action is not a significant regulatory action, as defined by Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any addition reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

List of Subjects in 32 CFR Part 285

Freedom of information.

■ Accordingly, 32 CFR part 285 is revised to read as follows:

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec.
285.1 Purpose.
285.2 Applicability and scope.
285.3 Policy.
285.4 Responsibilities.
285.5 Information requirements.

Authority: 5 U.S.C. 552.

§ 285.1 Purpose.

This part:

(a) Updates policies and responsibilities for implementing the DoD Freedom of Information Act (FOIA) Program under 5 U.S.C. 552.

(b) Continues to authorize DoD 5400.7–R[1] to implement the FOIA Program.

(c) Continues to delegate authorities and responsibilities for the effective administration of the FOIA program.

§ 285.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) National Security Agency/Central Security Service records are subject to this part unless the records are exempt under section 6 of the Public Law 86–36 (1959), codified at section 402 note of title 50, United States Code (U.S.C.). The records of the Defense Intelligence Agency, National Reconnaissance Office, and the National Geospatial-Intelligence Agency are also subject to this part unless the records are exempt under 10 U.S.C. 424, 50 U.S.C. 403–5e, 10 U.S.C. 455, or other applicable law.

[1] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

§ 285.3 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with DoD responsibility to protect national security and other sensitive DoD information as provided by applicable law.

(b) Allow a requester to obtain Agency records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by DoD 5400.7–R, Agency records requested by a member of the public who explicitly or implicitly cites the FOIA.

(d) Answer promptly all other requests for Agency information and records under established procedures and practices.

(e) Release Agency records to the public unless those records are exempt from disclosure as outlined in 5 U.S.C. 552.

(f) Process requests by individuals for access to records about themselves contained in a Privacy Act system of records under procedures set forth in DoD 5400.11–R[2] and procedures outlined in this part, as amplified by DoD 5400.7–R.

§ 285.4 Responsibilities.

(a) The Director, Administration and Management (DA&M) shall:

(1) Serve as the appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the DoD Field Activities, and select Defense Agencies as listed in DoD 5400.7–R. The DA&M may delegate this responsibility to an appropriate member of the DA&M or Washington Headquarters (WHS) staff.

(2) Prepare and maintain a DoD issuance and other discretionary information to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(b) The Director, Washington Headquarters Services, under the DA&M, shall:

(1) Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

(2) Administer the FOIA Program, inclusive of training, for the OSD, the Chairman of the Joint Chiefs of Staff and, as an exception to DoD Directive 5100.3[3], the Combatant Commands.

(c) The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this part; ensure affected legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels which may be of significant public, media, or Congressional interest, or of interest to senior DoD officials; and establish procedures to centralize processing pursuant to litigation.

(d) The Under Secretary of Defense for Intelligence shall establish uniform procedures regarding the declassification of national security information made pursuant to requests invoking the FOIA.

(e) The Heads of the DoD Components shall:

(1) Internally administer the DoD FOIA Program and publish any instructions necessary for the internal administration of this part within a DoD Component that are not prescribed by this part or by other issuances of the DA&M in the **Federal Register**.

(2) Ensure respective chains of command, affected legal advisors, public affairs officers and legislative affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, which may be of significant public, media, or Congressional interest, or of interest to senior DoD officials.

(3) Conduct training on the provisions of this part and 5 U.S.C. 552 and DoD 5400.7–R for officials and employees who implement the FOIA.

(4) Submit the Annual Report prescribed in Chapter 7 of DoD 5400.7–R.

(5) Make the records specified in 5 U.S.C. 552(a)(2) unless such records are published and copies are offered for sale, available for public inspection and copying in an appropriate facility or facilities, according to rules published in the **Federal Register**.

(6) Maintain and make current indices of all 5 U.S.C. 552(a)(2) records available for public inspection and copying.

§ 285.5 Information requirements.

The reporting requirements in Chapter 7 of DoD 5400.7–R have been assigned Report Control Symbol DD–DA&M(A)1365.

[2] See footnote 1 to § 285.1(b).

[3] See footnote 1 to § 285.1(b).

Dated: December 6, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 05–23880 Filed 12–9–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD 11–05–035]

Drawbridge Operation Regulations; Sacramento River, Isleton, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the CA–160 Highway Drawbridge across the Sacramento River, mile 18.7, at Isleton, CA. This deviation allows Caltrans to perform single leaf operation of the drawbridge with a 12-hour advance notification to the Rio Vista drawbridge. The temporary deviation is necessary to repair essential operating machinery.

DATES: This deviation is effective from 7 a.m. January 9, 2006 through 6 p.m. on February 17, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpw), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437–3515. Commander (dpw), Eleventh Coast Guard District, maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested to temporarily change the operating procedures for the CA–160 Highway Drawbridge, mile 18.7, Sacramento River, at Isleton, CA, to allow single leaf operation, with a 12-hour advance notice to the Rio Vista Drawbridge, from 7 a.m. January 9, 2006 through 6 p.m. on February 17, 2006, to repair essential operating machinery. The drawbridge provides unlimited vertical clearance in the full open-to-navigation position, and 15 ft. vertical clearance above Mean High Water when closed. As required by 33 CFR 117.189, the drawbridge opens on signal from approaching vessels from 6 a.m. to 10 p.m. May 1 through October 31 and from 9 a.m. to 5 p.m. November 1 through April 30. At all other times the draw shall open if at least 4-hours advance notice is given.

Numerous waterway users were consulted prior to the determination. It was determined that potential navigational impacts will be reduced if the repairs are performed November through March when there is less recreational boating traffic. The Coast Guard approved the deviation effective from 7 a.m. January 9, 2006 through 6 p.m. on February 17, 2006.

During these times, single leaf operation of the drawspan will be permitted, with a 12-hour advance notice.

The drawspan shall resume normal operation at the conclusion of the essential repair work. Mariners should contact the Rio Vista Drawbridge on VHF–FM Channel 16 or by telephone at (707) 374–2134, in advance, to determine conditions at the bridge and to make passing arrangements.

In the event of an emergency, the bridge owner would require 15-hour advance notice to open both leaves of the bridge. Vessels that can safely pass through the closed drawbridge may continue to do so at any time.

In accordance with 33 CFR 117.35(c), this work shall be performed with all due speed to return the drawbridge to normal operation as soon as possible. This deviation from the operating regulations is approved under the provisions of 33 CFR 117.35.

Dated: November 22, 2005.

Kevin J. Eldridge,

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

[FR Doc. 05–23889 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2004–TX–0001; FRL–8007–5]

Approval and Promulgation of Implementation Plans; Texas; Memoranda of Understanding Between Texas Department of Transportation and the Texas Commission on Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Texas Commission on Environmental Quality (TCEQ) on August 15, 2002. This SIP revision approves the adoption by reference of a Memorandum of Understanding (MOU) between the TCEQ and the Texas Department of Transportation (TxDOT). The MOU is adopted into the Texas rule at 30 TAC, Chapter 7, Section 119 (Section 7.119). This MOU concerns the coordination of environmental reviews associated with transportation projects. The adoption by reference of this MOU will streamline coordination between the TCEQ and TxDOT by consolidating separate MOUs currently in the air and water regulations. This action is important to satisfy the need of the Commission and TxDOT to coordinate regulatory programs and to ensure that overlapping areas of responsibility are clarified. This approval will make the MOU revised regulations Federally enforceable.

DATES: This rule is effective on February 10, 2006 without further notice, unless EPA receives adverse comment by January 11, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2004–TX–0001, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only

between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2004–TX–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in the official file, which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, State/Oversight Section (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7247; fax number 214–665–7263; e-mail address *patterson.alima@epa.gov*.

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

Outline

I. What Action Is EPA Taking?

We are granting direct final approval to a SIP revision submitted by the State of Texas which adopts by reference a MOU between the TCEQ [1] and the TxDOT. The MOU was adopted into the Texas Rule at 30 TAC, Chapter 7, Section 119 (Section 7.119) on April 10, 2002. The provisions of the new Section 7.119 of the MOU as adopted became effective on May 2, 2002, (See 27 Texas Register 3560). The approval of this new Section 7.119 of the State regulation streamlines coordination between the Commission and TxDOT by consolidating separate MOUs currently in the State air regulations (30 TAC Section 114.250).

EPA is taking direct final action to approve the incorporation of this MOU into the Texas SIP.

[1] At the time of the adoption of the MOU, the TCEQ name was the Texas Natural Resource Conservation Commission (TNRCC), however, on September 1, 2002, the TNRCC agency name was changed to the TCEQ. For further legislative history on the name-change, please refer to the Act of June 15, 2001, 77th Leg. R.S. Chapter 965, Section 18.01, 2001 Tex. Gen. Laws 1985. The TCEQ may perform any act for which it was authorized as either the TNRCC or the Texas Water Commission (TWC). Therefore, reference to TCEQ are references to TNRCC and to its successor, TECQ.

II. Why Was This SIP Revision Submitted?

The State of Texas adopted the MOU and a new Section 7.119 and submitted the revision to EPA for approval into the SIP on August 22, 2002. The rule and MOU streamlines coordination between the TCEQ and TxDOT by consolidating separate MOUs currently in the air regulations (30 TAC Section 114.250) and in water regulations (30 TAC Section 305.521). The rule adopts by reference a TxDOT MOU by consolidating these separate MOUs. The TCEQ repealed 30 TAC Section 114.250 which previously contained the MOU in the air regulations. Section 114.250 is not part of the SIP so no action on its repeal is necessary by EPA.

The EPA was given the opportunity during the State's public participation process to comment on the proposed rule and supported the repeal of Section 114.250 and Section 305.521 in favor of the new Section 7.119.

The provisions of the MOU regarding the processing of documents are in compliance with the requirements of the National Environmental Policy Act. The MOU establishes periods for review of documents and ensured coordination between the agencies on road projects that could have environmental impacts. The proposed rule does not represent a change from current practices, but is intended to streamline coordination between the two agencies by consolidating separate MOU provisions currently in the air regulations and the water regulations. There are no fiscal implications anticipated to State or Local units of government. Section 7.119 will be re-evaluated each year of the first five years of the agreement between TCEQ and TxDOT. The proposed rule and the MOU satisfies the need of the commission and TxDOT to coordinate regulatory programs and to ensure that overlapping areas of responsibility are clarified. The rule/MOU places no requirements on the regulated community.

Under 40 CFR Part 51.102, the State is required to provide public notification and conduct a public hearing prior to adoption and submission to EPA any revision under 40 CFR Part 51.104(a). The State provided for public participation in accordance with 40 CFR 51.102 and held a public hearing on November 27, 2001. The State provided in its SIP submittal a transcript of its public hearing, notification for the public hearing, copies of comment received and their evaluation of comments. The MOU between TECQ and TxDOT was

adopted on April 10, 2002 and became effective on May 2, 2002.

This rule incorporates an MOU into the SIP. The MOU provides for a streamlined coordination of environmental reviews associated with transportation projects between TxDOT and TCEQ. As such, this rule is procedural in nature and meets and complies with the requirements of section 110(l) of the Clean Air Act.

III. What Is the Effect of This Action?

EPA intends to take direct final action approving this SIP revision to incorporate by reference the MOU between TCEQ and TxDOT. The MOU will address transportation planning issues required by TxDOT and the TCEQ, specifically including processing of documents required by the National Environmental Policy Act. The MOU establishes periods for review of documents and ensures coordination between the agencies on road projects that could have environmental impacts.

IV. Final Action

EPA is approving by the direct final rulemaking the revision to the Texas SIP adopting by reference an MOU between the TCEQ and the TxDOT. The MOU is adopted into the Texas rule at 30 TAC Section 7.119 and this rule is being approved into the SIP. The approval of this new section of the State regulation streamlines coordination between the TCEQ and TxDOT. We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act. Therefore, we are approving the request of TCEQ to revise the SIP and incorporate by reference the MOU between the Commission and TxDOT.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on February 10, 2006 without further notice unless we receive adverse comment by January 11, 2006. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 February 10, 2006. 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, Intergovernmental Relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: November 18, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures" is amended by adding one new entry to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comments
*	*	*	*	*
Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission.	Statewide	08/15/2002	12/12/2005 [Insert *FR* page number where document begins].	

[FR Doc. 05–23915 Filed 12–9–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 400 to 599, revised as of October 1, 2005, on page 384, in § 571.111, add S9.4 to read as follows:

§ 571.111 Standard No. 111; Rearview mirrors.

* * * * *

S9.4(a) Each image required by S9.3(a)(1) to be visible at the driver's eye location shall be separated from the edge of the effective mirror surface of the mirror providing that image by a distance of not less than 3 minutes of arc.

(b) The image required by S9.3(a)(1) of cylinder P shall meet the following requirements:

(1) The angular size of the shortest dimension of that cylinder's image shall be not less than 3 minutes of arc; and

(2) The angular size of the longest dimension of that cylinder's image shall be not less than 9 minutes of arc.

* * * * *

[FR Doc. 05–55519 Filed 12–9–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050314071–5230–02; I.D. 030105E]

RIN 0648–AS16

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 6

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule requires an owner or operator of a trawler that harvests or possesses penaeid shrimp (brown, pink, or white shrimp) in or from the exclusive economic zone (EEZ) off the southern Atlantic states to obtain a commercial vessel permit for South Atlantic penaeid shrimp; requires an owner or operator of a vessel in the South Atlantic rock shrimp or penaeid shrimp fishery to submit catch and effort reports and to carry an observer on selected trips; and requires bycatch reduction devices (BRDs) in nets in the rock shrimp fishery. In addition, this final rule removes provisions of the regulations applicable to other fisheries off the southern Atlantic states that are no longer applicable and makes minor corrections. Amendment 6 also establishes stock status determination criteria for South Atlantic penaeid shrimp; revises the specifications of maximum sustainable yield (MSY) and optimum yield (OY) for South Atlantic rock shrimp; revises the stock status determination criteria for South Atlantic rock shrimp; revises the bycatch reduction criterion for the certification of BRDs; and transfers from the Council to the Regional Administrator, Southeast Region, NMFS (RA), responsibilities for the specification of the protocol for testing BRDs. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects of this rule are to provide additional information for, and improve the effective management of, the shrimp fisheries off the southern Atlantic states and to correct and clarify the regulations applicable to other southern Atlantic fisheries.

DATES: This final rule is effective January 11, 2006, except for § 622.4(a)(2)(xiii) which is effective April 11, 2006.

ADDRESSES: Copies of Final Regulatory Flexibility Analysis (FRFA) and Regulatory Impact Review (RIR) are available from NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements

contained in this final rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, OMB, by e-mail at *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–551–5796; fax: 727–824–5308; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The shrimp fishery in the EEZ off the South Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendment 6 on May 26, 2005. NMFS published the proposed rule to implement Amendment 6 and requested public comment on the proposed rule through July 11, 2005 (70 FR 30666, May 27, 2005). The rationale for the measures in Amendment 6 is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received two letters during the respective comment periods on the amendment and the proposed rule. The letters contained comments on two issues. NMFS' responses to those comments are provided below.

Comment 1: The regulation to require a Federal vessel permit for vessels shrimping in or traveling through the South Atlantic EEZ is unnecessarily burdensome on an already stressed fishery. Existing state data collection programs are adequate.

Response: The information collected through existing Federal and state vessel registration or licensing programs is not comprehensive or specific to the identification of shrimp vessels fishing in the EEZ. Most shrimp fishing effort in the South Atlantic region occurs in state waters, and there is limited information regarding the effort expended in Federal waters. The Council concluded that a Federal vessel permit requirement for the penaeid shrimp fishery in the South Atlantic EEZ was necessary to accurately identify the universe of vessels that fish for shrimp in the EEZ.

Comment 2: To maintain a valid shrimp vessel permit, the vessel owner is required to carry a Federal observer, if selected. This is an unnecessary and obtrusive proposal.

Response: The Magnuson-Stevens Act requires Councils to include a standardized methodology to assess bycatch in each fishery. Data collected from at-sea observer programs are considered to be the most reliable method for estimating bycatch. Better information, collected through an observer program, would facilitate scientific assessments of annual fishing effort, catch, and bycatch. This information would, in turn, aid in the formulation of sound management measures for the shrimp fishery and those finfish fisheries that are impacted because of bycatch mortality resulting from the shrimp fishery.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 6 is necessary for the conservation and management of the South Atlantic shrimp fishery and that Amendment 6 is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared an FSEIS for Amendment 6; the FSEIS was filed with the Environmental Protection Agency on March 18, 2005; a notice of availability was published on March 25, 2005 (70 FR 15314). The FSEIS evaluates the environmental effects of a number of actions proposed to improve the conservation and management of shrimp stocks. The analysis indicates the preferred alternatives will benefit the quality of the human environment over the long term by simplifying the administrative process associated with approving new bycatch reduction devices, advancing understanding of bycatch and fishery participants, and providing reference points to use in evaluating stock status and fishery performance.

NMFS prepared a FRFA for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the analysis follows.

To satisfy the requirements of the Magnuson-Stevens Act, the Council has proposed eight actions to amend the Shrimp Fishery Management Plan of the South Atlantic Region. These actions are intended to improve the identification and quantification of bycatch from penaeid shrimp (brown, pink, or white shrimp) and rock shrimp trawls; improve the identification and quantification of the known universe of penaeid shrimp vessels; reduce the bycatch from rock shrimp trawls; promote the use of more effective BRDs by amending the BRD framework system; and establish status determination criteria, or proxies thereof, as necessary, for penaeid and rock shrimp stocks.

This final rule: (1) requires an owner or operator of a trawler that harvests or possesses penaeid shrimp in or from the EEZ off the southern Atlantic states to obtain a commercial vessel permit for South Atlantic penaeid shrimp; (2) requires an owner or operator of a vessel in the South Atlantic rock shrimp or penaeid shrimp fishery to submit catch and effort reports and to carry an observer on selected trips; and (3) requires BRDs in nets in the rock shrimp fishery. In addition, Amendment 6 establishes stock status determination criteria for South Atlantic penaeid shrimp; revises the specifications of maximum sustainable yield and optimum yield for South Atlantic rock shrimp; revises the stock status determination criteria for South Atlantic rock shrimp; revises the bycatch reduction criterion for the certification of BRDs; and transfers from the Council to the Regional Administrator, Southeast Region, NMFS (RA), responsibilities for the specification of the protocol for testing BRDs. In this final rule, NMFS also removes provisions of the regulations applicable to other fisheries off the southern Atlantic states that are no longer applicable and makes minor corrections. The intended effects of this rule are to provide additional information for, and otherwise improve the effective management of, the shrimp fisheries off the southern Atlantic states and to correct and clarify the regulations applicable to other southern Atlantic fisheries. The Magnuson-Stevens Act provides the legal basis for this rule.

NMFS received two letters during the public comment period on the proposed rule. The commenters alleged that the vessel permit requirement and the requirement to accommodate an observer aboard the vessel, if selected to do so, were unnecessary and burdensome. NMFS' responses state that the vessel permit is necessary to properly identify the universe of vessels participating in the fishery, and observer coverage is the most reliable method for estimating bycatch, for compliance with the Magnuson-Stevens Act requirement to establish a standardized methodology for assessing bycatch in the fishery. Therefore, no changes were made in the final rule as a result of these comments.

The measures in this final rule apply to the commercial harvesting sector active in the penaeid and rock shrimp

fisheries in the South Atlantic. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $3.5 million per year.

It is estimated that there were at least 2,129, 1,835, and 1,731 commercial entities harvesting shrimp in the South Atlantic during 2000, 2001, and 2002, respectively. The average annual gross revenue per vessel from all commercial fishing activities by these vessels for 2000–2002 is estimated to be $76,879, $67,706, and $66,853, respectively. The rock shrimp fishery is a sub-sector of the shrimp fishery. The number of active vessels in this sector was 182, 159, and 148 for 2000–2002, respectively. Since July 2003, a limited access rock shrimp endorsement has been required onboard a vessel to fish for or possess rock shrimp in the South Atlantic EEZ off Georgia and Florida. To date, 145 limited access endorsements have been issued. The average revenue per rock shrimp vessel from 2000–2002 is estimated to be $241,079, $239,861 and $192,502, respectively. The highest gross revenue observed for a single vessel in the shrimp fishery during 2000–2002, regardless of species focus, did not exceed $1.0 million. There are insufficient data regarding potential ownership affiliation between vessels to identify whether an individual entity controlled sufficient numbers of vessels to achieve large entity status. Therefore, it is assumed that each vessel represents a separate business entity and, based on the revenue profiles provided above, all entities in the South Atlantic shrimp fishery are assumed to be small entities.

The actions to implement a Federal penaeid shrimp permit program, require logbook reporting, and require the use of BRDs on the rock shrimp vessels are expected to have direct impacts on the entities that participate in these fisheries. The requirement for a sample of vessels to carry observers is not expected to generate direct impacts on the affected entities because NMFS is covering all costs associated with this program. All the other actions are either administrative or establish fishery benchmark criteria that would not directly affect fishery participants.

The requirement for permits in the penaeid shrimp fishery is expected to affect 1,380 to 1,898 vessels. The lower bound assumes that only those commercial shrimp vessels that operate in state offshore and Federal waters in the South Atlantic would apply for the permit and is the average number of vessels estimated to operate in these waters per year during 2000–2002. The upper bound assumes that all commercial shrimp vessels that operate in the South Atlantic, regardless of whether they typically fish in inshore or offshore waters, would apply for the permit and is the average number of vessels estimated to operate per year during 2000–2002. It is expected that all rock shrimp vessels would apply for the penaeid shrimp permit, and the estimates include these vessels. The cost of the penaeid shrimp permit would be either $50 or $20, depending upon whether the permit is the only permit held by the vessel, therefore costing $50, or whether it represents an additional permit, thus costing only $20. Since all vessels operating in the rock shrimp fishery are currently already required to have a rock shrimp permit, the penaeid shrimp permit would cost only $20 for these vessels.

Under the final rule, a sample of vessels that are issued the Federal penaeid shrimp permit would be selected for reporting through a logbook program. The sample size has not been determined and, hence, it is unknown how many small entities would have to comply with this new reporting requirement. Data elements would include, but not necessarily be limited to: vessel name, vessel identifier, number of nets, type of net, size of net, type of bycatch reduction device, number of tows, length of tows (in hours), location of tow (either in terms of latitude and longitude or statistical area and depth) and an estimate of catch. The logbook would be completed on a daily basis. Completion of the logbook is estimated to take 10 minutes per daily form. Based on data from the Florida trip ticket program, the average east coast shrimp vessel averages 61.5 fishing days per year. At 10 minutes per day to complete the logbook, the average annual reporting burden per vessel would be 615 minutes, or 10.25 hours. Using the average wage of first line supervisors/managers in the fishing, forestry, and farming industries from the Bureau of Labor Statistics, $18.14, the average annual opportunity cost per vessel for logbook reporting would be approximately $185.94 ($18.14/hour X 10.25 hours). Completion of the form is not expected to adversely affect other trip or maintenance activities.

The action to require BRDs in the rock shrimp fishery is expected to affect the profitability of an estimated 43 vessels, or approximately 30 percent of this sub-sector of the shrimp fishery. The other vessels in this sub-sector are assumed to already utilize BRDs due to their concurrent participation in the penaeid shrimp fishery, which already requires the use of BRDs if the proportion of penaeid shrimp exceeds 1 percent. The use of BRDs is estimated to result in a maximum of 3 percent shrimp loss on rock shrimp trips. This amounts to a reduction of $1,382 in gross revenue per vessel, or 0.6 percent reduction in revenue per affected vessel in the rock shrimp fishery.

The determination of significant economic impact can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: Will the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All entities participating in the respective shrimp fisheries are considered small entities, so the issue of disproportionality does not arise. However, there is a high degree of diversity among the vessels in the shrimp fleet in terms of vessel length and variation in overall gross fishing income, vessel operating and fixed costs, and dependence on income from shrimp harvest are all related to vessel length. Nevertheless, as discussed below, the costs of the actions are not expected to be great enough to affect competitive advantage.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? The current profitability of vessels in the commercial shrimp fishery that are likely to be affected by the measures in this amendment is unknown. Existing studies on the shrimp fleet in the South Atlantic are dated and not reflective of the current conditions in this fishery. Imports have had a substantial negative effect on the profitability of vessels in the domestic shrimp industry since the 1990s. A study on the penaeid shrimp fishery off South Carolina during 1999 indicated that many vessels were operating on break-even levels of activity. This fishery was classified into three operational size categories based on differences in operating costs, profit margins and ability of the vessel owner to make input substitutions. Small vessels (less than 30 ft(9 m)) had an average annual profitability of $2,533, medium vessels $10,086, and large vessels $8,639. It is not known whether these data were representative of the shrimp fleet in the other South Atlantic states. Regardless, current profit margins are expected to be lower as a result of the decline in prices since 1999, and increases in fuel prices and other input costs.

The average annual revenue from all commercial fishing activities, for shrimp vessels operating in the South Atlantic

during 2000–2002 ranged from $70,749 for vessels that fished in either or both inshore and offshore waters to $81,362 for vessels that operated only in offshore waters. The annual cost of a permit would be only $50 if the vessel obtained a single permit, or $20 if the vessel possessed multiple permits and, thus, would represent a small additional operational cost. A time burden would also be imposed in order to complete the permit application form. This time burden is estimated to be 0.33 hours per application, with an opportunity cost of approximately $6. There will not, however, be any additional actual expenditures other than to cover postage. The burden associated with logbook reporting is similarly a time cost, estimated to have an opportunity cost of $185.94 per vessel, as discussed above, and is not expected to adversely affect operation or productivity of the vessel and, thus, not impose any direct financial costs.

The BRD requirement for the rock shrimp sector is expected to impact those vessels that do not currently utilize BRDs. As previously stated, it is estimated that the majority of vessels in this fishery currently have BRDs, but that an estimated 43 vessels will be affected by this action. The estimated cost of the BRD-induced shrimp loss is $1,382 in gross revenue per vessel, or a 0.6 percent reduction in revenue per affected vessel. Additionally, BRDs are estimated to cost $20-$100 each, or $80-$400 per vessel since most rock shrimp vessels pull four nets. Combining the revenue loss ($1,382), penaeid shrimp permit cost ($20 since the vessel would already have the rock shrimp permit), and assuming the maximum BRD cost ($400), these 43 rock shrimp vessels would be expected to incur $1,802 in reduced revenues or increased costs, an amount less than 1 percent of average annual revenues. It should be noted, however, that ex-vessel shrimp price reductions and fuel price increases since 2002 have substantially reduced the profitability of shrimp vessels, thereby increasing the potential net impact of the BRD requirements in this final rule.

This final rule requires any trawler fishing for or in possession of penaeid shrimp in or from Federal waters to possess a Federal penaeid shrimp permit and to provide the information specified on the permit application. Selected vessels would also have to complete logbook forms at the end of each trip. The information required for the permit application and logbook are standard information and data elements necessary for the routine operation of a fishing business and are not expected to impose any reporting or record keeping requirements that are especially difficult or burdensome. The permit application process, vessel marking requirements, and requirements for notification of vessel trips selected for observer coverage do not require any professional skills that vessel owners and operators do not already possess.

Three alternatives were considered to the final rule requirement to obtain a penaeid shrimp permit. The status quo alternative would not require a permit and, therefore, would eliminate all costs associated with the permit. This alternative, however, would not meet the Council's objective of allowing for the efficient and accurate identification of vessels in the shrimp fishery, and the indirect economic benefits from better data collection and management would not be realized. Two alternatives to the final rule would require shrimp trawlers to purchase a Federal penaeid shrimp permit, like the proposed action, but would allow exemptions for vessels in transit with properly stowed gear. These two alternatives, however, differ in the qualification requirements, one alternative granting a permit for anyone who applied, as would the final rule, while the other alternative would require documentation of a state permit. Neither of these alternatives would reduce the costs to those who operate in the South Atlantic fishery, but they would eliminate the additional permit cost for vessels that operate outside the region and wish only to transit or land shrimp in the South Atlantic. Both alternatives, however, would produce law enforcement loopholes that could lower compliance rates, thus jeopardizing the expected benefits of the final rule and would not meet the Council's objectives.

Three alternatives were considered to the logbook and observer requirements. The status quo alternative, not requiring a logbook, would not support the collection of necessary bycatch information and would not, therefore, meet the Council's objectives. A second alternative would adopt the Atlantic Coastal Cooperative Statistics Program. However, NMFS does not have the ability to fully implement the program at this time, particularly with respect to the desired level of observer coverage. Further, this program does not necessarily require the use of logbooks, and, thus, might not generate accurate effort information that is necessary to produce accurate estimates of bycatch, which would be contrary to the Council's objectives. As with the preferred action, the third alternative would require paper logbooks, but does not contemplate the eventual adoption of the Atlantic Coastal Cooperative Statistics Program, particularly with respect to the desired level of observer coverage, which is contrary to the Council's objectives. These alternatives were not selected because, while they would impose time costs on the fishery participants comparable to those of the final rule (and, thus, would not lessen the impact on the small business entities), they would not fully meet the Council's objectives. The final rule would provide a more systematic interim data collection approach until the more comprehensive Atlantic coast-wide bycatch program developed by the Atlantic Coastal Cooperative Statistics Program is funded and implemented.

Four alternatives were considered to the BRD requirement for rock shrimp vessels. The no action alternative would not provide any reduction in bycatch and would not, therefore, meet the Council's objectives. The remaining three alternatives would impose seasonal closures (fall, winter, or summer) to address the bycatch problem. Each of these alternatives would result in greater economic losses than the final rule, ranging from a $5,901 reduction in gross revenues per vessel per year for a winter closure to $42,363 for a summer closure, compared to an estimated maximum loss of $1,382 under the BRD requirement. The projected losses under the summer and fall closures would likely be sufficiently great to force some vessels to exit the industry. While seasonal closures would likely result in larger total bycatch reductions than the final rule, the final rule better meets the Council's objectives while minimizing the social and economic consequences. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all permit holders for the South Atlantic shrimp fishery.

No duplicative, overlapping or conflicting Federal rules were identified in the IRFA for this rule.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB. The

permit-related requirements have been approved under OMB control number 0648–0205; vessel identification requirements have been approved under OMB control number 0648–0358; and logbook requirements have been approved under OMB control number 0648–0016. The requirements for notification of vessel trips related to observers and the reporting requirements related to BRDs were previously approved under OMB control numbers 0648–0205. The public reporting burden for requirements for: (1) submission of applications for commercial vessel permits for the penaeid shrimp fishery; (2) identification of such permitted vessels, i.e., vessel marking requirements; (3) submission of logbooks by permitted vessels in the rock shrimp and penaeid shrimp fisheries; (4) notification of vessel trips in the rock shrimp and penaeid shrimp fisheries related to vessel observers; and (5) applications for testing proposed bycatch reduction devices, conducting such tests, and reporting the results of tests, as prescribed by the Bycatch Reduction Device Testing Protocol Manual are estimated to average 20 minutes per response for each permit application, 45 minutes for each vessel to be identified, 10 minutes for each logbook submission, 5 minutes for each notification of a vessel trip, and 186 hours per respondent for the requirements prescribed by the Bycatch Reduction Device Testing Protocol Manual. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 6, 2005.

James W. Balsiger,

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition of "Penaeid shrimp trawler" is revised and the definition of "Penaeid shrimp" is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Penaeid shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus.*

(2) Pink shrimp, *Farfantepenaeus duorarum.*

(3) White shrimp, *Litopenaeus setiferus.*

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of penaeid shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

■ 3. In § 622.4, paragraph (a)(1)(iii) is removed; in the first sentence of paragraph (a)(2)(viii)(B), the phrase "effective July 15, 2003," is removed; paragraph (r)(12) is removed; paragraph (a)(1)(iv) is redesignated as (a)(1)(iii); and paragraph (a)(2)(xiii) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(xiii) *South Atlantic penaeid shrimp.* For a person aboard a trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, a valid commercial vessel permit for South Atlantic penaeid shrimp must have been issued to the vessel and must be on board.

* * * * *

■ 4. In § 622.5, the first sentence of paragraph (a)(2)(i) is revised and paragraph (a)(1)(vii) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(vii) *South Atlantic rock or penaeid shrimp.* The owner or operator of a vessel for which a commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been issued, as required under § 622.4(a)(2)(viii) or (xiii), respectively, or whose vessel fishes for or lands South Atlantic rock shrimp or South Atlantic penaeid shrimp in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(2) * * *

(i) Completed fishing records required by paragraphs (a)(1)(i), (ii), (iv), (vi), and (vii) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip.

* * *

* * * * *

■ 5. In § 622.7, paragraphs (aa) and (cc) are revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Falsify information submitted regarding an application for testing a BRD or regarding testing of a BRD, as specified in § 622.41(g)(3)(i) or (h)(3).

* * * * *

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) through (iv).

* * * * *

■ 6. In § 622.8, paragraph (a)(4) is added to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(4) *South Atlantic rock or penaeid shrimp.* A vessel for which a Federal commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

* * * * *

■ 7. In § 622.9, the first sentence of paragraph (a) is revised to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirement for use.* An owner or operator of a vessel that has been issued a limited access endorsement for South

Atlantic rock shrimp must ensure that such vessel has a NMFS-approved, operating VMS on board when on a trip in the South Atlantic. * * *

* * * * *

■ 8. In § 622.17, paragraph (a) is revised to read as follows:

§ 622.17 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. No additional permits may be issued except for the northern zone as follows:

(1) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.

(2) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two individuals accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.

(3) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.

(4) A vessel permit for the northern zone issued under paragraph (a)(1) of this section, and any successor permit, may not be changed to another zone. A successor permit includes a permit issued to that vessel for a subsequent owner and a permit issued via transfer from that vessel to another vessel.

* * * * *

■ 9. Section 622.18 is revised to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

(a) *General.* The only valid commercial vessel permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. A commercial vessel permit for South Atlantic snapper-grouper is either a transferable commercial permit or a trip-limited commercial permit.

(b) *Transfers of permits.* A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, an application for transfer must be submitted to the RA.

(1) *Transferable permits.* (i) An owner of a vessel with a transferable permit may request that the RA transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit from one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father.

(iii) Except as provided in paragraphs (b)(1)(i) and (ii) of this section, a person desiring to acquire a limited access, transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(iv) A transfer of a permit that is undertaken under paragraph (b)(1)(ii) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits.* An owner of a vessel with a trip- limited permit may request that the RA transfer the permit to another vessel owned by the same entity.

(c) *Renewal.* NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within 60 days of the permit's expiration date.

■ 10. Section 622.19 is revised to read as follows:

§ 622.19 South Atlantic rock shrimp limited access.

(a) *Applicability.* For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(b) *Transfer of an endorsement.* A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, an application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(c) *Renewal.* The RA will not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(d) *Non-renewal of inactive endorsements.* In addition to the sanctions and denials specified in § 622.4(j)(1), a limited access endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years will not be renewed. For the purpose of this paragraph, "inactive" means that the vessel with the endorsement has not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(e) *Reissuance of non-renewed permits.* A permit that is not renewed under paragraph (d) of this section will be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996 but who did not qualify for an initial limited access endorsement. Owners' names have been placed on the list in accordance with the procedures specified in the FMP for the Shrimp Fishery of the South Atlantic Region.

■ 11. In § 622.41, paragraph (g) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Rock and penaeid shrimp in the South Atlantic*--(1) *BRD requirements.* Except as exempted in paragraph (g)(4) of this section, BRDs are required as follows:

(i) On a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed.

(ii) On a vessel that fishes for or possesses rock shrimp in the South Atlantic EEZ, each trawl net or try net that is rigged for fishing must have a certified BRD installed.

(iii) A trawl net or try net is rigged for fishing if it is in the water, or if it is

shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(2) *Certified BRDs.* The following BRDs are certified for use in the South Atlantic EEZ. Specifications of these certified BRDs are contained in Appendix D of this part.

(i) Extended funnel.

(ii) Expanded mesh.

(iii) Fisheye.

(iv) Gulf fisheye.

(v) Jones-Davis.

(3) *Certification of additional BRDs.* (i) A person who proposes a BRD for certification for use in the South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the *Bycatch Reduction Device Testing Protocol Manual*, which is available from the RA upon request.

(ii) For a new BRD to be certified, it must be statistically demonstrated that in testing under the *Bycatch Reduction Device Testing Protocol Manual* the BRD can reduce the total weight of finfish taken as bycatch by at least 30 percent.

(iii) If a BRD meets the certification criterion, as determined under the testing protocol, NMFS will publish a notice in the **Federal Register** adding the BRD to the list of certified BRDs in paragraph (g)(2) of this section and providing the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(4) *Limited exemption.* A rock or penaeid shrimp trawler that is authorized by the RA to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the *Bycatch Reduction Device Testing Protocol Manual* is granted a limited exemption from the BRD requirement specified in paragraph (g)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

* * * * *

■ 12. In Table 4 of Appendix A to Part 622—South Atlantic Snapper-Grouper, the section heading, Serranidae–Sea Basses and Groupers, and the species listed under that heading are revised to read as follows:

Appendix A to Part 622—Species Tables

* * * * *

Table 4 of Appendix A to Part 622—South Atlantic Snapper-Grouper

* * * * *

Serranidae—Groupers

Rock hind, *Epinephelus adscensionis*

Graysby, *Epinephelus cruentatus*

Speckled hind, *Epinephelus drummondhayi*

Yellowedge grouper, *Epinephelus flavolimbatus*

Coney, *Epinephelus fulvus*

Red hind, *Epinephelus guttatus*

Goliath grouper, *Epinephelus itajara*

Red grouper, *Epinephelus morio*

Misty grouper, *Epinephelus mystacinus*

Warsaw grouper, *Epinephelus nigritus*

Snowy grouper, *Epinephelus niveatus*

Nassau grouper, *Epinephelus striatus*

Black grouper, *Mycteroperca bonaci*

Yellowmouth grouper, *Mycteroperca interstitialis*

Gag, *Mycteroperca microlepis*

Scamp, *Mycteroperca phenax*

Tiger grouper, *Mycteroperca tigris*

Yellowfin grouper, *Mycteroperca venenosa*

Serranidae—Sea Basses

Bank sea bass, *Centropristis ocyurus*

Rock sea bass, *Centropristis philadelphica*

Black sea bass, *Centropristis striata*

* * * * *

PART 622—[Nomenclature change]

13. In part 622, revise all references to "jewfish" to read "goliath grouper" wherever it appears.

[FR Doc. 05–23929 Filed 12–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 120705A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 feet (18.3 Meters) Length Overall and Longer Using Hook-and-line Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters (m)) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of Pacific cod specified for catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 7, 2005, until 2400 hrs, A.l.t., December 31, 2005.

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

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

The 2005 Pacific cod TAC allocated to catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI is 230 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), the reallocation on October 5, 2005 (70 FR 58983, October 11, 2005) and the reallocation on November 21, 2005 (70 FR 71039, November 25, 2005). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod TAC allocated to catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from

responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI.

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

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

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

Dated: December 7, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23926 Filed 12–7–05; 2:16 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 237
Monday, December 12, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–10–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for General Electric Company (GE) CF6–45/–50 series turbofan engines. That AD currently requires an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts and inspection of the fail-safe bolt and platform lug if the side links are cracked. That AD also requires a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. This proposed AD would require inspecting and refurbishing the side link at every exposure of the side link. This proposed AD would also require the same actions on certain part number side links installed on CF6–80A turbofan engines. This proposed AD results from a report of a cracked side link. We are proposing this AD to prevent failure of the side links and possible engine separation from the airplane.

DATES: We must receive any comments on this proposed AD by February 10, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You can get the service information identified in this proposed AD from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7192; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 95–ANE–10–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On August 15, 1995, the FAA issued AD 95–17–15, Amendment 39–9346 (60 FR 46758, September 8, 1995). That AD requires an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts and inspection of the fail-safe bolt and platform lug, if side links are found cracked. That AD also requires a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. That AD was the result of six reports of cracked side links detected during routine engine shop visits. That condition, if not corrected, could result in failure of the side links and possible engine separation from the airplane.

Actions Since We Issued AD 95–17–15

Since we issued AD 95–17–15, a routine inspection at a shop visit found a cracked side link. A review of the records of the cracked part showed that it was previously refurbished and was in compliance with AD 95–17–15. That AD required initial and repetitive on-wing inspection of the CF6–45/50 side links until refurbished using GE Service Bulletin 72–1092, dated November 18, 1994. Refurbishment includes reapplication of the protective Sermetel W coating. That AD didn't specify any repetitive refurbishment. That AD also didn't include initial or repetitive inspections of the side links installed on CF6–80A series engines, even though some P/Ns are common to both engine series. The manufacturer previously issued several documents including Commercial Engine Services Memoranda (CESM) 201, All Operator Wires, and service bulletins recommending inspecting and refurbishing the side links per the engine manual at each piece part exposure for both the CF6–45/–50 and the CF6–80A series engines. The manufacturer recently issued temporary revisions to Chapter 5 of the Airworthiness Limitations sections of the CF6–45/–50 and CF6–80A engine manuals to require inspecting and refurbishing the side links every time one or more of the bolts attaching the side link to the fan frame-front high pressure compressor case or the bolt attaching the side link to the mount platform are removed.

Relevant Service Information

We have reviewed and approved the technical contents of GE Aircraft

Engines (GEAE) Service Bulletins CF6–50 S/B 72–1255, dated January 26, 2005, and CF6–80A S/B 72–0797, dated January 26, 2005; that describe procedures for inspecting and refurbishing the side links.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require inspecting and refurbishing the side links at each exposure of the side link. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 195 engines installed on U.S. registered airplanes per year. We also estimate that it would take 8.0 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. This AD does not require parts. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $101,400 per year.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 95–ANE–10–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–9346 (60 FR 46758, September 8, 1995) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. 95–ANE–10–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 10, 2006.

Affected ADs

(b) This AD supersedes AD 95–17–15, Amendment 39–9346.

Applicability

(c) This AD applies to General Electric (GE) CF6–45/–50 and CF6–80A turbofan engines with left-hand side links part numbers (P/Ns) 9204M94P01, 9204M94P03, and 9346M99P01, and right-hand side links, P/Ns 9204M94P02, 9204M94P04, and 9346M99P02, installed on the five-link forward engine mount assembly (also known as Configuration 2). These engines are installed on, but not limited to, Boeing DC10–15, DC10–30, 767, and 747 series airplanes and Airbus Industrie A300 and A310 series airplanes.

Unsafe Condition

(d) This AD results from a report of a cracked side link. We are issuing this AD to prevent failure of the side links and possible engine separation from the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at every exposure of the side link.

Inspecting and Refurbishing the Side Links

(f) Inspect and refurbish each side link at every exposure of the side links. Use the following GE Aircraft Engines (GEAE) service bulletins (SBs):

(1) For CF6–45/–50 series engines, use 3.A. through 3.E. of the Accomplishment Instructions of GEAE SB CF6–50 S/B 72–1255, dated January 26, 2005.

(2) For CF6–80A series engines, use 3.A. through 3.E. of the Accomplishment Instructions of GEAE SB CF6–80A S/B 72–0797, dated January 26, 2005.

Definition of Exposure of Side Link

(g) A side link is exposed when one or more bolts that attach the side links to the fan frame—front high pressure compressor case are removed, or when the bolt attaching the side link to the mount platform is removed.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) None.

Issued in Burlington, Massachusetts, on December 1, 2005.

Peter A. White,

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

[FR Doc. 05–23898 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21880; Directorate Identifier 2004–NM–216–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 and –300F Series Airplanes

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) for certain Boeing Model 767–300

and –300F series airplanes. The proposed AD would have required a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly; and re-alignment of the seat tracks, if necessary. Since the proposed AD was issued, we have received new data that the affected airplanes are included in the applicability of an existing AD that addresses the unsafe condition. Accordingly, the proposed AD is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–21880; the directorate identifier for this docket is 2004–NM–216–AD.

FOR FURTHER INFORMATION CONTACT: Sue Rosanske, 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) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for a new AD for certain Boeing Model 767–300 and –300F series airplanes. That NPRM was published in the **Federal Register** on July 21, 2005 (70 FR 42008). The NPRM would have required a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly; and re-alignment of the seat tracks, if necessary. The NPRM resulted from reports indicating that a pilot's seat slid from the forward to the aft-most position during acceleration and take-off. The proposed actions were intended to prevent uncommanded movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane.

Actions Since NPRM Was Issued

Since we issued the NPRM, we have determined that the affected Boeing Model 767–300 and –300F series airplanes, variable numbers (V/Ns) VK145, VL941, VN968, VW714, and VW715, are already included in the applicability of existing AD 98–03–10, amendment 39–10302 (63 FR 5725, February 4, 1998). We have further determined that, since the identified unsafe condition is being adequately addressed on these five affected airplanes by existing AD 98–03–10, it is unnecessary to provide further rulemaking at this time.

Comments

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

Request To Remove Certain Airplanes From the Applicability

Two commenters request that we remove certain airplanes from the applicability of the NPRM. One commenter operates the affected airplane having V/N VL914, which corresponds to line number (L/N) 637. (We infer the commenter meant to reference V/N VL941.) A second commenter operates affected airplanes having V/Ns VW714 and VW715, which correspond to L/Ns 638 and 640, respectively. Both commenters state that their affected airplanes are included in the applicability of AD 98–03–10, which is applicable to certain Model 737, 747, 757, and 767 airplanes, having certain line numbers; equipped with non-powered IPECO pilots' seats. Of the affected Model 767 airplanes, AD 98–03–10 is applicable to L/Ns 1 through 642 inclusive.

As discussed previously, we agree with the commenter's request.

FAA's Conclusions

Upon further consideration, we have determined that the five Model 767–300 and –300F series airplanes, which were added to the effectivity of Boeing Special Attention Service Bulletin 767–25–0244, Revision 2, dated September 2, 2004, are included in the applicability of an existing AD that addresses the unsafe condition. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2005–21880, Directorate Identifier 2004–NM–216–AD, which was published in the **Federal Register** on July 21, 2005 (70 FR 42008).

Issued in Renton, Washington, on December 6, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23905 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–107722–00]

RIN 1545–AY22

Corporate Estimated Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of previous proposed rules, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: This document withdraws proposed regulations relating to corporate estimated taxes. This document also contains new proposed regulations that provide guidance to corporations with respect to estimated tax requirements. These proposed regulations generally affect corporate taxpayers who are required to make estimated tax payments. These proposed amendments reflect changes to the law since 1984. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 22, 2006. Outlines of topics to be discussed at the public hearing scheduled for March 15, 2006, must be received by February 22, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–107722–00), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–107722–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent

electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–107722–00). The public hearing will be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Joseph P. Dewald, (202) 622–4910; concerning the submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document withdraws §§ 1.6152–1(a)(1), 1.6654–2(d)(1)(i), 1.6655–1, 1.6655–2, 1.6655–3, 1.6655–4, 1.6655–5, 1.6655–6, and 301.6655–1 in the notice of proposed rulemaking (LR–228–82) relating to corporate estimated taxes under section 6655 that was published in the **Federal Register** (49 FR 11186) on March 26, 1984 (referred to as the 1984 proposed regulations). This document also contains new proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Procedure and Administration Regulations (26 CFR Part 301) relating to corporate estimated taxes under section 6425 and section 6655 of the Internal Revenue Code. The IRS is withdrawing the 1984 proposed regulations because significant changes to the law since 1984 have caused them to become outdated.

These proposed regulations reflect changes to the law made by the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494), the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499 (100 Stat. 1613), the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (101 Stat. 1330), the Revenue Act of 1987, Public Law 100–203 (101 Stat. 1330–382), the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 (102 Stat. 1107), the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342), the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 (103 Stat. 2106), the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (104 Stat. 1388), the Tax Extension Act of 1991, Public Law 102–227 (105 Stat. 1686), the Act of Feb. 7, 1992, Public Law 102–244 (106 Stat. 3), the Unemployment Compensation Amendments of 1992, Public Law 102–318 (106 Stat. 290), the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 312), the Uruguay Round Agreements Act of 1994, Public Law 103–465 (108 Stat. 4809), the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755), the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788), the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170 (113 Stat. 1860), the Community Renewal Tax Relief Act of 2000, Public Law 106–554 (114 Stat. 2763), the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38), the Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108–27 (117 Stat. 752), and the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418).

The existing regulations under section 6655 do not reflect significant changes to the tax law since 1984, most notably the enactment of the economic performance rules under section 461(h). Since the enactment of section 461(h), the determination of when economic performance must occur for taxpayers to take a deduction into account for purposes of computing a quarterly estimated tax payment has been unclear, particularly for taxpayers that compute their quarterly estimated tax payments using an annualization method.

In addition, the IRS and Treasury Department have become aware of techniques employed by taxpayers, particularly those taxpayers computing their estimated tax payments using an annualization method, that reduce, if not eliminate, estimated tax payments for one or more installments for a taxable year. The proposed regulations provide rules that the IRS and Treasury Department believe result in a more accurate reflection of annualized income than methods that taxpayers may currently be employing. For example, the proposed regulations make it clear that taxpayers may not, for any purpose, determine taxable income for an annualization period or an adjusted seasonal installment period as though the period is a short taxable year. The proposed regulations provide specific rules for determining taxable income for any annualization period, including how section 461(h) is to be applied in computing taxable income for any annualization period. For example, with respect to an item of income or gain, the proposed regulations provide that the item must be taken into account in computing annualized taxable income for a particular annualization period if the item is includible in computing taxable income in accordance with section 451 on or before the last day of the annualization period. With respect to an item of deduction, the proposed regulations generally provide that an accrual method taxpayer may take into account a deduction in computing annualized taxable income for a particular annualization period only to the extent the item is incurred under § 1.461–1(a)(2) on or before the last day of the annualization period. For purposes of determining whether a deduction may be taken into account by an accrual method taxpayer in determining annualized taxable income for a particular annualization period, the provisions of section 170(a)(2) and § 1.170A–11(b) (charitable contributions by accrual method corporations), § 1.461–4(d)(6)(ii) (provision of services or property to a taxpayer), § 1.461–5 (recurring item exception), and any other provision that has a similar effect are not taken into account in determining whether the item of deduction has been incurred under § 1.461–1(a)(2) and is deductible in computing annualized taxable income for an annualization period.

Revenue Ruling 76–450 (1976–2 C.B. 444), provides that state property tax and franchise tax are deductible from the income for an annualization period on the date the taxpayer accrues the taxes under the taxpayer's method of accounting. Revenue Ruling 76–450 was issued prior to the enactment of section 461(h) and does not take into account the application of the economic performance requirements of section 461(h) for purposes of computing an estimated tax payment using the annualized income installment method. The proposed regulations address the application of section 461(h) for purposes of the annualized income installment method and provide that a taxpayer using an accrual method of accounting cannot take a deduction into account unless the deduction has been incurred under § 1.461–1(a)(2) and is otherwise deductible in computing taxable income for the applicable annualization period. As a result of the rules provided in the proposed regulations regarding the application of section 461(h) to the annualized income installment method, Rev. Rul. 76–450 is no longer applicable and will be obsolete when these regulations are effective.

For purposes of section 404 and the regulations, regardless of the overall method of accounting employed by the taxpayer, the applicable 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10- or 11-month annualization period shall not be treated

as a short taxable year and the rules of section 404 and the regulations shall be applied on the basis of the taxpayer's taxable year for which estimated tax is being determined. Thus, the determination of whether a payment to an employee is deferred compensation under § 1.404(b)–1T shall be made by reference to whether the payment is received by the employee more than a brief period of time after the last day of the taxable year for which estimated tax is being determined, and not the last day of the annualization period. With respect to contributions to qualified plans governed by section 404 and the regulations, in determining whether an item is paid or incurred by the end of an annualization period, economic performance is satisfied only to the extent such item is paid by the last day of the annualization period (without regard to section 404(a)(6)) and does not, in combination with other such items paid during the annualization period, exceed the applicable deduction limit of section 404(a) for the taxable year. For purposes of sections 419 and 419A and the regulations, regardless of the overall method of accounting employed by the taxpayer, the applicable 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month annualization period shall not be treated as a short taxable year and the rules of sections 419 and 419A and the regulations shall be applied on the basis of the taxpayer's taxable year for which estimated tax is being determined. With respect to contributions to a welfare benefit fund governed by sections 419 and 419A and the regulations, in determining whether an item is paid or incurred by the end of an annualization period, economic performance is satisfied only to the extent such item is paid by the last day of the applicable annualization period and does not, in combination with other such items paid during the annualization period, exceed the applicable deduction limit of section 419 for the taxable year.

The proposed regulations provide guidance for annual expenses paid or incurred at the end of the taxable year, or after the end of the taxable year that are deemed paid or incurred during the taxable year. Section 1.6655–2(f)(2)(i) of the proposed regulations provides that if an accrual method taxpayer has a history of incurring a specific item of expense (or paying a specific item of expense, in the case of a cash method taxpayer) that, while attributable to income earned throughout the current taxable year, is not incurred (or paid, in the case of a cash method taxpayer) until the end of the taxable year or after the end of the current taxable year and is deemed incurred (or paid, in the case of a cash method taxpayer) during the current taxable year (taking into account, as applicable, section 170(a)(2) and § 1.170A–11(b), section 404(a)(6), § 1.461–4(d)(6)(ii), § 1.461–5, and any other provision that has a similar effect), then the taxpayer may take into account a proportionate part of the specific item of expense for each annualization period. In such case the taxpayer may take into account a proportionate part of the specific item of expense for each annualization period only if the portion of the annual expense taken into account is determined with reasonable accuracy and the expense is properly deducted by the taxpayer for the current taxable year under the taxpayer's method of accounting. For purposes of § 1.6655–2(f)(2)(i), a taxpayer has a history of incurring or paying a specific item of expense at the end of the taxable year, or after the end of the taxable year that is deemed incurred or paid during the taxable year, if, in each of the two taxable years immediately preceding the current taxable year (or the immediately preceding taxable year if the taxpayer was not in existence for the two preceding taxable years), the taxpayer incurred or paid the specific item of expense at the end of each taxable year, or after the end of each taxable year that was deemed incurred or paid during such taxable year. For purposes of § 1.6655–2(f)(2)(i), the term "the end of the taxable year" means the period between and including the 15th and last day of the last month of the taxable year.

The proposed regulations also provide guidance regarding the treatment of specific items for purposes of computing annualized taxable income for an annualization period. For example, net operating loss carryovers must be taken into account in computing an annualized income installment after placing the taxable income for the annualization period on an annualized basis, and section 481(a) adjustments must be recognized ratably over the applicable adjustment period.

Revenue Ruling 67–93 (1967–1 C.B. 366), provides that a taxpayer should deduct a net operating loss (NOL) carryover from the income for an annualization period before annualizing the income for that period. As previously stated, the IRS and Treasury Department believe that it is not appropriate for taxpayers to determine taxable income for an annualization period or an adjusted seasonal installment period as though the period is a short taxable year. As a result, the IRS and Treasury Department now believe that it is a more appropriate reflection of annualized taxable income if a NOL carryover is deducted after annualizing the taxable income for an applicable annualization period or adjusted seasonal installment period. Accordingly, the proposed regulations provide that a taxpayer must annualize taxable income before taking into account a NOL carryover and reduce the annualized amount by the NOL carryover. As a result, Rev. Rul. 67–93 will be obsolete when these regulations are effective.

In addition, the proposed regulations provide guidance on the amount of depreciation and amortization (depreciation) expense that a taxpayer may take into account for an annualization period. The proposed regulations generally provide that a proportionate amount of a taxpayer's estimated annual depreciation expense shall be taken into account when determining any annualized income installment for the taxable year. In determining the estimated annual depreciation expense, a taxpayer may take into account purchases, sales or other dispositions, changes in use, depreciation permitted by sections 168(k) and 1400L, and other similar events that, based on all of the relevant information available as of the last day of the annualization period (such as capital spending budgets, financial statement data and projections, or similar reports that provide evidence of the taxpayer's capital spending plans for the current taxable year), the taxpayer reasonably expects to occur during the taxable year. As an alternative to estimating annual depreciation expense based on events that are reasonably expected to occur, the proposed regulations provide that, in general, a taxpayer may claim for an annualization period at least a proportionate amount of 50 percent of the taxpayer's estimated depreciation expense for the current taxable year attributable to assets that the taxpayer had in service on the last day of the preceding taxable year, that remain in service on the first day of the current taxable year, and that are subject to the half-year convention. The proposed regulations also provide that an annualization period cannot be treated as a short taxable year, including for purposes of determining the depreciation allowance for such annualization period.

The proposed regulations also provide guidance regarding short taxable years, including the due dates for required installments for a short taxable year (including a taxpayer's initial taxable year), the computation of such installments, and the applicable

percentage of the annual tax due with each installment.

Proposed Effective Date

These regulations are proposed to apply to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**. Until the final regulations become effective, taxpayers may rely on these proposed rules for taxable years beginning on or after the date this notice of proposed rulemaking is published in the **Federal Register**, provided, however, that the taxpayer applies all of these proposed rules in determining its required installments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Except with respect to § 1.6655–5, which deals with the rules applicable to a short taxable year, it has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these provisions do not impose a collection of information on small businesses, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. With respect to § 1.6655–5, it is hereby certified that this provision of the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that not many small businesses are going to be subject to the short taxable year rules because: (1) Existing small businesses generally are not targets of mergers and acquisitions, which result in a short taxable year; (2) start-up small businesses with a short taxable year of less than four months do not have to pay estimated taxes; and (3) start-up small businesses with a short taxable year of four months or more are not likely to have taxable income that would be subject to the corporate estimated tax rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. In particular, the IRS and Treasury Department request comments on whether the 52–53 week taxable year rules under § 1.6655–2(e) should be simplified. The IRS and Treasury Department also request comments on whether the final regulations should include an additional exception, similar to the exception provided in § 1.6655–2(f)(2)(i), that would permit a taxpayer to take into account for an annualization period a proportionate amount of a specific item of expense that is attributable to income earned throughout the current taxable year and is paid or incurred during the taxable year but after the applicable annualization period. If such an exception is appropriate, the IRS and Treasury Department request comments on what specific types of expenses would meet the requirements of the rule, and whether the exception should provide for any additional limitations, such as a requirement that a minimum percentage of the annual amount of the expense be paid or incurred on a particular day during the taxable year. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 22, 2006, beginning at 10 a.m. in the Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by February 22, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Robert A. Desilets, Jr., formerly of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division, and Joseph P. Dewald, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Partial Withdrawal of a Previous Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, §§ 1.6152–1(a)(1), 1.6654–2(d)(1)(i), 1.6655–1, 1.6655–2, 1.6655–3, 1.6655–4, 1.6655–5, 1.6655–6, and 301.6655–1 in the notice of proposed rulemaking published in the **Federal Register** on March 26, 1984, (LR–228–82) (49 FR 11186) are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.6655–5 also issued under 26 U.S.C. 6655(i)(2). * * *

Par. 2. In § 1.56–0, the heading for paragraph (e)(5) is added to read as follows:

§ 1.56–0 Table of contents to § 1.56–1, adjustment for book income of corporations.

* * * * *

(e) * * *

(5) Effective date.

Par. 3. In § 1.56–1, paragraph (e)(4) is revised and paragraph (e)(5) is added to read as follows:

§ 1.56–1 Adjustment for the book income of corporations.

* * * * *

(e) * * *

(4) *Estimating the book income adjustment for purposes of the*

estimated tax liability. See § 1.6655–7, as issued by TD 8307 (55 FR 33671), for special rules for estimating the corporate alternative minimum tax book income adjustment under the annualization exception.

(5) *Effective date.* Paragraph (e)(4) of this section is applicable for taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

Par. 4. In § 1.6425–2, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 1.6425–2 Computation of adjustment of overpayment of estimated tax.

(a) *Income tax liability defined.* For purposes of §§ 1.6425–1 through 1.6425–3 and 1.6655–7, relating to excessive adjustment, the term *income tax liability* means the excess of—

(1) The sum of—

(i) The tax imposed by section 11 or 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, whichever is applicable; plus

(ii) The tax imposed by section 55; over

(2) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

* * * * *

(c) *Effective date.* Paragraph (a) of this section is applicable to applications for adjustments of overpayments of estimated income tax that are filed in taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

Par. 5. Section 1.6425–3 is amended by:

1. Revising paragraphs (f)(1) and (f)(2).
2. Adding paragraph (f)(3).

The revisions and addition read as follows:

§ 1.6425–3 Allowance of adjustments.

* * * * *

(f) *Effect of adjustment.* (1) For purposes of all sections of the Internal Revenue Code except section 6655, relating to additions to tax for failure to pay estimated income tax, any adjustment under section 6425 is to be treated as a reduction of prior estimated tax payments as of the date the credit is allowed or the refund is paid. For the purpose of sections 6655(a) through (g), (i), and (j), credit or refund of an adjustment is to be treated as if not made in determining whether there has been any underpayment of estimated income tax and, if there is an underpayment, the period during which the underpayment existed. However, an excessive adjustment under section 6425 shall be taken into account in applying the addition to tax under section 6655(h).

(2) For the effect of an excessive adjustment under section 6425, see § 1.6655–7.

(3) This paragraph (f) is applicable to applications for adjustments of overpayments of estimated income tax that are filed in taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

Par. 6. Section 1.6655–0 is added to read as follows:

§ 1.6655–0 Table of contents.

This section lists the table of contents for §§ 1.6655–1 through 1.6655–7.

§ 1.6655–7 Addition to tax on account of excessive adjustment under section 6425.

Par. 7. Sections 1.6655–1, 1.6655–2, and 1.6655–3 are revised to read as follows:

§ 1.6655–1 Addition to the tax in the case of a corporation.

(a) *In general.* Section 6655 imposes an addition to the tax under chapter 1 of the Internal Revenue Code in the case of any underpayment of estimated tax by a corporation. An addition to tax due to the underpayment of estimated taxes is determined by applying the underpayment rate established under section 6621 to the amount of the underpayment, for the period of the underpayment. This addition to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment.

(b) *Amount of underpayment.* The amount of the underpayment for any required installment is the excess of—

(1) The required installment; over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) *Period of the underpayment.* The period of the underpayment of any required installment runs from the date the installment was required to be paid to the 15th day of the 3rd month following the close of the taxable year, or to the date such underpayment is paid, whichever is earlier. For purposes of determining the period of the underpayment—

(1) The date prescribed for payment of any installment of estimated tax shall be determined without regard to any extension of time; and

(2) A payment of estimated tax will be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) *Amount of required installment.* Except as otherwise provided in this section and §§ 1.6655–2 through 1.6655–7, the amount of any required installment is 25 percent of the lesser of—

(1) 100 percent of the tax shown on the return for the taxable year (or, if no return is filed, 100 percent of the tax for such year); or

(2) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

(3) Paragraph (d)(2) of this section shall not apply if the preceding taxable year was not a taxable year of 12 months or the corporation did not file a return for such preceding taxable year showing a liability for tax.

(e) *Large corporation required to pay 100 percent of current year tax*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, paragraph (d)(2) of this section shall not apply in the case of a large corporation (as defined in § 1.6655–4).

(2) *May use last year's tax for first installment.* Paragraph (e)(1) of this section shall not apply for purposes of determining the amount of the first required installment for any taxable year. Any reduction in such first installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (d)(1) of this section by the amount of such reduction and, if the next required installment is reduced by use of the annualized income installment method under § 1.6655–2 or the adjusted seasonal installment method under § 1.6655–3, by increasing subsequent required installments determined under paragraph (d)(1) of this section to the extent that the reduction has not previously been recaptured.

(f) *Required installment due dates*—(1) *Number of required installments.* Unless otherwise provided, corporations must make 4 required installments for each taxable year.

(2) *Time for payment of installments*—(i) *Calendar year.* In the case of a calendar year taxpayer, the due dates of the required installments are as follows:

1st—April 15
2nd—June 15
3rd—September 15
4th—December 15

(ii) *Fiscal year.* In the case of a taxpayer other than a calendar year taxpayer, the due dates of the required installments are as follows:

1st—15th day of 4th month of the taxable year
2nd—15th day of 6th month of the taxable year
3rd—15th day of 9th month of the taxable year
4th—15th day of 12th month of the taxable year

(iii) *Short taxable year.* See § 1.6655–5 for rules regarding required installments for corporations with a short taxable year.

(iv) *Partial month.* Except as otherwise provided, for purposes of determining the due date of any required installment a partial month shall be treated as a full month.

(g) *Definitions.* (1) The term *tax* as used in this section and §§ 1.6655–2 through 1.6655–7 means the excess of—

(i) The sum of—

(A) The tax imposed by section 11, section 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, whichever is applicable;

(B) The tax imposed by section 55; plus

(C) The tax imposed by section 887; over

(D) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(ii) In the case of a foreign corporation subject to taxation under section 11, section 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

(iii) In the case of a partnership that is treated, pursuant to regulations issued under section 1446(f)(2), as a corporation for purposes of this section, the tax imposed by section 1446 shall be treated as a tax imposed by section 11.

(2) For the purposes of paragraph (d)(2) of this section, the term *return for the preceding taxable year* means the Federal income tax return for such taxable year that is required by section 6012(a)(2). However, if an amended Federal income tax return has been filed before the due date for an installment, then the term *return for the preceding taxable year* means the Federal income tax return as amended. Paragraph (d)(2) of this section will apply without regard to whether the taxpayer's Federal income tax return for the preceding taxable year is filed in a timely manner.

(3) If the tax rates for the current taxable year for which estimated tax is being determined differ from the rates applicable to the preceding taxable year, the tax determined for the preceding taxable year shall be recomputed using the rates applicable to the current taxable year.

(h) *Special rules for consolidated returns.* For special rules relating to the determination of the amount of the underpayment in the case of a corporation whose income is included in a consolidated return, see § 1.1502–5(b).

(i) *Overpayments applied to subsequent taxable year's estimated tax*—(1) *In general.* If a taxpayer elects under the provisions of sections 6402(b) and 6513(d) and the regulations to apply an overpayment in year one against the estimated tax liability for year two, the overpayment will be applied to the required installment payments for year two in the order due and to the extent necessary to satisfy such installments, similar to the manner in which an

actual overpayment of one installment is carried forward to the next installment. No interest is accrued or paid on an overpayment if the election to apply the overpayment against estimated tax is made.

(2) *Subsequent examinations.* If a deficiency is determined in an examination of a return for a taxable year that originally reflected an overpayment that was applied against estimated tax for the succeeding taxable year, interest on the deficiency will not begin to accrue on an amount applied until that amount is used to satisfy a required estimated tax payment in such taxable year. Regardless of whether the taxpayer anticipated the application of such overpayment from the prior taxable year in calculating and paying its required estimated tax installment liabilities for the current taxable year, the subsequently determined underpayment and interest computation thereon will not change the taxpayer's original election to apply the overpayment against the estimated tax liability of the succeeding taxable year. Any changes to the usage of the original overpayment from the prior taxable year are hypothetical only and solely for the purpose of computing deficiency interest. Overpayment interest will not be impacted. For further guidance, see Rev. Rul. 99–40 (1999–2 C.B. 441), (see § 601.601(d)(2)(ii)(b) of this chapter).

(j) *Examples.* The method prescribed in paragraphs (d) through (g) of this section may be illustrated by the following examples:

Example 1. X, a calendar year corporation, estimates its tax liability for its taxable year ending December 31, 2006, will be $85,000. X is not a large corporation as defined in section 6655(g)(2) and § 1.6655–4. X reported a liability of $74,900 on its return for the taxable year ended December 31, 2005, with no credits against tax. X paid four installments of estimated tax, each in the amount of $18,725 (25 percent of $74,900), on April 17, 2006, June 15, 2006, September 15, 2006, and December 15, 2006, respectively. X reported a tax liability of $88,900 on its return due March 15, 2007. X had a $5,000 credit against tax for tax year 2006 as provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code. X did not underpay its estimated tax for tax year 2006 for any of the four installments, determined as follows:

(i) Tax as defined in paragraph (g) of this section for 2006 ($88,900 − $5,000)—$83,900

(ii) Tax as defined in paragraph (g) of this section for 2005—74,900

(iii) 100% of the lesser of this paragraph (j), *Example 1* (i) or (ii)—74,900

(iv) Amount of estimated tax required to be paid on or before each installment date (25% of $74,900)—18,725

(v) Deduct amount paid on or before each installment date—18,725

(vi) Amount of underpayment for each installment date—0

Example 2. (i) *Facts.* Y, a calendar year corporation, estimates its tax liability for its taxable year ending December 31, 2006, will be $70,000. Y is not a large corporation as defined in section 6655(g)(2) and § 1.6655–4. Y reported a Federal income tax liability of $90,000 for its taxable year ending December 31, 2005. Y paid no installment of estimated tax on or before April 17, 2006, June 15, 2006, or September 15, 2006, but made a payment of $63,000 on December 15, 2006. On March 15, 2007, Y filed its income tax return showing a tax of $70,000. Y had no credits against tax for tax year 2006. Of the $63,000 paid by Y on December 15, 2006, $17,500 is applied to each of the first three installments due on April 15, June 15, and September 15, 2006, and the remaining $10,500 is applied to the fourth installment. Y has an underpayment of estimated tax for each of the first three installments of $17,500 and for the fourth installment of $7,000. The addition to tax under section 6655(a) is computed as follows:

(A) Tax as defined in paragraph (g) of this section for 2006—$70,000

(B) Tax as defined in paragraph (g) of this section for 2005—90,000

(C) 100% of the lesser of this paragraph (j), *Example 2* (i)(A) or (i)(B)—70,000

(D) Amount of estimated tax required to be paid on or before each installment date (25% of $70,000)—17,500

(E) Amount paid on or before the first, second, and third installment dates—0

(F) Amount paid on or before the fourth installment date—63,000

(G) Amount of underpayment for the first, second, and third installment dates—17,500

(H) Amount of underpayment for the fourth installment date—7,000

(ii) *Addition to tax.* Assuming that neither the annualized income installment method nor the adjusted seasonal installment method described in §§ 1.6655–2 and 1.6655–3 would result in a lower payment for any installment period, and the addition to tax is computed under section 6621(a)(2) at the rate of 8 percent per annum for the applicable periods of underpayment, the addition to tax is determined as follows:

(A) First installment (underpayment period 4–16–06 through 12–15–06), computed as $244/365 \times \$17{,}500 \times 8\%$—$936

(B) Second installment (underpayment period 6–16–06 through 12–15–06), computed as $183/365 \times \$17{,}500 \times 8\%$—702

(C) Third installment (underpayment period 9–16–06 through 12–15–06), computed as $91/365 \times \$17{,}500 \times 8\%$—349

(D) Fourth installment (underpayment period 12–16–06 through 3–15–07), computed as $90/365 \times \$7{,}000 \times 8\%$—138

(E) Total of this paragraph (j), *Example 2* (ii)(A) through (D)—2,125

(k) *Effective date.* This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

§ 1.6655–2 Annualized income installment method.

(a) *In general.* In the case of any required installment, if the corporation establishes that the annualized income installment determined under this section, or the adjusted seasonal installment determined under § 1.6655–3, is less than the amount determined under § 1.6655–1—

(1) The amount of such required installment shall be the annualized income installment (or, if less, the adjusted seasonal installment); and

(2) Any reduction in a required installment resulting from the application of this section will be recaptured by increasing the amount of the next required installment determined under § 1.6655–1 by the amount of such reduction (and, if the next required installment is similarly reduced, by increasing subsequent required installments to the extent that the reduction has not previously been recaptured).

(b) *Determination of annualized income installment—In general.* In the case of any required installment, the annualized income installment is the excess (if any) of—

(1) The product of the applicable percentage and the tax for the taxable year computed by annualizing the taxable income and alternative minimum taxable income—

(i) For the first 3 months of the taxable year, in the case of the first required installment;

(ii) For the first 3 months of the taxable year, in the case of the second required installment;

(iii) For the first 6 months of the taxable year in the case of the third required installment; and

(iv) For the first 9 months of the taxable year, in the case of the fourth required installment; over

(2) The aggregate amount of any prior required installments for the taxable year.

(c) *Special rules*—(1) *Applicable percentage.* Except as otherwise provided in § 1.6655–5(d) with respect to short taxable years—

In the case of the following required installments:	The applicable percentage is:
1st	25
2nd	50
3rd	75
4th	100

(2) *Partial month.* Except as otherwise provided, for purposes of paragraph (b) of this section a partial month shall be treated as a month.

(d) *Election of different annualization periods.* (1) If the taxpayer timely files Form 8842, "Election to Use Different Annualization Periods for Corporate Estimated Tax," in accordance with section 6655(e)(2)(C)(iii), and elects Option 1—

(i) Paragraph (b)(1)(i) of this section will be applied by using the language "2 months" instead of "3 months";

(ii) Paragraph (b)(1)(ii) of this section will be applied by using the language "4 months" instead of "3 months";

(iii) Paragraph (b)(1)(iii) of this section will be applied by using the language "7 months" instead of "6 months"; and

(iv) Paragraph (b)(1)(iv) of this section will be applied by using the language "10 months" instead of "9 months".

(2) If the taxpayer timely files Form 8842, in accordance with section 6655(e)(2)(C)(iii), and elects Option 2—

(i) Paragraph (b)(1)(ii) of this section will be applied by using the language "5 months" instead of "3 months";

(ii) Paragraph (b)(1)(iii) of this section will be applied by using the language "8 months" instead of "6 months"; and

(iii) Paragraph (b)(1)(iv) of this section will be applied by using the language "11 months" instead of "9 months".

(e) *52–53 week taxable year.* (1) Generally, in the case of a taxpayer whose taxable year constitutes 52 or 53 weeks in accordance with section 441(f), the rules prescribed by § 1.441–2 shall be applicable in determining—

(i) Whether a taxable year is a taxable year of 12 months; and

(ii) When the 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period (whichever is applicable) commences and ends for purposes of paragraphs (b)(1), (d)(1) and (d)(2) of this section.

(2) If a taxpayer employs four 13-week periods or thirteen 4-week accounting periods and the end of any accounting period employed by the taxpayer does not correspond to the end of the 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period (whichever is applicable), then, provided the taxpayer has at least one full 4-week or 13-week accounting period, as appropriate, within the applicable period, annualized taxable income for the applicable period shall be—

(i) [(x/(y*13))*z], in the case of a taxpayer using four 13-week periods, if—

(A) x = Taxable income for the number of full 13-week periods in the applicable period;

(B) y = The number of full 13-week periods in the applicable period; and

(C) z = The number of weeks in the taxable year; or

(ii) [(x/(y*4))*z], in the case of a taxpayer using thirteen 4-week periods, if—

(A) x = Taxable income for the full 4-week periods in the applicable period;

(B) y = The number of full 4-week periods in the applicable period; and

(C) z = The number of weeks in the taxable year.

(3) If a taxpayer employs four 13-week periods and the taxpayer does not have at least one 13-week period within the applicable 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period, the taxpayer shall be permitted to determine annualized taxable income for the applicable period based upon—

(i) The taxable income for the number of weeks in the applicable period; or

(ii) The taxable income for the full 13-week periods that end before the due date of the required installment.

(4) The following examples illustrate the rules of this paragraph (e):

Example 1. Taxpayer A, an accrual method taxpayer, uses a 52/53 week year-end ending on the last Friday in December and uses four thirteen-week periods. For its year beginning December 30, 2006, A uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installments. For purposes of computing its first and second required installments, the first 3 months of A's taxable year under paragraph (b)(1)(i) of this section will end on March 30th, the thirteenth Friday of A's taxable year. For purposes of its third required installment, the first 6 months of A's taxable year will end on June 29th, the twenty-sixth Friday of A's taxable year. For purposes of its fourth required installment, the first 9 months of A's taxable year will end on September 28th, the thirty-ninth Friday of A's taxable year.

Example 2. Same facts as Example 1 except that A uses thirteen four-week periods and there are 52 weeks during A's taxable year beginning December 30, 2006, and ending December 28, 2007. For purposes of computing A's first and second required installments, A's annualized taxable income for the first three months will be the taxable income for the first three four-week periods of A's taxable year (December 30, 2006, through March 23, 2007) divided by 12 (number of full four-week periods in the first three months (3) multiplied by 4) and multiplied by 52 (the number of weeks in the taxable year). For purposes of computing A's third required installment, A's annualized taxable income for the first six months will be the taxable income for the first six four-week periods of A's taxable year (December 30, 2006, through June 15, 2007) divided by 24 and multiplied by 52. For purposes of computing A's fourth required installment, A's annualized taxable income for the first nine months will be the taxable income for the first nine four-week periods of A's taxable year (December 30, 2006, through September 7, 2007) divided by 36 and multiplied by 52.

(5) The application of the annualized income installment method is illustrated by the following example:

Example. (i) X, a calendar year corporation, had a taxable year of less than twelve months for tax year 2005 and no credits against tax for tax year 2006. X made an estimated tax payment of $15,000 on the installment dates of April 17, 2006, June 15, 2006, September 15, 2006, and December 15, 2006, respectively. Assume that, under paragraph (d)(1) of this section, X elected Option 1 by timely filing Form 8842, in accordance with section 6655(e)(2)(C)(iii), and determined that its taxable income for the first 2, 4, 7 and 10 months was $25,000, $64,000, $125,000, and $175,000 respectively. The income for each period is annualized as follows:

$25,000 × 12/2 = $150,000
$64,000 × 12/4 = $192,000
$125,000 × 12/7 = $214,286
$175,000 × 12/10 = $210,000

(ii)(A) To determine whether the installment payment made on April 17, 2006, equals or exceeds the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 2-month period, the following computation is necessary:

(*1*) Annualized income for the 2 month period—$150,000

(*2*) Tax on this paragraph (e)(5), *Example* (ii)(A)(*1*)—41,750

(*3*) 100% of this paragraph (e)(5), *Example* (ii)(A)(*2*)—41,750

(*4*) 25% of this paragraph (e)(5), *Example* (ii)(A)(*3*)—10,438

(B) Because the total amount of estimated tax that was timely paid on or before the first installment date ($15,000) exceeds the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 2-month period, the exception described in paragraphs (a) and (b) of this section applies, and no addition to tax will be imposed for the installment due on April 15, 2006.

(iii)(A) To determine whether the installment payments made on or before June 15, 2006, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 4-month period, the following computation is necessary:

(*1*) Annualized income for the 4 month period—$192,000

(*2*) Tax on this paragraph (e)(5), *Example* (iii)(A)(*1*)—58,130

(*3*) 100% of this paragraph (e)(5), *Example* (iii)(A)(*2*)—58,130

(*4*) 50% of this paragraph (e)(5), *Example* (iii)(A)(*3*) less $10,438 (amount due with the first installment)—18,627

(B) Because the total amount of estimated tax actually paid on or before the second installment date ($19,562 ($15,000 second required installment payment plus $4,562 overpayment of first required installment)) exceeds the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 4-month period, the exception described in paragraphs (a) and (b) of this section applies, and no addition to tax will be imposed for the installment due on June 15, 2006.

(iv)(A) To determine whether the installment payments made on or before September 15, 2006, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 7-month period, the following computation is necessary:

(*1*) Annualized income for the 7 month period—$214,286

(*2*) Tax on this paragraph (e)(5), *Example* (iv)(A)(*1*)—66,821

(*3*) 100% of this paragraph (e)(5), *Example* (iv)(A)(*2*)—66,821

(*4*) 75% of this paragraph (e)(5), *Example* (iv)(A)(*3*) less $29,065 (amount due with the first and second installment)—21,051

(B) Because the total amount of estimated tax actually paid on or before the third installment date ($15,935 ($15,000 third required installment payment plus $935 overpayment of second required installment)) does not equal or exceed the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 7-month period, the exception described in paragraphs (a) and (b) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of the September 15, 2006, installment unless another exception applies to this installment payment.

(v)(A) To determine whether the installment payments made on or before December 15, 2006, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 10-month period, the following computation is necessary:

(*1*) Annualized income for the 10 month period—$210,000

(*2*) Tax on this paragraph (e)(5), *Example* (v)(A)(*1*)—65,150

(*3*) 100% of this paragraph (e)(5), *Example* (v)(A)(*2*)—65,150

(*4*) 100% of this paragraph (e)(5), *Example* (v)(A)(*3*) less $50,116 (amount due with the first, second, and third installment)—15,034

(B) Because the total amount of estimated tax payments made on or before the fourth installment date that is available to be applied to the estimated tax due for the fourth installment ($9,884 ($15,000 fourth required installment payment less $5,116 underpayment for the third installment of estimated tax ($21,051 third installment of estimated tax due less $15,935 payments available to be applied to the third installment of estimated tax))) does not equal or exceed the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 10-month period, the exception described in paragraphs (a) and (b) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of the December 15, 2006, installment unless another exception applies to this installment payment.

(vi) Assuming that no other exceptions apply and the addition to tax is computed under section 6621(a)(2) at the rate of 8 percent per annum for the applicable periods of underpayment, the amount of the addition to tax is as follows:

(A) First installment (no underpayment)

(B) Second installment (no underpayment)

(C) Third installment (underpayment period 9–16–06 through 12–15–06), computed as 91/365 × $5,116 × 8%—102

(D) Fourth installment (underpayment period 12–16–06 through 3–15–07), computed as 90/365 × $5,150 × 8%—102

(E) Total of this paragraph (e)(5), *Example* (vi)(A) through (D)—204

(f) *Determination of taxable income for an annualization period*—(1) *In general.* In determining the applicability of the exception described in paragraphs (a) and (b) of this section (relating to the annualization of income) and the exception described in § 1.6655–3 (relating to annualization of income for corporations with seasonal income), and for purposes of computing a taxpayer's taxable income (and applicable tax), an item must be taken into account in computing a taxpayer's taxable income for the taxable year for which the estimated tax is being determined, and must be properly taken into account in determining a taxpayer's taxable income (and applicable tax) for the applicable annualization period by the last day of such period. Generally, except as provided in paragraph (f)(2) of this section, for an item to be taken into account during an annualization period, the following must occur on or before the last day of the applicable annualization period (determined based on the accounting period employed by the taxpayer):

(i) With respect to an item of gross income, such income is includible in computing taxable income in accordance with section 451 or the appropriate provision of the Internal Revenue Code (for example, section 453 for installment sales or section 460 for long-term contracts).

(ii) With respect to an item of loss, the loss must be permitted to be taken into account under the appropriate provision of the Internal Revenue Code.

(iii) With respect to an item of deduction, for taxpayers using the cash receipts and disbursements method of accounting, the deduction must be paid under § 1.461–1(a)(1) and otherwise deductible in computing taxable income for the annualization period or, for taxpayers using an accrual method of accounting, the deduction must be incurred under § 1.461–1(a)(2) and otherwise deductible in computing taxable income for the annualization period. In the case of an accrual method taxpayer, the provisions of section 170(a)(2) and § 1.170A–11(b) (charitable contributions by accrual method corporations), § 1.461–4(d)(6)(ii) (provision of services or property to a taxpayer), § 1.461–5 (recurring item exception), and any other provision that has a similar effect can not be used in determining whether the item of deduction has been incurred under § 1.461–1(a)(2) and is otherwise deductible for purposes of computing taxable income for an annualization period. For purposes of section 404 and the regulations, regardless of the overall method of accounting employed by the taxpayer, the applicable 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period shall not be treated as a short taxable year and the rules of section 404 and the regulations shall be applied on the basis of the taxpayer's taxable year for which estimated tax is being determined. Thus, the determination of whether a payment to an employee is deferred compensation under § 1.404(b)–1T shall be made by reference to whether the payment is received by the employee more than a brief period of time after the last day of the taxable year for which estimated tax is being determined and not the last day of the applicable annualization period. With respect to

contributions to qualified plans governed by section 404 and the regulations, in determining whether an item is paid or incurred by the end of an annualization period, economic performance is satisfied only to the extent such item is paid by the last day of the applicable annualization period (without regard to section 404(a)(6)) and does not, in combination with other such items paid during the applicable annualization period, exceed the applicable deduction limit of section 404(a) for the taxable year. For purposes of sections 419 and 419A and the regulations, regardless of the overall method of accounting employed by the taxpayer, the applicable 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period shall not be treated as a short taxable year and the rules of sections 419 and 419A and the regulations shall be applied on the basis of the taxpayer's taxable year for which estimated tax is being determined. With respect to contributions to a welfare benefit fund governed by sections 419 and 419A and the regulations, in determining whether an item is paid or incurred by the end of an annualization period, economic performance is satisfied only to the extent such item is paid by the last day of the applicable annualization period and does not, in combination with other such items paid during such annualization period, exceed the applicable deduction limit of section 419 for the taxable year.

(iv) With respect to depreciation and amortization (depreciation) expense, a taxpayer shall take into account depreciation expense only as provided in paragraph (f)(2)(v) of this section.

(v) With respect to any item taken into account in computing taxable income for the annualization period that is not described in paragraphs (f)(1)(i), (ii), (iii), and (iv) of this section, the item is includible in computing taxable income in accordance with the appropriate provision of the Internal Revenue Code.

(vi) With respect to an item of credit, the amounts upon which the credit is computed must have been taken into account in computing taxable income for the annualization period pursuant to paragraphs (f)(1)(i), (ii), (iii), (iv), and (v) of this section, as applicable.

(2) *Exceptions*—(i) *Annual expenses paid or incurred at or after the end of the taxable year.* (A) Except as otherwise provided in paragraphs (f)(2)(ii) through (vi) of this section, if an accrual method taxpayer has a history of incurring a specific item of expense under § 1.461–1(a)(2) (or a cash method taxpayer has a history of paying a specific item of expense under § 1.461–1(a)(1)) that, while attributable to income earned throughout the current taxable year, is not incurred (or paid, in the case of a cash method taxpayer) until the end of the taxable year, or after the end of the current taxable year and is deemed incurred (or paid, in the case of a cash method taxpayer) during the current taxable year (taking into account, as applicable, section 170(a)(2) and § 1.170A–11(b), section 404(a)(6), § 1.461–4(d)(6)(ii), § 1.461–5, and any other provision that has a similar effect), then the taxpayer may, in lieu of any amount determined under paragraph (f)(1) of this section, take into account for the applicable annualization period the amount of such expense properly allocable to such period provided the amount so allocated to such annualization period is determinable with reasonable accuracy and the amount of the item so allocated is properly deducted by the taxpayer during the current taxable year under the taxpayer's method of accounting.

(B) For purposes of this paragraph (f)(2)(i), the portion of an annual expense item allocable to an annualization period will be considered to be determined with reasonable accuracy if such item is allocated evenly throughout the taxable year unless the taxpayer is able to clearly demonstrate such item is more appropriately allocable to an annualization period by some other method including, for example, in proportion to the earning of revenue, the use of property, or the provision of services. For purposes of this paragraph (f)(2)(i), a taxpayer has a history of incurring or paying a specific item of expense at the end of the taxable year, or after the end of the taxable year that is deemed incurred or paid during the taxable year, if, in each of the two taxable years immediately preceding the current taxable year (or the immediately preceding taxable year if the taxpayer was not in existence for the two preceding taxable years), the taxpayer incurred or paid the specific item of expense at the end of each taxable year, or after the end of each taxable year that was deemed incurred or paid during such taxable year. In addition, for purposes of this paragraph (f)(2)(i), the term "the end of the taxable year" means the period between and including the 15th and last day of the last month of the taxable year.

(ii) *Net operating loss carryover.* Any net operating loss carryover to the current taxable year shall be taken into account in computing an annualized income installment only after annualizing the taxable income for the annualization period.

(iii) *Credit carryover.* Any credit carryover to the current taxable year shall be taken into account in computing an annualized income installment only after annualizing the taxable income for the annualization period and computing the applicable tax, and before applying the applicable percentage.

(iv) *Section 481(a) adjustment.* (A) Any section 481(a) adjustment required to be recognized during the taxable year shall be recognized ratably over the number of months in the taxable year.

(B) With respect to a Form 3115, "Application for Change in Accounting Method," filed during the current taxable year or a preceding taxable year, if the change in method of accounting—

(*1*) Is permitted to be made with the automatic consent of the Commissioner, the appropriate portion of the section 481(a) adjustment determined under paragraph (f)(2)(iv)(A) of this section shall be taken into account in determining an annualized income installment if, and only if, the copy of the Form 3115 has been mailed to the IRS National Office on or before the last day of the annualization period; or

(*2*) Requires the prior consent of the Commissioner, the appropriate portion of the section 481(a) adjustment determined under paragraph (f)(2)(iv)(A) of this section shall be taken into account in determining an annualized income installment if, and only if, the consent agreement reflecting the Commissioner's consent to the change in method of accounting and the prescribed terms and conditions for effecting such change has been signed by the taxpayer and mailed to the IRS National Office on or before the last day of the annualization period.

(v) *Depreciation and amortization*—(A) *General rule.* In determining any annualized income installment, a proportionate amount of the taxpayer's estimated annual depreciation and amortization (depreciation) expense shall be taken into account. For purposes of the preceding sentence, estimated annual depreciation expense is the estimated depreciation expense to be properly taken into account in determining the taxpayer's taxable income for the taxable year. In determining the estimated annual depreciation expense, a taxpayer may take into account purchases, sales or other dispositions, changes in use, depreciation deductions permitted under sections 168(k) and 1400L(b), and other similar events and provisions (for example, section 179) that, based on all the relevant information available as of the last day of the annualization period (such as capital spending budgets, financial statement data and projections, or similar reports that provide evidence

of the taxpayer's capital spending plans for the current taxable year), are reasonably expected to occur or apply during the taxable year. For purposes of the additional first-year depreciation deduction under sections 168(k) and 1400L(b), only a proportionate amount of the current year's additional first-year depreciation deduction to be taken into account in determining a taxpayer's taxable income for the taxable year is taken into account in computing taxable income for an annualization period. As an alternative to estimating annual depreciation expense based on events that are reasonably expected to occur, a taxpayer may claim for an annualization period at least a proportionate amount of 50 percent of the taxpayer's estimated depreciation expense for the current taxable year attributable to assets that a taxpayer had in service on the last day of the preceding taxable year, that remain in service on the first day of the current taxable year, and that are subject to the half-year convention.

(B) *Short taxable years.* Unless the taxable year is, or will be, a short taxable year, in no circumstance may an annualization period be treated as a short taxable year for purposes of determining the depreciation allowance for such annualization period. If the taxable year is, or will be (based on all relevant information available as of the last day of the annualization period), a short taxable year, annual depreciation expense shall be computed using the rules applicable for computing depreciation during a short taxable year for purposes of determining the annual depreciation expense to be allocated to an annualization period. For this purpose, the rules applicable for computing depreciation during a short taxable year shall be applied on the basis of the date the taxable year is expected to end based on all relevant information available as of the last day of the annualization period. See Rev. Proc. 89–15 (1989–1 C.B. 816), (see § 601.601(d)(2)(ii)(b) of this chapter).

(vi) *Member of partnership.* In determining a partner's distributive share of partnership items that must be taken into account during an annualization period, the rules set forth in § 1.6654–2(d)(2) are applicable.

(3) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Corporation A, a calendar year taxpayer, uses an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment payment for its 2006 taxable year. Consistent with its historical practice, the board of directors of A, on or before March 31, 2006, make a binding, irrevocable commitment to fund a minimum contribution of $10,000,000 to A's qualified retirement plan by March 15, 2007, which fixes A's liability to make the $10,000,000 contribution. Similarly, consistent with A's historical practice, A plans to remit payments to the retirement plan of $1,000,000 on January 2, 2007, and $9,000,000 on March 1, 2007. The $10,000,000 commitment is not taken into account for purposes of determining A's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year, because A did not make any payments by March 31, 2006 (and therefore did not satisfy the economic performance requirements of § 1.461–4(d)(2)(iii) by March 31, 2006), in accordance with paragraph (f)(1)(iii) of this section. The $10,000,000 is not treated as paid on or before March 31, 2006, under section 404(a)(6) because, pursuant to paragraph (f)(1)(iii) of this section, the last day of the annualization period is not to be treated as the last day of A's taxable year. However, pursuant to paragraph (f)(2)(i)(A) of this section, because A has historically incurred a retirement plan expense during the taxable year pursuant to section 404 that, but for the deeming rule of section 404(a)(6), would have been incurred after the end of the taxable year, and because A satisfies the other requirements of paragraph (f)(2)(i)(A) of this section, A may take into account a $2,500,000 retirement plan expense for purposes of determining A's taxable income to be annualized in computing A's first annualized income installment for 2006 ($10,000,000/12 × 3 = $2,500,000) unless, pursuant to paragraph (f)(2)(i)(B) of this section, A is able to clearly demonstrate that the retirement plan expense is more appropriately allocable by some other method.

Example 2. Same facts as *Example 1* except that, consistent with its historical practice, A remits $9,000,000 to the retirement plan on June 30, 2006, and $1,000,000 to the retirement plan on September 30, 2006. For purposes of determining A's first and second required installments for 2006, which are based on the income and deductions from the first three months of the taxable year, A may not take into account any of the retirement plan expense because A did not make any payments by March 31, 2006 (and therefore did not satisfy the economic performance requirements of § 1.461–4(d)(2)(iii) by March 31, 2006), in accordance with paragraph (f)(1)(iii) of this section. For A's third required installment, which is based on the income and deductions from the first six months of the taxable year, A may take into account a $9,000,000 retirement plan expense for purposes of determining A's annualized taxable income because A incurred the $9,000,000 expense by June 30, 2006. For A's fourth required installment, which is based on the income and deductions from the first nine months of the taxable year, A may take into account a $10,000,000 retirement plan expense for purposes of determining A's annualized taxable income because A incurred the $10,000,000 retirement plan expense by September 30, 2006.

Example 3. Corporation B, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment. In each of the three preceding taxable years, B has paid annual bonuses on the Friday immediately preceding December 25 to those employees of B that provided services to B during the taxable year and were employed by B on the date such bonuses were paid. At the beginning of 2006, consistent with its historical experience, B's board of directors pass a resolution that B will pay cash bonuses of $6,000,000 to those employees that have provided services to B during 2006 and are employed by B on December 22, 2006, the Friday immediately preceding December 25, 2006. B plans to pay, and does pay, the cash bonuses to eligible employees on March 1, 2007. The bonuses, pursuant to paragraph (f)(1)(iii) of this section, are not treated as deferred compensation for the taxable year or the annualization period under § 1.404(b)–1T because the last day of the annualization period is not to be treated as the last day of B's taxable year. Because the bonuses are not treated as deferred compensation, the bonuses are not subject to section 404, and instead are treated as service liabilities under § 1.461–4(d)(2)(i) rather than employee benefit liabilities under § 1.461–4(d)(2)(iii). Thus, the bonuses are incurred when all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and the services are provided to B by B's employees. If B's first required installment is made under the provisions of section 6655(e)(1), the $6,000,000 is not taken into account for purposes of determining B's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year, because B did not incur any liability for bonus payments for the current taxable year by March 31, 2006, in accordance with paragraph (f)(1)(iii) of this section. However, pursuant to paragraph (f)(2)(i)(A) of this section, because B has historically incurred a bonus expense at the end of the taxable year, and because B satisfies the other requirements of paragraph (f)(2)(i)(A) of this section, B may take into account a $1,500,000 bonus expense for purposes of determining B's taxable income to be annualized in computing B's first annualized income installment for 2006 ($6,000,000/12 × 3 = $1,500,000) unless, pursuant to paragraph (f)(2)(i)(B) of this section, B is able to clearly demonstrate that the bonus expense is more appropriately allocable by some other method.

Example 4. Corporation C, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment for its 2006 taxable year. C has a net operating loss carryover to 2006 of $400,000. C's taxable income from January 1, 2006, through March 31, 2006, without regard to any net operating loss carryover, is $500,000. For purposes of determining C's first annualized income installment, C's

annualized taxable income is $1,600,000, determined by placing C's first three months of taxable income from January 1, 2006, through March 31, 2006, on an annualized basis ($500,000 × 12/3 = $2,000,000) and reducing the resulting amount of $2,000,000 by the $400,000 net operating loss carryover to 2006.

Example 5. Corporation D, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2006 taxable year. On April 15, 2005, D filed a Form 3115, "Application for Change in Accounting Method," to request the consent of the Commissioner to change its method of accounting for recognizing revenue. The Commissioner consented to D's requested change, and D signed and mailed the consent letter to the IRS National Office on December 15, 2005. The method change resulted in a positive section 481(a) adjustment of $200,000 to be taken into account over four taxable years beginning in 2005. D's taxable income from January 1, 2006, through March 31, 2006, prior to any section 481(a) adjustment, is $500,000. For purposes of determining D's first annualized income installment for its 2006 taxable year, D's annualized taxable income is $2,050,000, determined by placing the sum of D's first three months of taxable income from January 1, 2006, through March 31, 2006, ($500,000) plus, pursuant to paragraph (f)(2)(iv) of this section, the portion of the section 481(a) adjustment required to be recognized during the taxable year ($200,000/4 = $50,000) that is attributable to the period from January 1, 2006, through March 31, 2006, ($50,000 × 3/12 = $12,500) on an annualized basis ($512,500 × 12/3 = $2,050,000).

Example 6. Corporation E, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2006 taxable year. E's taxable income from January 1, 2006, through March 31, 2006, prior to any section 481(a) adjustment, is $500,000. On June 30, 2006, E filed a copy of the Form 3115 with the IRS National Office to request a change in method of accounting that was permitted to be made with the automatic consent of the Commissioner and resulted in a negative section 481(a) adjustment of $400,000 to be taken into account entirely in 2006. For purposes of determining E's first annualized income installment for its 2006 taxable year, E's annualized taxable income is $2,000,000, determined by placing E's first three months of taxable income from January 1, 2006, through March 31, 2006, ($500,000) on an annualized basis ($500,000 × 12/3 = $2,000,000). Because E did not file the accounting method change request until after the last day of the annualization period, no portion of the section 481(a) adjustment is taken into account in computing E's first annualized income installment.

Example 7. Same facts as *Example 6* except that E's taxable income from January 1, 2006, through June 30, 2006, prior to any section 481(a) adjustment, is $800,000. For purposes of determining E's third annualized income installment for its 2006 taxable year, E's annualized taxable income is $1,200,000, determined by placing the sum of E's first six months of taxable income from January 1, 2006, through June 30, 2006, ($800,000) less, pursuant to paragraph (f)(2)(iv) of this section, the portion of the 2006 section 481(a) adjustment required to be recognized during the taxable year that is attributable to the period from January 1, 2006, through June 30, 2006 ($400,000 × 6/12 = $200,000) on an annualized basis ($600,000 × 12/6 = $1,200,000).

Example 8. Same facts as *Example 7* except that E's request for change in method of accounting required the prior consent of the Commissioner and the Form 3115 was filed with the IRS National Office on June 30, 2006. On December 10, 2006, E received the consent of the Commissioner to change its method of accounting. E signed and mailed the consent letter to the IRS National Office on December 15, 2006. For purposes of determining E's third annualized income installment for its 2006 taxable year, E's annualized taxable income is $1,600,000, determined by placing E's first six months of taxable income from January 1, 2006, through June 30, 2006, on an annualized basis ($800,000 × 12/6 = $1,600,000). No portion of the section 481(a) adjustment is taken into account in computing E's third annualized income installment because, although E filed the accounting method change request on or before the last day of E's third annualization period, E did not receive the Commissioner's consent to change its method of accounting, and E did not sign and mail the consent agreement to the IRS National Office, on or before the last day of E's third annualization period.

Example 9. Corporation F, a calendar year taxpayer that began business on January 1, 2003, adopted an accrual method of accounting and will use the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment payment for its 2003 taxable year. As of March 31, 2003, F has purchased and placed in service $100,000 of "5-year property," as defined in section 168(e), and anticipates purchasing and placing in service another $100,000 of "5-year property" before December 31, 2003. F does not anticipate being subject to the mid-quarter convention for the 2003 taxable year, does not anticipate making any depreciation elections for this class of property, does not anticipate making a section 179 election, will deduct the 30% additional first year depreciation deduction, does not anticipate any sales or other dispositions of depreciable property, and no events have occurred, and, based on all relevant information available as of the due date of F's first required installment, F does not know of any event that will cause F's taxable year to be a short taxable year. F's annual depreciation expense for 2003 is estimated to be $88,000 (total depreciation deduction under section 168(k) of $60,000 ($200,000 × 30% = $60,000) plus annual depreciation of $28,000 (($200,000 minus $60,000) × 20%)). For purposes of determining F's first annualized income installment for its 2003 taxable year, in accordance with paragraph (f)(2)(v)(A) of this section, depreciation expense of $22,000 ($88,000 × 3/12 = $22,000) may be taken into account in computing F's January 1, 2003, through March 31, 2003, taxable income to be annualized. Under paragraph (f)(2)(v)(B) of this section, F may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

Example 10. Corporation G, a calendar year taxpayer that began business on January 5, 2004, adopted an accrual method of accounting and will use the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment payment for its 2005 taxable year. On January 5, 2004, G purchased and placed in service an asset that cost $30,000, qualifies as "5-year property" as defined in section 168(e), is eligible for the 50% additional first year depreciation deduction under section 168(k), and is subject to the half-year convention. G will deduct the 50% additional first year depreciation deduction with respect to the "5-year property." For tax year 2004, G takes a depreciation deduction under section 168(k) of $18,000 ($15,000 ($30,000 × 50% = $15,000) plus annual depreciation of $3,000 ($15,000 × 20% = $3,000)). G does not anticipate being subject to the mid-quarter convention for the 2004 taxable year, does not anticipate making any depreciation elections for this class of property, does not anticipate making a section 179 election, will deduct the 50% additional first year depreciation deduction, does not anticipate any sales or other dispositions of depreciable property, and no events have occurred, and, based on all relevant information available as of the due date of G's first required installment, G does not know of any event that will cause G's taxable year to be a short taxable year. G's annual depreciation expense for 2005 is estimated to be $4,800 ($15,000 × 32% = $4,800). For purposes of determining G's first annualized income installment for its 2005 taxable year, in accordance with paragraph (f)(2)(v)(A) of this section, depreciation expense of $1,200 ($4,800 × 3/12 = $1,200) may be taken into account in computing G's January 1, 2005, through March 31, 2005, taxable income to be annualized. As an alternative to estimating annual depreciation expense based on events that are reasonably expected to occur, depreciation expense of at least $600 ($4,800 × 50% × 3/12 = $600) may be taken into account in computing G's January 1, 2005, through March 31, 2005, taxable income to be annualized. Under paragraph (f)(2)(v)(B) of this section, G may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

Example 11. Corporation H, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2006 taxable year. H has owned real property in State Y since 2002 and has used the real property in its trade or business. H's method of

accounting for real estate taxes is to deduct the taxes on the lien date, subject to the recurring item exception of § 1.461–5. Based on historical practice for the past five years, for the 2006 calendar year State Y imposes a lien for real estate taxes on real property owned in State Y on March 15, 2006, with 90% of the tax due on June 30, 2006, and the remaining 10% of the tax due on June 29, 2007. Based on the value of H's real property in State Y, H's real estate tax liability lien imposed on March 15, 2006, is $100,000. H pays the first 90% of this liability on June 30, 2006, and the remaining 10% on June 29, 2007. Under paragraph (f)(1)(iii) of this section, the $100,000 real estate tax liability is not taken into account for purposes of determining H's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year, because economic performance with respect to the real estate tax liability did not occur by March 31, 2006. However, pursuant to paragraph (f)(2)(i)(A) of this section, because H has historically incurred a real estate tax expense after the end of the taxable year and the real estate tax expense was deemed incurred in 2006 pursuant to § 1.461–5, and because H satisfies the other requirements of paragraph (f)(2)(i)(A) of this section, a $2,500 real estate tax expense may be taken into account for purposes of determining H's taxable income to be annualized in computing H's first annualized income installment ($10,000/12 × 3 = $2,500) unless, pursuant to paragraph (f)(2)(i)(B) of this section, H is able to clearly demonstrate that the real estate tax expense is more appropriately allocable by some other method.

Example 12. Same facts as *Example 11*, except that H is computing its third required installment payment for H's 2006 taxable year. Pursuant to paragraph (f)(1)(iii) of this section, H may take into account $90,000 ($100,000 real estate tax liability × 90% paid on June 30, 2006) for purposes of determining the taxable income to be annualized in computing H's third annualized income installment because economic performance with respect to $90,000 of the real estate tax liability occurred by June 30, 2006. In addition, pursuant to paragraph (f)(2)(i)(A) of this section, because H has historically incurred a real estate tax expense after the end of the taxable year and the real estate tax expense was deemed incurred in 2006 pursuant to § 1.461–5, and because H satisfies the other requirements of paragraph (f)(2)(i)(A) of this section, a $5,000 real estate tax expense also may be taken into account for purposes of determining H's taxable income to be annualized in computing H's third annualized income installment ($10,000/12 × 6 = $5,000) unless, pursuant to paragraph (f)(2)(i)(B) of this section, H is able to clearly demonstrate that $10,000 of the real estate tax expense is more appropriately allocable by some other method. Therefore, pursuant to paragraphs (f)(1)(iii) and (f)(2)(i)(A) of this section, H may take into account $95,000 of the real estate tax liability for purposes of computing the third required installment payment for H's 2006 taxable year.

Example 13. Same facts as *Example 11*, except that H pays 90% of the real estate tax liability on June 30, 2006, and the remaining 10% of the real estate tax liability on November 30, 2006. Under paragraph (f)(1)(iii) of this section, the $100,000 real estate tax liability is not taken into account for purposes of determining H's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year, because economic performance with respect to the real estate tax liability did not occur by March 31, 2006. In addition, although H has a history of incurring a real estate tax expense after the end of the taxable year that is deemed incurred during the taxable year, H does not meet the requirements of paragraph (f)(2)(i)(A) of this section in order to take a real estate tax expense into account for purposes of determining H's first annualized income installment because H does not incur a real estate tax at the end of the current taxable year or after the end of the current taxable year that will be deemed incurred during the current taxable year.

Example 14. Same facts as *Example 13* except that H is computing its third required installment payment for H's 2006 taxable year. Pursuant to paragraph (f)(1)(iii) of this section, H may take into account $90,000 ($100,000 real estate tax liability × 90% paid on June 30, 2006) for purposes of determining the taxable income to be annualized in computing H's third annualized income installment because economic performance with respect to $90,000 of the real estate tax liability occurred by June 30, 2006.

Example 15. Corporation I, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2006 taxable year. As of December 31, 2005, I had a $1,000,000 account receivable due from Z related to the sale of goods from I to Z during 2005. I has traditionally incurred bad debt expense for worthless accounts receivable and, as of January 1, 2006, I projects that it will have a bad debt expense of $1,600,000 under section 166 and the regulations for its calendar year 2006. On March 31, 2006, I determined that its receivable from Z was totally worthless under section 166 and the regulations. No other receivables were determined to be worthless between January 1, 2006, and March 31, 2006. In accordance with paragraph (f)(1)(ii) of this section, a $1,000,000 bad debt write-off is taken into account for purposes of determining the taxable income to be annualized in computing I's first annualized income installment.

Example 16. Same facts as *Example 15* except that I determines that its receivable from Z was totally worthless under section 166 and the regulations on April 10, 2006. As of March 31, 2006, I had not determined that any receivables were worthless under section 166 and the regulations. In accordance with paragraph (f)(1)(ii) of this section, the $1,000,000 bad debt expense attributable to the receivable from Z is not taken into account for purposes of determining the taxable income to be annualized in computing I's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year, because the receivable from Z became totally worthless after the last day of I's annualization period. Furthermore, I may not take the bad debt expense into account for purposes of determining the taxable income to be annualized in computing I's first annualized income installment because the receivable from Z does not meet the requirements of paragraph (f)(2)(i) of this section.

Example 17. Corporation J, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment payment for its 2006 taxable year. J projects its annualized tax for its 2006 taxable year, based on annualizing J's taxable income for its first annualization period from January 1, 2006, through March 31, 2006, to be $1,500,000 before reduction for any credits. J has an unused credit for increasing research activities from 2005 of $500,000 that is carried over to 2006. For purposes of determining J's first annualized income installment, J's annualized tax for 2006 is $1,000,000, determined as the tax for the taxable year computed by placing on an annualized basis J's taxable income from its first annualization period from January 1, 2006, through March 31, 2006, ($1,500,000) reduced by the $500,000 credit carryover from 2005.

Example 18. Corporation K, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment payment for its 2006 taxable year. K projects its annualized tax for its 2006 taxable year, based on annualizing K's taxable income for its first annualization period from January 1, 2006, through March 31, 2006, to be $2,000,000 before reduction for any credits. K has historically earned a credit for increasing research activities and, for 2006, K estimates that it will earn a credit for increasing research activities under section 41 of $1,200,000. However, pursuant to paragraph (f)(1)(vi) of this section, if K were to annualize all components involved in computing the current year credit based on K's activity from January 1, 2006, through March 31, 2006, K would generate a credit of $1,600,000 for 2006. For purposes of determining K's first annualized income installment, K's annualized tax for 2006 is $400,000, determined as the tax for the 2006 taxable year ($2,000,000) computed by placing on an annualized basis K's taxable income from its first annualization period January 1, 2006, through March 31, 2006, reduced by a $1,600,000 current year credit from increasing research activities.

Example 19. Same facts as *Example 18* except that K does not begin any research activities until April 3, 2006, and will not incur any research expenses described in paragraph (f)(2)(i) of this section. As a result, if K were to annualize all components involved in computing the current year credit based on K's activity from January 1, 2006, through March 31, 2006, K would generate no section 41 research credit for purposes of

determining its first annualized income installment. Pursuant to paragraph (f)(1)(vi) of this section, K can not take into account any credit for its first annualization period because K did not incur the credit by the last day of the first annualization period. Accordingly, for purposes of determining K's first annualized income installment, K's annualized tax for its first annualization period January 1, 2006, through March 31, 2006, is $2,000,000.

Example 20. Corporation L, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate its first required installment payment for its 2006 taxable year. L has licensed technology from Corporation M for the past five years. Pursuant to the license agreement, L pays a license fee to M equal to $.01 for every dollar of gross receipts earned by L. For 2006, L projects gross receipts of $200,000,000, of which $100,000,000 is earned by March 31, 2006, and no portion of L's license fee expense is described in paragraph (f)(2)(i) of this section. Pursuant to paragraph (f)(1)(iii) of this section, a license fee expense of $1,000,000 ($100,000,000 × $.01) is incurred by March 31, 2006, and may be taken into account for purposes of determining the taxable income to be annualized in computing L's first annualized income installment.

Example 21. Same facts as *Example 20* except that L does not earn any gross receipts by March 31, 2006. In accordance with paragraph (f)(1)(iii) of this section, because the license fee expense was not incurred under § 1.461–1(a)(2) by the last day of the annualization period, no license fee expense is taken into account for purposes of determining the taxable income to be annualized in computing L's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year.

Example 22. Corporation N is a calendar year taxpayer that produces and sells candy bars. N uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2007 taxable year. N annually conducts, and will conduct for 2007 and 2008, a contest for its customers whereby N awards, on a quarterly basis, a cash prize of $100,000, $200,000, $300,000, and $400,000 to the first, second, third, and fourth quarter winners, respectively. Winners are announced on the last day of each calendar quarter and the prize is payable on the last day of the month following the announcement of the winner. N uses the recurring item exception of section 461(h) and the regulations with respect to its liability to the prize winner. On December 31, 2006, N announced its fourth quarter winner and remitted payment of $400,000 to the winner on January 31, 2007. Although the contest liability is incurred in accordance with § 1.461–4(g)(4) on January 31, 2007, at the time payment is made to the award winner, N may not take such item into account in computing N's first annualized income installment for 2007 because, pursuant to the recurring item exception, the $400,000 is deductible in determining N's 2006 taxable income and is not taken into account in determining N's taxable income for 2007, as required pursuant to paragraph (f)(1) of this section. However, because N has historically incurred an annual prize expense of $400,000 that is described in paragraph (f)(2)(i)(A) of this section, $100,000 may be taken into account for purposes of determining the taxable income to be annualized in computing N's first annualized income installment for N's 2007 taxable year based on the $400,000 liability N will incur for the 2007 taxable year when N makes the payment in January of 2008 to the 2007 fourth quarter winner ($400,000/12 × 3 = $100,000), unless, pursuant to paragraph (f)(2)(i)(B) of this section, N is able to clearly demonstrate that the annual prize expense is more appropriately allocable by some other method.

(g) *Items that substantially affect taxable income but cannot be determined accurately by the installment due date*—(1) *In general.* In determining the applicability of the annualization exceptions described in paragraphs (a) and (b) of this section and § 1.6655–3, reasonable estimates may be made from existing data for items that substantially affect income if the amount of such items cannot be determined accurately by the installment due date. Examples of these items are the inflation index for taxpayers using the dollar-value LIFO (last-in, first-out) inventory method, intercompany adjustments for taxpayers that file consolidated returns, and the liquidation of a LIFO layer at the installment date that the taxpayer reasonably believes will be replaced at the end of the year.

(2) *Example.* The following example illustrates the rules of this paragraph (g):

Example. Corporation X accounts for its inventory using the dollar-value LIFO method of accounting. If, when computing its first annualized income installment, no reliable inflation index exists for the period January 1, 2006, through March 31, 2006, X may interpolate from an available inflation index for the same months in the previous year to calculate its cost of goods sold.

(h) *Events arising after installment due date that were not reasonably foreseeable*—(1) *In general.* Events arising subsequent to an installment due date that cause the taxpayer's computation of its taxable income for a prior installment period to be understated will not result in a recomputation of its taxable income for the prior installment period. The preceding sentence applies only if, based on all the facts and circumstances as of the due date of an installment payment, it was not reasonably foreseeable that these subsequent events would occur.

(2) *Example.* The following example illustrates the rules of this paragraph (h):

Example. Assume that Congress enacts retroactively effective legislation that causes the taxable income for the applicable 2-, 3-, 4-, 5-, 6-, 7-;, 8-, 9-, 10- or 11-month period to be understated. This event, which occurs after the applicable installment due date and was not reasonably foreseeable at the time the installment payment was made, will not result in a recomputation of a corporation's taxable income for the applicable installment period because such an event was not reasonably foreseeable.

(i) *Effective date.* This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register.**

§ 1.6655–3 Adjusted seasonal installment method.

(a) *In general.* In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

(1) 100 percent of the amount determined under paragraph (c) of this section; over

(2) The aggregate amount of all prior required installments for the taxable year.

(b) *Limitation on application of section.* This section shall apply only if the base period percentage (as defined in section 6655(e)(3)(D)(i) and paragraph (d)(1) of this section) for any six consecutive months of the taxable year equals or exceeds seventy percent.

(c) *Determination of amount.* The amount determined under this section for any installment will be determined in the following manner—

(1) Take the taxable income for all months during the taxable year preceding the filing month;

(2) Divide such amount by the base period percentage for all months during the taxable year preceding the filing month;

(3) Determine the tax on the amount determined under paragraph (c)(2) of this section; and

(4) Multiply the tax computed under paragraph (c)(3) of this section by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(d) *Special rules*—(1) *Base period percentage.* The base period percentage for any period of months shall be the average percent that the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years.

(2) *Filing month.* The term *filing month* means the month in which the installment is required to be paid.

(3) *Application of the rules related to the annualized income installment method to the adjusted seasonal installment method.* The rules governing the computation of taxable income (and resulting tax) for purposes of determining any required installment payment of estimated tax under the annualized income installment method under § 1.6655–2 shall apply to the computation of taxable income (and resulting tax) for purposes of determining any required installment payment of estimated tax under the adjusted seasonal installment method.

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) X, a corporation that reports on a calendar year basis, expected that it would have an estimated tax liability of $1,200,000 for its taxable year ending December 31, 2006. On its 2005 tax return, X reported a tax liability of $652,800. X paid four installments of estimated tax, each in the amount of $250,000, $250,000, $250,000, and $450,000 on April 17, 2006, June 15, 2006, September 15, 2006, and December 15, 2006, respectively. X reported a tax liability of $1,152,600 on its return due March 15, 2007, with no credits against tax. Under the general provision of section 6655(b) and section 6655(d), there was an underpayment in the amount of $76,300 for the second installment through September 15, 2006, and $114,450 for the third installment through December 15, 2006, determined as follows:

(A) Tax as defined in section 6655(g)—$1,152,600

(B) 100% of this paragraph (e), *Example* (i)(A)—1,152,600

(C) Amount of estimated tax required to be paid on or before the first installment (25% of $652,800)—163,200

(D) Deduct amount timely paid on or before the first installment due date under the general rule of section 6655(b)—250,000

(E) Amount of overpaid estimated tax for the first installment date—86,800

(F) Amount of estimated tax required to be paid on or before the second installment (25% of $1,152,600 plus the recapture amount under section 6655(d)(2)(B) of $124,950 (25% of $1,152,600 less 163,200))—413,100

(G) Deduct amount paid on or before the due date of the second installment less amount applied towards the first installment under the general rule of section 6655(b) ($250,000 paid in each of the first and second installments less this paragraph (e), *Example* (i)(C))—336,800

(H) Amount of underpayment for the second installment date—76,300

(I) Amount of estimated tax required to be paid on or before the third installment (25% of $1,152,600)—288,150

(J) Deduct amount paid on or before the due date of the third installment less amount applied towards the first and second installments under the general rule of section 6655(b) ($250,000 paid in each of the first, second, and third installments less this paragraph (e), *Example* (i)(C) less this paragraph (e), *Example* (i)(F))—173,700

(K) Amount of underpayment for the third installment date—114,450

(L) Amount of estimated tax required to be paid on or before the fourth installment (25% of $1,152,600)—288,150

(M) Deduct amount paid on or before the due date of the fourth installment less amount applied towards the first, second, and third installments under the general rule of section 6655(b) ($250,000 paid in each of the first, second, and third installments plus $450,000 paid in the fourth installment less this paragraph (e), *Example* (i)(C) less this paragraph (e), *Example* (i)(F) less this paragraph (e), *Example* (i)(I))—335,550

(N) Amount of overpaid estimated tax for the fourth installment date—47,400

(ii) X wants to determine if it qualifies for the adjusted seasonal installment method. X determines that its monthly taxable income for the preceding three taxable years and for the current taxable year 2006 is as follows:

January	February	March	April	May	June	July	August	September	October	November	December
2003:											
$100,000	$90,000	$80,000	$70,000	$60,000	$20,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
2004:											
200,000	170,000	170,000	130,000	125,000	45,000	21,000	19,000	20,000	20,000	20,000	20,000
2005:											
410,000	350,000	330,000	270,000	240,000	80,000	40,000	40,000	40,000	40,000	40,000	40,000
2006:											
600,000	680,000	650,000	560,000	460,000	170,000	70,000	60,000	50,000	40,000	30,000	20,000

(iii) X must initially determine if its base period percentage for the same 6 consecutive months of the 3 preceding taxable years equals or exceeds 70 percent (see section 6655(e)(3) and paragraphs (b) and (c) of this section). By using its taxable income for the first 6 months of 2003, 2004, and 2005, X qualifies for the adjusted seasonal installment method because its base period percentage is 87.5 percent (which exceeds 70 percent) computed as follows:

(A) Taxable income for first 6 months of 2003—$420,000

(B) Total taxable income for 2003—480,000

(C) Divide this paragraph (e), *Example* (iii)(A) by this paragraph (e), *Example* (iii)(B)—.875

(D) Taxable income for first 6 months of 2004—840,000

(E) Total taxable income for 2004—960,000

(F) Divide this paragraph (e), *Example* (iii)(D) by this paragraph (e), *Example* (iii)(E)—.875

(G) Taxable income for first 6 months of 2005—1,680,000

(H) Total taxable income for 2005—1,920,000

(I) Divide this paragraph (e), *Example* (iii)(G) by this paragraph (e), *Example* (iii)(H)—.875

(J) Add this paragraph (e), *Example* (iii)(C), (F), and (I)—2.625

(K) Divide this paragraph (e), *Example* (iii)(J) by 3—.875

(iv) To determine the amount of the first installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 3 months of 2006—$1,930,000

(B) Taxable income for first 3 months of 2003 ($270,000) divided by total taxable income for 2003 ($480,000)—.5625

(C) Taxable income for first 3 months of 2004 ($540,000) divided by total taxable income for 2004 ($960,000)—.5625

(D) Taxable income for first 3 months of 2005 ($1,090,000) divided by total taxable income for 2005 ($1,920,000)—.5677

(E) Add this paragraph (e), *Example* (iv)(B), (C), and (D) and divide by 3—.5642

(F) Divide this paragraph (e), *Example* (iv)(A) by this paragraph (e), *Example* (iv)(E)—3,420,773

(G) Determine the tax on this paragraph (e), *Example* (iv)(F)—1,163,049

(H) Taxable income for first 4 months of 2003 ($340,000) divided by total taxable income for 2003 ($480,000)—.7083

(I) Taxable income for first 4 months of 2004 ($670,000) divided by total taxable income for 2004 ($960,000)—.6979

(J) Taxable income for first 4 months of 2005 ($1,360,000) divided by total taxable income for 2005 (1,920,000)—.7083

(K) Add this paragraph (e), *Example* (iv)(H), (I), and (J) and divide by 3—.7048

(L) Multiply this paragraph (e), *Example* (iv)(G) by this paragraph (e), *Example* (iv)(K)—819,717

(M) 100% of this paragraph (e), *Example* (iv)(L)—819,717

(N) Amount of all prior required installments for 2006—0

(O) Amount of adjusted seasonal installment for the first installment payment (this paragraph (e), *Example* (iv)(M) less this paragraph (e), *Example* (iv)(N))—819,717

(v) To determine the amount of the second installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 5 months of 2006—$2,950,000

(B) Taxable income for first 5 months of 2003 ($400,000) divided by total taxable income for 2003 ($480,000)—.8333

(C) Taxable income for first 5 months of 2004 ($795,000) divided by total taxable income for 2004 ($960,000)—.8281

(D) Taxable income for first 5 months of 2005 ($1,600,000) divided by total taxable income for 2005 ($1,920,000)—.8333

(E) Add this paragraph (e), *Example* (v)(B), (C), and (D) and divide by 3—.8316

(F) Divide this paragraph (e), *Example* (v)(A) by this paragraph (e), *Example* (v)(E)—3,547,379

(G) Determine the tax on this paragraph (e), *Example* (v)(F)—1,206,109

(H) Taxable income for first 6 months of 2003 ($420,000) divided by total taxable income for 2003 ($480,000)—.875

(I) Taxable income for first 6 months of 2004 ($840,000) divided by total taxable income for 2004 ($960,000)—.875

(J) Taxable income for first 6 months of 2005 ($1,680,000) divided by total taxable income for 2005 ($1,920,000)—.875

(K) Add this paragraph (e), *Example* (v)(H), (I), and (J) and divide by 3—.875

(L) Multiply this paragraph (e), *Example* (v)(G) by this paragraph (e), *Example* (v)(K)—1,055,345

(M) 100% of this paragraph (e), *Example* (v)(L)—1,055,345

(N) Amount of all prior required installments for 2006—163,200

(O) Amount of adjusted seasonal installment for the second installment payment (this paragraph (e), *Example* (v)(M) less this paragraph (e), *Example* (v)(N))—892,145

(vi) To determine the amount of the third installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 8 months of 2006—$3,250,000

(B) Taxable income for first 8 months of 2003 ($440,000) divided by total taxable income for 2003 ($480,000)—.9167

(C) Taxable income for first 8 months of 2004 ($880,000) divided by total taxable income for 2004 ($960,000)—.9167

(D) Taxable income for first 8 months of 2005 ($1,760,000) divided by total taxable income for 2005 ($1,920,000)—.9167

(E) Add this paragraph (e), *Example* (vi)(B), (C), and (D) and divide by 3—.9167

(F) Divide this paragraph (e), *Example* (vi)(A) by this paragraph (vi)(E)—3,545,326

(G) Determine the tax on this paragraph (e), *Example* (vi)(F)—1,205,411

(H) Taxable income for first 9 months of 2003 ($450,000) divided by total taxable income for 2003 ($480,000)—.9375

(I) Taxable income for first 9 months of 2004 ($900,000) divided by total taxable income for 2004 ($960,000)—.9375

(J) Taxable income for first 9 months of 2005 ($1,800,000) divided by total taxable income for 2005 ($1,920,000)—.9375

(K) Add this paragraph (e), *Example* (vi)(H), (I), and (J) and divide by 3—.9375

(L) Multiply this paragraph (e), *Example* (vi)(G) by this paragraph (e), *Example* (vi)(K)—1,130,073

(M) 100% of this paragraph (e), *Example* (vi)(L)—1,130,073

(N) Amount of all prior required installments for 2006—576,300

(O) Amount of adjusted seasonal installment for the third installment payment (this paragraph (e), *Example* (vi)(M) less this paragraph (e), *Example* (vi)(N))—553,773.

(vii) To determine the amount of the fourth installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 11 months of 2006—$3,370,000

(B) Taxable income for first 11 months of 2003 ($470,000) divided by total taxable income for 2003 ($480,000)—.9792

(C) Taxable income for first 11 months of 2004 ($940,000) divided by total taxable income for 2004 ($960,000)—.9792

(D) Taxable income for first 11 months of 2005 ($1,880,000) divided by total taxable income for 2005 ($1,920,000)—.9792

(E) Add this paragraph (e), *Example* (vii)(B), (C), and (D) and divided by 3—.9792

(F) Divide this paragraph (e), *Example* (vii)(A) by this paragraph (e), *Example* (vii)(E)—3,441,585

(G) Determine the tax on this paragraph (e), *Example* (vii)(F)—1,170,139

(H) Taxable income for first 12 months of 2003 ($480,000) divided by total taxable income for 2003 ($480,000)—1.0000

(I) Taxable income for first 12 months of 2004 ($960,000) divided by total taxable income for 2004 ($960,000)—1.0000

(J) Taxable income for first 12 months of 2005 ($1,920,000) divided by total taxable income for 2005 ($1,920,000)—1.0000

(K) Add this paragraph (e), *Example* (vii)(H), (I), and (J) and divide by 3—1.0000

(L) Multiply this paragraph (e), *Example* (vii)(G) by this paragraph (e), *Example* (vi)(K)—1,170,139

(M) 100% of this paragraph (e), *Example* (vii)(L)—1,170,139

(N) Amount of all prior required installments for 2006—864,450

(O) Amount of adjusted seasonal installment for the fourth installment payment (this paragraph (e), *Example* (vii)(M) less this paragraph (e), *Example* (vii)(N))—305,689

(viii) Because the total amount of each required estimated tax payment determined under section 6655(e)(3) and paragraph (a) of this section exceeds the amount of each required estimated tax payment determined under section 6655(d) and § 1.6655–1(d) and (e), the exception described in section 6655(e) and this section does not apply and the addition to the tax with respect to the underpayment for the June 15, 2006, and September 15, 2006, installments will be imposed unless another exception (for example, see section 6655(e)(2)) applies with respect to these installments.

(f) *Effective date.* This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

Par. 8. Section 1.6655–4 is added to read as follows:

§ 1.6655–4 Large corporations.

(a) *Large corporation defined.* The term *large corporation* means any corporation (or a predecessor corporation) that had taxable income of at least $1,000,000 for any taxable year during the testing period. For purposes of this section, a predecessor corporation is the distributor or transferor corporation in a transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies.

(b) *Testing period.* For purposes of paragraph (a) of this section, the term *testing period* means the 3 taxable years immediately preceding the taxable year for which estimated tax is being determined (the current taxable year) or, if less, the number of taxable years the taxpayer has been in existence.

(c) *Computation of taxable income during testing period*—(1) *Short taxable year.* In the case of a corporation (or predecessor corporation) that had a short taxable year during the testing period, for purposes of determining whether the $1,000,000 amount referred to in paragraph (a) of this section is equaled or exceeded, the taxable income for the short taxable year is computed by—

(i) Multiplying the taxable income for the short taxable year by 12; and

(ii) Dividing the resulting amount by the number of months in the short taxable year.

(2) *Computation of taxable income in taxable year when there occurs a transaction to which section 381 applies.* (i) For purposes of determining whether an acquiring corporation had taxable income of $1,000,000 or more for a taxable year in which there occurs a transaction to which section 381 applies, the acquiring corporation's taxable income will be the sum of—

(A) The taxable income of the acquiring corporation for its taxable year; plus

(B) The taxable income of the distributor or transferor corporation for that portion of the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381(b)–1(b)).

(ii) For purposes of determining whether a transferor or distributor corporation had taxable income of $1,000,000 or more for a taxable year in which there occurs a transaction to which section 381 applies, the distributor or transferor corporation's taxable income shall be reduced by the amount of its taxable income for that portion of its taxable year corresponding to the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381(b)–1(b)).

(d) *Members of controlled group*—(1) *In general.* For purposes of applying

paragraph (a) of this section, the taxable income of members of a controlled group of corporations (as defined in section 1563(a)) must be aggregated for each year of the testing period. The provisions of this section shall not apply to a controlled group for any taxable year in which the aggregate taxable income of the members of the controlled group is less than $1,000,000.

(2) *Aggregation.* For purposes of paragraph (d)(1) of this section, a taxable loss of any member of the controlled group for a taxable year during the testing period is not taken into account.

(3) *Allocation rule.* If the aggregate taxable income of members of a controlled group computed pursuant to paragraph (d)(1) of this section exceeds $1,000,000 during the testing period, the $1,000,000 amount that is relevant for purposes of determining, under paragraph (a)(1) of this section, whether a corporation is a large corporation shall be divided equally among the component members of such group (including component members excluded pursuant to paragraph (d)(2) of this section) unless all of such component members consent to an apportionment plan providing for an alternative allocation of such amount. The procedure for making and filing this plan will be the same as the procedure used for making and filing an apportionment plan under section 1561. See section 1561 and the regulations.

(4) *Controlled group members.* (i) In the case of any corporation that was a member of a controlled group of corporations at any time during the testing period but is not a member of such group during the taxable year involved, the taxable income of the former member for the testing period is determined as if such corporation were not a member of a group at any time during that period. With respect to the controlled group, the taxable income of its former member will not be taken into account in determining such group's taxable income for any taxable year during the testing period for purposes of applying paragraph (a)(1) of this section.

(ii) For purposes of paragraph (d)(4)(i) of this section, the determination of whether a corporation is a member of a controlled group during the testing period is based on whether the corporation was a member of the controlled group on the last day of the month preceding the due date of the required installment.

(e) *Effect on a corporation's taxable income of items that may be carried back or carried over from any other taxable year.* In determining whether a corporation (or predecessor corporation) is a large corporation for its current taxable year, items that could offset taxable income during a taxable year included in the testing period (for example, those described in sections 172 and 1212) are not to be taken into account and the taxable income of a corporation for any taxable year during the testing period shall be determined without regard to items carried back or carried over from any other taxable year.

(f) *Consolidated returns.* [Reserved].

(g) *Example.* The provisions of this section may be illustrated by the following example:

Example. Y Corporation and Z Corporation are calendar year taxpayers. In 2006, Z acquires all of the assets of Y in a transaction to which section 381 applies. Z's taxable income for both 2004 and 2005 was less than $1,000,000. Y's taxable income for 2006 is determined under paragraph (c)(2) of this section to be $300,000 for that portion of the acquiring corporation's taxable year up to and including the date of transfer. Z's taxable income for 2006 is $800,000. Under the provisions of paragraph (c)(2) of this section, Z's 2006 taxable income for purposes of determining whether it is a large corporation for taxable year 2007 is $1,100,000 ($800,000 + $300,000). Thus, Z is a large corporation for the 2007 taxable year. In addition, if Z's 2006 taxable income, as determined under paragraph (c)(2) of this section, had been less than $1,000,000 but Y's taxable income in 2004 or 2005 had been $1,000,000 or more, Z would be a large corporation for taxable year 2007 because Y is a predecessor corporation.

(h) *Effective date.* This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

§ 1.6655–7 [Removed]

Par. 9. Section 1.6655–7 is removed.

§ 1.6655–5 [Redesignated as § 1.6655–7]

Par. 10. Section 1.6655–5 is redesignated as § 1.6655–7.

Par. 11. Sections 1.6655–5 and 1.6655–6 are added to read as follows:

§ 1.6655–5 Short taxable year.

(a) *In general.* Except as otherwise provided in this section, the provisions of section 6655 and the regulations are applicable in the case of a short taxable year (including an initial taxable year) for which a payment of estimated tax is required to be made.

(b) *Exception to payment of estimated tax.* In the case of a short taxable year, no payment of estimated tax is required if—

(1) The short taxable year is a period of less than 4 full calendar months; or

(2) The tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

(c) *Installment due dates*—(1) *In general*—(i) *Taxable year of four months but less than twelve months.* Except as otherwise provided, in the case of a short taxable year, if such year results in a taxable year of four or more full calendar months but less than twelve full calendar months, the due dates prescribed in § 1.6655–1(f)(2) shall apply.

(ii) *Exception.* If the date determined under paragraph (c)(1)(i) of this section for the first required installment due during the taxpayer's short taxable year is earlier than the 15th day of the fourth month of the taxpayer's short taxable year, the taxpayer's first required installment shall be due on the first due date otherwise determined under paragraph (c)(1)(i) of this section that is on or after the 15th day of the fourth month of the short taxable year.

(2) *Early termination of taxable year*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, if a taxable year ends early (for example, as a result of an acquisition or a change in taxable year), the due date for the final required installment shall be the date that would have been the due date of the next required installment if the event that gave rise to the short taxable year had not occurred.

(ii) *Exception.* If the date determined under paragraph (c)(2)(i) of this section is within thirty days of the last day of the short taxable year, the due date for the final required installment shall be the fifteenth day of the second month following the month that includes the last day of the short taxable year.

(d) *Amount due for required installment*—(1) *In general.* The amount due for any required installment determined under section 6655(d)(1)(B)(i) for a short taxable year shall be 100% of the required annual payment for the short taxable year divided by the number of required installments due (as determined under this section) for the short taxable year.

(2) *Tax shown on the return for the preceding taxable year.* If the current taxable year is a short taxable year, the amount due for any required installment determined under section 6655(d)(1)(B)(ii) shall be determined in the following manner—

(i) Take 100% of the tax shown on the return of the corporation for the preceding taxable year;

(ii) Multiply such amount by the number of full calendar months in the current short taxable year and divide by 12; and

(iii) Divide the amount determined under paragraph (d)(2)(ii) of this section by the number of required installments

due (as determined under this section) for the current short taxable year.

(3) *Applicable percentage.* In the case of any required installment determined under section 6655(e), the applicable percentage under section 6655(e)(2)(B)(ii) shall be—

(i) 25%, 50%, 75%, and 100% for the first, second, third, and fourth (last) required installments, respectively, if the taxpayer will have four required installments due for the short taxable year;

(ii) 33.33%, 66.67%, and 100% for the first, second, and third (last) required installments, respectively, if the taxpayer will have three required installments due for the short taxable year;

(iii) 50% and 100% for the first and second (last) required installments, respectively, if the taxpayer will have two required installments due for the short taxable year; or

(iv) 100% for the first (and last) required installment if the taxpayer will have one required installment for the short taxable year.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. A corporation is a calendar year taxpayer that was acquired by B corporation on April 16, 2007, resulting in A having a short taxable year from January 1 through April 16, 2007. Because A has a taxable year of less than four full calendar months, no estimated tax payments are required by A for the short taxable year.

Example 2. B corporation began business on January 10, 2007, and adopted a calendar year as its taxable year. B computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to § 1.6655–1(f)(2)(i), the due dates of B's required installments for B's initial taxable year from January 10, 2007, through December 31, 2007, are April 15, 2007, June 15, 2007, September 15, 2007, and December 15, 2007. However, because the due dates for the first, third, and fourth required installments fall on a weekend, B's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, April 16, 2007, September 17, 2007, and December 17, 2007, respectively, for the first, third, and fourth required installments. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 25% of the required annual payment for B's first required installment, 50% of the required annual payment for B's second required installment, 75% of the required annual payment for B's third required installment, and 100% of the required annual payment for B's fourth required installment.

Example 3. Corporation C began business on February 12, 2007, and adopted a calendar year as its taxable year. C computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to § 1.6655–1(f)(2)(i), the due dates of C's required installments for C's initial taxable year from February 12, 2007, through December 31, 2007, are April 15, 2007, June 15, 2007, September 15, 2007, and December 15, 2007. However, in accordance with paragraph (c)(1)(ii) of this section, C's first required installment is due June 15, 2007, because April 15, 2007, is earlier than the fifteenth day of the fourth month of C's taxable year. As a result, C's second required installment is due September 15, 2007, and C's third (and last) installment is due December 15, 2007. However, because the due dates for the second and third (and last) required installments fall on a weekend, C's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, September 17, 2007, and December 17, 2007, respectively, for the second and third (and last) required installments. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 33.33% of the required annual payment for C's first required installment, 66.67% of the required annual payment for C's second required installment, and 100% of the required annual payment for C's third (and last) required installment.

Example 4. Same facts as *Example 3* except C began business on April 10, 2007. In accordance with paragraph (c)(1)(ii) of this section, C's first required installment is due September 15, 2007, because April 15, 2007, and June 15, 2007, are earlier than the fifteenth day of the fourth month of C's taxable year. As a result, C's second (and last) required installment is due December 15, 2007. However, because the due dates for the first and second (and last) required installments fall on a weekend, C's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, September 17, 2007, and December 17, 2007, respectively, for the first and second (and last) required installments. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 50% of the required annual payment for C's first required installment, and 100% of the required annual payment for C's second (and last) required installment.

Example 5. D corporation began business on February 12, 2007, and adopted a fiscal year ending October 31 as its taxable year. D computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to § 1.6655–1(f)(2)(ii), the due dates of D's required installments for D's initial taxable year from February 12, 2007, through October 31, 2007, are February 15, 2007, April 15, 2007, July 15, 2007, and October 15, 2007. However, in accordance with paragraph (c)(1)(ii) of this section, D's first required installment is due July 15, 2007, because February 15, 2007, and April 15, 2007, are earlier than the fifteenth day of the fourth month of D's taxable year. As a result, D's second (and last) installment is due October 15, 2007. However, because the due date for the first required installment falls on a weekend, D's first required installment payment will be timely if paid on or before the first business day following the actual due date of the required installment, that is, July 16, 2007. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 50% of the required annual payment for D's first required installment, and 100% of the required annual payment for D's second (and last) required installment.

Example 6. Same facts as *Example 5* except D corporation began business on May 10, 2007. In accordance with paragraph (c)(1)(ii) of this section, D's first (and last) installment is due October 15, 2007, because July 15, 2007, is earlier than the fifteenth day of the fourth month of D's taxable year. Pursuant to paragraph (d)(1) of this section, the amount due with D's required installment is 100% of the required annual payment, computed as 100% divided by the number of required installments due for the short taxable year.

Example 7. E corporation is a calendar year taxpayer that computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). E computes its 2007 required installments based on a projected 2007 total tax liability of $600,000. On July 31, 2007, E is acquired by F corporation resulting in E having a short taxable year from January 1, 2007, through July 31, 2007. E determines that its total tax liability for the short period is $350,000. The due dates for E's first and second required installments are April 15, 2007, and June 15, 2007, respectively. However, because the due date for the first required installment falls on a weekend, E's first required installment payment will be timely if paid on or before the first business day following the actual due date of the required installment, that is, April 16, 2007. Pursuant to section 6655(d)(1)(A), E paid $150,000 with each required installment. Pursuant to paragraph (c)(2) of this section, E's third (and last) required installment of estimated tax is due on September 15, 2007, and the percentage of the required annual payment due with such installment is 100% pursuant to paragraph (d)(1) of this section. However, because the due date for the third (and last) required installment falls on a weekend, E's third (and last) required installment payment will be timely if paid on or before the first business day following the actual due date of the required installment, that is, September 17, 2007. Accordingly, E is required to pay $50,000 with its final required installment on September 17, 2007 ($350,000 total tax liability for the short taxable year less prior installment payments of $300,000).

Example 8. Same facts as *Example 7* except that E is acquired by F corporation on August 31, 2007. Pursuant to paragraph (c)(2)(ii) of this section, E's third (and last) required installment of estimated tax is due on October 15, 2007, because September 15, 2007, the date that would have been the due date of E's next required installment if F's acquisition of E had not occurred, is within

thirty days of the last day of E's short taxable year, and 100% of the required annual payment is due with such installment.

Example 9. F corporation is a calendar year taxpayer that computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). F computes its 2007 estimated tax payments based on a projected 2007 total tax liability of $900,000. On December 3, 2007, F is acquired by G corporation resulting in F having a short taxable year from January 1, 2007, through December 3, 2007. F determined its total tax liability for the short period to be $800,000. The due dates for F's first, second, and third required installments are April 15, 2007, June 15, 2007, and September 15, 2007, respectively. However, because the due dates for the first and third required installments fall on a weekend, F's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, April 16, 2007, and September 17, 2007, respectively, for the first and third required installments. Pursuant to section 6655(d)(1)(A), F paid $225,000 with each required installment. Pursuant to paragraph (c)(2)(ii) of this section, F's fourth (and last) required installment of estimated tax is due on February 15, 2008, and the percentage of the required annual payment due with such installment is 100% pursuant to paragraph (d)(1) of this section. Accordingly, F is required to pay $125,000 with its final required installment due February 15, 2008 ($800,000 total tax liability for the short taxable year less prior installment payments of $675,000).

Example 10. G corporation, a calendar year taxpayer, reported a tax liability of $75,000 on its return for the taxable year ending December 31, 2006, and is not a large corporation as defined in section 6655(g). On July 31, 2007, G makes a final distribution of its assets, in connection with a plan of complete liquidation, resulting in a short taxable year from January 1, 2007, through July 31, 2007. To satisfy the requirements of the exception described in section 6655(d)(1)(B)(ii) for payments determined by reference to the tax shown on the return of the corporation for the preceding taxable year, pursuant to paragraph (d)(2) of this section, G must pay in a proportionate amount of its 2006 tax liability based on the number of months in the current taxable year. Accordingly, G must pay $43,750 ($75,000 × 7/12) through payments of estimated tax payments in 2007, with $14,583 due on April 15, 2007, June 15, 2007, and September 15, 2007. However, because the due dates for the first and third required installments fall on a weekend, G's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, April 16, 2007, and September 17, 2007, respectively, for the first and third required installments.

Example 11. Same facts as *Example 10* except that G makes a final distribution of its assets, in connection with a plan of complete liquidation, on October 1, 2007, resulting in a short taxable year from January 1, 2007, through October 1, 2007. To satisfy the requirements of the exception described in section 6655(d)(1)(B)(ii), G must pay $56,250 ($75,000 × 9/12) through payments of estimated tax in 2007, with $14,063 due on April 15, 2007, June 15, 2007, September 15, 2007, and December 15, 2007, respectively. However, because the due dates for the first, third, and fourth required installments fall on a weekend, G's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, April 16, 2007, September 17, 2007, and December 17, 2007, respectively, for the first, third, and fourth required installments.

Example 12. H corporation began business on February 15, 2007, and adopted a calendar year. H computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). H estimated at the beginning of its short taxable year that its estimated tax liability for short taxable year February 15, 2007, through December 31, 2007, would be $180,000. H paid its first required installment of estimated tax of $60,000 on June 15, 2007, its second required installment of estimated tax of $60,000 on September 17, 2007, and its third (and last) required installment of estimated tax of $60,000 on December 17, 2007 ($180,000 total estimated tax liability for the short taxable year less prior installment payments of $120,000). H reported a tax liability of $240,000 on its return for the short period February 15, 2007, through December 31, 2007, with no credits against tax. There was an underpayment in the amount of $20,000 on the first installment date through September 15, 2007, $40,000 on the second installment date through December 15, 2007, and $60,000 on the third (and last) installment date through March 15, 2008, determined as follows:

(i) Tax as defined in section 6655(d)(1)(B)(i)—$240,000

(ii) 100% of this paragraph (e), *Example 12* (i)—240,000

(iii) Amount of estimated tax required to be paid by the first installment date (33.33% of $240,000)—80,000

(iv) Amount of estimated tax required to be paid by the second installment date (66.67% of $240,000 less $80,000 (amount due with first installment))—80,000

(v) Amount of estimated tax required to be paid by the third installment date (100% of $240,000 less $160,000 (amount due with first and second installment))—80,000

(vi) Deduct amount paid on or before the first installment date—60,000

(vii) Amount of underpayment for the first installment date (this paragraph (e), *Example 12* (iii) minus this paragraph (e), *Example 12* (vi))—20,000

(viii) Deduct amount available for the second installment date ($60,000 second installment payment less this paragraph (e), *Example 12* (vii) applied towards the first installment underpayment)—40,000

(ix) Amount of underpayment for the second installment date (this paragraph (e), *Example 12* (iv) minus this paragraph (e), *Example 12* (viii))—40,000

(x) Deduct amount available for the third installment date ($60,000 third installment payment less this paragraph (e), *Example 12* (ix) applied towards the second installment underpayment)—20,000

(xi) Amount of underpayment for the third installment date (this paragraph (e), *Example 12* (v) minus this paragraph (e), *Example 12* (x))—60,000

(f) *52 or 53 week taxable year.* For purposes of this section a taxable year of 52 or 53 weeks shall be deemed a period of 12 months in the case of a corporation that computes its taxable income in accordance with the election permitted by section 441(f).

(g) *Use of annualized income or seasonal installment method—(1) In general.* Regardless of the annual accounting period used by a corporation (for example, calendar year, fiscal year) the taxpayer may use the method described in § 1.6655–2 (annualized income installment method) or § 1.6655–3 (adjusted seasonal installment method) to compute its required installments of estimated tax when the current taxable year is a short taxable year.

(2) *Computation of annualized income installment.* To the extent a short taxable year includes an annualization period elected by the taxpayer, the taxpayer shall compute its annualized income installment by determining the tax on the basis of such annualized income for the annualization period multiplied by the number of months in the short taxable year divided by 12.

(3) *Annualization period for final required installment.* For purposes of determining the final required installment (as described in paragraph (c)(2) of this section) for a short taxable year, annualized taxable income shall be determined by placing on an annualized basis the taxable income for the last complete annualization period that occurs within the short taxable year.

(4) *Examples.* The provisions of paragraph (g) of this section may be illustrated by the following examples:

Example 1. X corporation began business on February 12, 2007, and adopted a calendar year as its taxable year. X adopts an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2007 taxable year. Pursuant to § 1.6655–1(f)(2)(i), the due dates of X's required installments for X's initial taxable year from February 12, 2007, through December 31, 2007, are April 15, 2007, June 15, 2007, September 15, 2007, and December 15, 2007. However, in accordance with paragraph (c)(1)(ii) of this section, X's first required installment is due June 15, 2007. As a result, X's second required installment is due September 15, 2007, and X's third (and last) required installment is due December 15,

2007. However, because the due dates for the third and fourth required installments fall on a weekend, X's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, September 17, 2007, and December 17, 2007, respectively, for the third and fourth required installments. The amount of X's first and second required installments are each based on annualizing X's taxable income from February 12, 2007, through April 30, 2007, (the first three months of X's taxable year) and X's third (and last) required installment is based on annualizing X's taxable income from February 12, 2007, through July 31, 2007 (the first six months of X's taxable year). Because X will have three required installments due for its short taxable year, pursuant to paragraph (d)(3)(ii) of this section, the applicable percentage is 33.33% for X's first required installment, 66.67% for X's second required installment, and 100% for X's third (and last) required installment.

Example 2. Y, a calendar year corporation, made a final distribution of its assets, in connection with a plan of complete liquidation, on August 1, 2007. Y filed a timely election to use the alternative annualization periods described under section 6655(e)(2)(C)(i) and determined that its taxable income for the first 2, 4 and 7 months of the taxable year was $25,000, $50,000 and $140,000. The due dates for Y's required installments for its short taxable year January 1, 2007, through August 1, 2007, are April 15, 2007, June 15, 2007, and September 15, 2007. However, because the due dates for the first and third required installments fall on a weekend, Y's required installment payments will be timely if paid on or before the first business day following the actual due date of the required installments, that is, April 16, 2007, and September 17, 2007, respectively, for the first and third required installments. Y made installment payments of $10,000, $10,000, and $20,000, respectively, on April 16, 2007, June 15, 2007, and September 17, 2007. The taxable income for each period is annualized as follows:

$25,000 × 12/2 = $150,000
$50,000 × 12/4 = $150,000
$140,000 × 12/7 = $240,000

(i)(A) To determine whether the first required installment equals or exceeds the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 2-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 2-month period—$150,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (i)(A)(*1*)—39,250

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (i)(A)(*2*) multiplied by 7 (the number of months in the short taxable year) divided by 12—22,896

(*4*) 100% of this paragraph (g)(4), *Example 2* (i)(A)(*3*)—22,896

(*5*) 33.33% of this paragraph (g)(4), *Example 2* (i)(A)(*4*)—7,631

(B) Because the total amount of estimated tax that is timely paid on or before the first installment date ($10,000) exceeds the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 2-month period taking into account the number of months in the short taxable year, the exception described in § 1.6655–2(a) applies and no addition to tax will be imposed for the installment due on April 15, 2007.

(ii)(A) To determine whether the required installments made on or before June 15, 2007, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 4-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 4-month period—$150,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (ii)(A)(*1*)—39,250

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (ii)(A)(*2*) multiplied by 7 (the number of months in the short taxable year) divided by 12—22,896

(*4*) 100% of this paragraph (g)(4), *Example 2* (ii)(A)(*3*)—22,896

(*5*) 66.67% of this paragraph (g)(4), *Example 2* (ii) (A)(*4*) less $7,631 (amount due with first installment)—7,631

(B) Because the total amount of estimated tax available to apply towards the amount due for the second installment ($12,369 ($10,000 paid on the second installment date plus $2,369 overpayment of the first installment)) exceeds the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 4-month period for the taxable year taking into account the number of months in the short taxable year, the exception described in § 1.6655–2(a) applies and no addition to tax will be imposed for the installment due on June 15, 2007.

(iii)(A) Pursuant to paragraph (c) and (d) of this section, the final required installment is due by September 15, 2007, and the applicable percentage due for the final required installment is 100%. However, because the due date for the final required installment falls on a weekend, Y's final required installment payment will be timely if paid on or before the first business day following the actual due date of the required installment, that is, September 17, 2007. To determine whether the installment payments made on or before September 17, 2007, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 7-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 7-month period—$240,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (iii)(A)(*1*)—56,100

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (iii)(A)(*2*) multiplied by 7 (the number of months in the short taxable year) divided by 12—32,725

(*4*) 100% of this paragraph (g)(4), *Example 2* (iii)(A)(*3*)—32,725

(*5*) 100% of this paragraph (g)(4), *Example 2* (iii)(A)(*4*) less $15,262 (amount due with first and second installment)—17,463

(B) Because the total amount of estimated tax available to apply towards the amount due for the final installment ($24,738 ($20,000 that is timely paid on the third installment date plus $4,738 overpayment of the second installment)) exceeds the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 7-month period for the taxable year taking into account the number of months in the short taxable year, the exception described in § 1.6655–2(a) applies and no addition to tax will be imposed for the final installment due on September 15, 2007.

(h) *Preceding taxable year a short taxable year.* If the preceding taxable year referred to in section 6655(d)(1) was a short taxable year, the tax computed on the basis of the facts shown on the return for such preceding year, for purposes of determining the applicability of the exception described in section 6655(d)(2), shall be the tax computed on the annual basis in the manner described in section 443(b)(1) (prior to the reduction of the tax liability in the manner described in the last sentence).

(i) *Effective date.* This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

§ 1.6655–6 Methods of accounting.

(a) *In general.* In computing any required installment, a corporation must use the methods of accounting used in computing taxable income for the taxable year for which estimated tax is being determined (the current taxable year).

(b) *Exceptions*—(1) *Automatic accounting method changes.* If a taxpayer is making a change in method of accounting for the current taxable year that is permitted to be made with the automatic consent of the Commissioner, the new method of accounting shall be used in determining any required installment if, and only if, the copy of the Form 3115, "Application for Change in Accounting Method," has been mailed to the IRS National Office on or before the last day of the annualization period.

(2) *Non-automatic accounting method changes.* If a taxpayer is making a change in method of accounting for the current taxable year that requires the prior consent of the Commissioner, the new method of accounting shall be used

in determining any required installment if, and only if, the consent agreement reflecting the Commissioner's consent to the change in method of accounting and the prescribed terms and conditions for effecting such change has been signed by the taxpayer and mailed to the IRS National Office on or before the last day of the annualization period.

(c) *Examples.* The following examples illustrate the rules of this section:

Example 1. X corporation, a calendar year taxpayer, uses an accrual method of accounting and the annualization method under section 6655(e)(2)(A)(i) to calculate its 2006 required installments. X receives advance payments each taxable year with respect to agreements for the sale of goods properly includible in X's inventory. The advance payments received by X qualify for deferral under § 1.451–5(c). Although X is eligible to defer the advance payments in accordance with § 1.451–5(c), X's method of accounting with respect to the advance payments is to include the advance payments in income when received. If, as of the last day of the annualization period, X's method of accounting for advance payments is to include the advance payments in income when received, and the requirements of paragraph (b)(1) or (b)(2) of this section, as applicable, are not met, then X must use that method of accounting for purposes of computing such required installment.

Example 2. Y corporation, a calendar year taxpayer, uses an accrual method of accounting and the annualization method under section 6655(e)(2)(A)(i) to calculate its 2006 required installments. Y computes its annual taxable income by deducting its liability for state income taxes in the taxable year the taxes are paid, without regard to the recurring item exception of section 461(h) and the regulations. If, as of the last day of the annualization period, Y's method of accounting for state income taxes is to deduct such taxes in the taxable year the taxes are paid without regard to the recurring item exception, and the requirements of paragraph (b)(1) or (b)(2) of this section, as applicable, are not met, then Y must use that method of accounting for purposes of computing such required installment.

(d) *Effective date.* This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

Par. 12. Newly designated § 1.6655–7 is revised to read as follows:

§ 1.6655–7 Addition to tax on account of excessive adjustment under section 6425.

(a) Section 6655(h) imposes an addition to the tax under chapter 1 of the Internal Revenue Code in the case of any excessive amount (as defined in paragraph (c) of this section) of an adjustment under section 6425 that is made before the 15th day of the third month following the close of a taxable year beginning after December 31, 1967. This addition to tax is imposed whether or not there was reasonable cause for an excessive adjustment.

(b) If the amount of an adjustment under section 6425 is excessive, there shall be added to the tax under chapter 1 of the Internal Revenue Code for the taxable year an amount determined at the annual rate referred to in the regulations under section 6621 upon the excessive amount from the date on which the credit is allowed or refund paid to the 15th day of the third month following the close of the taxable year. A refund is paid on the date it is allowed under section 6407.

(c) The excessive amount is equal to the lesser of the amount of the adjustment or the amount by which—

(1) The income tax liability (as defined in section 6425(c)) for the taxable year, as shown on the return for the taxable year; exceeds

(2) The estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

(d) The computation of the addition to the tax imposed by section 6425 is made independent of, and does not affect the computation of, any addition to the tax that a corporation may otherwise owe for an underpayment of an installment of estimated tax.

(e) The following example illustrates the rules of this section:

Example. (i) Corporation X, a calendar year taxpayer, had an underpayment as defined in section 6655(b), for its fourth installment of estimated tax that was due on December 15, 2006, in the amount of $10,000. On January 2, 2007, X filed an application for adjustment of overpayment of estimated income tax for 2006 in the amount of $20,000.

(ii) On February 16, 2007, the IRS, in response to the application, refunded $20,000 to X. On March 15, 2007, X filed its 2006 tax return and made a payment in settlement of its total tax liability. Assuming that the addition to tax is computed under section 6621(a)(2) at a rate of 8% per annum for the applicable periods of underpayment, under section 6655(a), X is subject to an addition to tax in the amount of $197 (90/365 × $10,000 × 8%) on account of X's December 15, 2006, underpayment. Under section 6655(h), X is subject to an addition to tax in the amount of $118 (27/365 × $20,000 × 8%) on account of X's excessive adjustment under section 6425. In determining the amount of the addition to tax under section 6655(a) for failure to pay estimated income tax, the excessive adjustment under section 6425 is not taken into account.

(f) An adjustment is generally to be treated as a reduction of estimated income tax paid as of the date of the adjustment. However, for purposes of § 1.6655–1 through § 1.6655–6, the adjustment is to be treated as if not made in determining whether there has been any underpayment of estimated income tax and, if there is an underpayment, the period during which the underpayment existed.

(g) This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 13. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 14. Section 301.6655–1 is revised to read as follows:

§ 301.6655–1 Failure by corporation to pay estimated income tax.

(a) For regulations under section 6655, see §§ 1.6655–1 through 1.6655–7 of this chapter.

(b) This section applies to taxable years beginning after the date that is 30 days after the date the final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–23872 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Fee Schedule

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or the Commission) is seeking comments on proposed revisions to its Privacy Act fee schedule. The proposed schedule of fees conforms to EEOC's Freedom of Information Act (FOIA) fee schedule which was recently updated (70 FR 57510 of October 3, 2005).

DATES: The agency must receive comments on or before January 11, 2006.

ADDRESSES: Written comments should be submitted to Stephen Llewellyn, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments of six pages or less transmitted by facsimile ("fax") machine. The telephone number of the

fax receiver is (202) 663–4114. This is not a toll free number. The six-page limitation is necessary to assure access to the equipment. Receipt of fax transmissions will not be acknowledged although a sender may request confirmation by calling the Executive Secretariat at (202) 663–4070 (voice) or (202) 663–4074 (TTY). These are not toll free numbers. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m. Additionally, members of the public may submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Michelle Zinman, Senior General Attorney at (202) 663–4640 (voice) or (202) 663–7026 (TTY). This notice is also available in the following formats: large print, Braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: EEOC is proposing to amend 29 CFR 1611.11. This section contains a schedule of fees utilized by the Commission for purposes of assessing costs to individuals who seek access to records under the Privacy Act, 5 U.S.C. 552a. The present fee schedule has become outdated. The proposed fee schedule would amend 29 CFR 1611.11 to conform the fees charged under the Privacy Act to the fees charged under the FOIA. See 29 CFR 1610.15, as amended by 70 FR 57510 (2005). In effect, the fees for duplication, attestation and certification of records under the Privacy Act are being made consistent with the fees charged for those services under the FOIA.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has determined that the regulation will not 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 or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This proposal contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Regulatory Flexibility Act

The Commission, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 29 CFR Part 1611

Privacy Act.

For the Commission.

Dated: December 5, 2005.

Cari M. Dominguez,

Chair.

Accordingly, for the reasons set forth in the preamble, EEOC proposes to amend 29 CFR part 1611 as follows:

PART 1611—PRIVACY ACT REGULATIONS

1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1611.11 is revised to read as follows:

§ 1611.11 Fees.

(a) No fee shall be charged for searches necessary to locate records. No charge shall be made if the total fees authorized are less than $1.00. Fees shall be charged for services rendered under this part as follows:

(1) For copies made by photocopy—$0.15 per page (maximum of 10 copies). For copies prepared by computer, such as tapes or printouts, EEOC will charge the direct cost incurred by the agency, including operator time. For other forms of duplication, EEOC will charge the actual costs of that duplication.

(2) For attestation of documents—$25.00 per authenticating affidavit or declaration.

(3) For certification of documents—$50.00 per authenticating affidavit or declaration.

(b) All required fees shall be paid in full prior to issuance of requested copies of records. Fees are payable to "Treasurer of the United States."

[FR Doc. E5–7177 Filed 12–9–05; 8:45 am]

BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2004–TX–0001; FRL–8007–4]

Approval and Promulgation of Implementation Plans; Texas; Memoranda of Understanding Between Texas Department of Transportation and the Texas Commission on Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Texas Commission on Environmental Quality (TCEQ) on August 15, 2002. This SIP revision approves the adoption by reference of a Memorandum of Understanding (MOU) between the TCEQ and the Texas Department of Transportation (TxDOT). The MOU is adopted into the Texas rule at 30 TAC, Chapter 7, Section 119. This MOU concerns the coordination of environmental reviews associated with transportation projects. The adoption by reference of this MOU, will streamline coordination between the TCEQ and TxDOT by consolidating separate MOUs currently in the air and water regulations. This action is important to satisfy the need of the Commission and TxDOT to coordinate regulatory programs and to ensure that overlapping areas of responsibility are clarified. This approval will make the MOU revised regulations Federally enforceable.

DATES: Comments must be received by January 11, 2006.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Alima Patterson, State/Oversight Section (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–

2733, telephone (214) 665–7247; fax number 214–665–7263; e-mail address *patterson.alima@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: November 18, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–23914 Filed 12–9–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 22, 25, 28, 30, 32, 36, 42, 48, 49, 50, 52, and 53

[FAR Case 2004–033]

RIN 9000–AK26

Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to adjust acquisition-related thresholds for inflation. Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) requires that the FAR Council periodically adjust all statutory acquisition-related dollar thresholds in the FAR for inflation, except the statute does not permit escalation of acquisition-related dollar thresholds established by the Davis-Bacon Act, the Service Contract Act, or trade agreements. This rule also proposes to amend other acquisition-related thresholds that are based on policy rather than statute. Inflation adjustment of Cost Accounting Standards (CAS) thresholds in the CAS regulations is simultaneously addressed in a separate case.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before February 10, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004–033 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–033@gsa.gov*. Include FAR case 2004–033 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004–033 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAR case 2004–033.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375). Section 807 provides for adjustment every 5 years of acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds, as provided by law. This rule also proposes escalation of some non-statutory acquisition-related thresholds.

What is an acquisition-related threshold?

The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council.

There are other thresholds in the FAR that, while not meeting this statutory definition of "acquisition-related," nevertheless meet all the other criteria. These thresholds may have their origin in executive order or regulation.

Therefore, an acquisition-related threshold, for the purposes of this rule, is a threshold that is specified in law, executive order, or regulation as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law, executive order, or regulation to the procurement of supplies or services by an executive agency, as determined by the FAR Council. Acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification.

Examples of thresholds that the Councils do not view as "acquisition-related" are thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, liquidated damages, etc.

What acquisition-related thresholds are not subject to escalation adjustment under this case?

The statute does not permit escalation of acquisition-related thresholds established by the Davis-Bacon Act, the Service Contract Act, or trade agreements.

The statute does not authorize the FAR to escalate thresholds originating in executive order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the executive order or agency regulations are first amended.

Analysis of statutory acquisition-related thresholds.

With the exception of thresholds set by the Davis-Bacon Act, Service Contract Act, and trade agreements, the statute requires that we adjust the acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are subject to 5 years of

inflation. For purposes of this proposed rule, a matrix has been developed that includes calculation of escalation based on the CPI from December 1999 to December 2004 (the most recent available data), which currently calculates as 1.1307. Acquisition-related thresholds in statutes that took effect after October 1, 2000, are escalated proportionately for the number of months between the effective date of the statute, and October 1, 2005.

Once the escalation factor is applied to the acquisition-related threshold, then the law requires rounding of the calculated threshold as follows:

<$10,000	Nearest $500
$10,000 - <$100,000	Nearest $5,000
$100,000 - <$1,000,000	Nearest $50,000
$1,000,000 or more	Nearest $500,000

At the current rate of inflation, this means that thresholds of $1,000, $10,000, $100,000, and $1,000,000, although subject to inflation calculation, will not actually be changed until 2010, because the inflation is insufficient to overcome the rounding requirements.

Section 807(c) of the statute states that this statute supersedes the applicability of any other provision of law that provides for the adjustment of any acquisition-related threshold that is adjustable under this statute. The cost or pricing data threshold in the Truth in Negotiations Act (10 U.S.C. 2306a and 41 U.S.C. 254b) and allowable costs threshold at 10 U.S.C. 2324(1) and 41 U.S.C. 256(1) currently have built in escalation that is consistent with the escalation provided in this statute. The thresholds for defining a major system are stated in fiscal year 1990 constant dollars for DoD and in fiscal year 1980 constant dollars for civilian agencies. This rule proposes to convert these major system thresholds to current year dollars that will be adjusted every 5 years.

The law tasks the FAR Council to carry out these inflation adjustments, even if the change to a statutory threshold affects the regulations of the primary implementing agency (such as DoL or SBA). The Councils have coordinated with the affected agencies before issuance of this proposed rule.

Analysis of non-statutory acquisition-related thresholds.

No statutory authorization is required to escalate thresholds that were set as policy within the FAR. The FAR acquisition-related threshold term "simplified acquisition threshold (SAT)" is substituted for the current standard default of $100,000 amount for SAT. This revision is made to eliminate future FAR adjustments and to take advantage of the higher thresholds granted for special emergency situations. It will escalate automatically whenever the SAT is increased. In several other instances, the term "micro-purchase" has been substituted for the various separate micro-purchase thresholds for administrative simplicity. Escalation of the other FAR policy acquisition-related thresholds has been calculated using the same formula applied to the statutory thresholds, unless a reason has been provided for not doing so. The Councils have also proposed changes other than escalation in some cases.

Matrix of acquisition-related thresholds.

A matrix of the thresholds considered in the drafting of this proposed rule is available via the Internet at *http://www.acqnet.gov/far/ProposedRules/proposed.htm.*

Effect of this proposed rule on the most heavily used thresholds.

This rule includes the following proposed changes to heavily used thresholds:

- The micro-purchase threshold (FAR 2.101) will be raised from $2,500 to $3,000.
- The FPDS reporting threshold (FAR 4.602(c)) will be raised from $2,500 to $3,000.
- The simplified acquisition threshold (FAR 2.101) of $100,000 will not be raised.
- Commercial items test program ceiling (FAR 13.500) will be raised from $5 million to $5.5 million.
- The cost and pricing data threshold (FAR 15.403–4) will be raised from $550,000 to $600,000.
- The prime contractor subcontracting plan (FAR 19.702) floor will be raised from $500,000 to $550,000, but for construction ($1,000,000) is unchanged.

Further explanation of proposed changes.

FAR 2.101, definition of "Major system." The thresholds in the definition of major system for DoD ($115 million and $540 million), are based on fiscal year 1990 constant dollars. The threshold of $750,000 for the civilian agencies is based on fiscal year 1980 constant dollars. The current statute provides that it supersedes the applicability of any other provision of law that provides for the adjustment of an acquisition-related threshold. The Councils have calculated the 2004 value of these thresholds using the CPI inflation calculator, as $166,210,000, $780,460,000, and $1,719,360, respectively (the value of the thresholds in 2004 dollars at the time this statute was enacted). Then applying the CPI—all urban consumers index for 1 year, the escalated and rounded totals are $171.5 million, $806 million, and $1.8 million.

FAR 4.601(a) and (d). 41 U.S.C. 417(a) and Section 1004 of Public Law 103–355 specify the SAT as the threshold for the required records. The FAR has a policy threshold of $25,000, which was the threshold above which the DD 350 was required. Under the new FPDS-NG case, the threshold will be changed to $2,500 (the new reporting threshold, which equals the basic micro-purchase threshold). The Councils recommend that this threshold be escalated along with the micro-purchase threshold to $3,000.

FAR 4.602(c)(1). The threshold for FPDS-NG contract reporting is $2,500, established January 1, 2004, at the basic micro-purchase threshold. The micro-purchase threshold is being adjusted to $3,000 under this rule.

FAR Part 5—Publicizing Contract Actions. The Councils have consulted with SBA regarding the proposed escalation of thresholds in Part 5. The threshold for pre-award synopsis is currently $25,000 (see FAR 5.101(a), 5.203(b), 5.205(d), and 5.207(c)(11)). Our international trade agreements require that we publish intended procurement subject to those agreements. Since the threshold for NAFTA (Canada) is $25,000, the Council does not propose to increase this threshold.

At FAR 5.301, the threshold for post-award synopsis of contract awards is currently $25,000, if the acquisition is covered by a trade agreement or likely to result in the award of subcontracts. $25,000 is the threshold for NAFTA (Canada), and is therefore not subject to escalation for acquisitions subject to trade agreements. The threshold for synopsis of acquisitions likely to result in subcontract award could be raised to $30,000. The primary exception to trade agreements in this range is for small business set-asides. The likelihood of subcontracting opportunities under small business set-asides between $25,000 and $30,000 is probably small. Therefore, the Councils propose, for the sake of simplicity, that this threshold for post-award synopsis also be left at $25,000.

The Councils propose to increase the threshold for public announcement of contract awards from $3 million to $3.5 million.

FAR 7.107(b). The Councils have calculated an adjusted value of $85 million for the threshold at FAR 7.107(b)(1) and (b)(2). The amount of $7.5 million, while not an acquisition threshold, must also be adjusted (to $8.5 million) because it is based on the

calculation of 10 percent of the threshold.

FAR 8.405–6(f). Although these thresholds for sole source justification and approval were not incorporated in the FAR until July 19, 2004, they must be kept parallel to the thresholds at 6.304(a).

FAR 9.405–2(b), 9.409(b), 52.209–6, 52.213–4(b)(2)(i). The threshold of $25,000 was established in the mid 1980's, at the time equivalent to the small purchase threshold, in order to balance the goal of not awarding subcontracts to contractors that have been debarred, suspended, or proposed for debarment or suspension, against the administrative costs of enforcing this at very low dollar levels. At the time the simplified acquisition threshold of $100,000 was established, the Suspension, Debarment, and Business Ethics Committee requested that as a matter of policy the threshold not be increased to $100,000. 10 U.S.C. 2393 requires that for DoD contracts, the requirement for subcontractors to disclose whether or not the subcontractor is debarred or suspended shall apply to any subcontract that exceeds the simplified acquisition threshold. However, to keep the threshold at a lower level as a matter of policy still meets the statutory requirement. The Councils concur not to raise this threshold to $100,000. However, the Councils do recommend normal escalation for this threshold to $30,000.

FAR 13.003(b)(1). These thresholds are for the exclusive set-aside of acquisitions of supplies or services for small business concerns. The FAR does not include the thresholds that apply outside the United States because FAR Part 19 (except FAR Subpart 19.6) applies only in the United States or its outlying areas (see FAR 19.000(b)). However, since this statement of policy is in FAR Part 13, the Councils recommend inclusion of a reference to FAR 19.000(b) or inclusion of the phrase "in the United States or its outlying areas."

FAR 15.304(c)(3). The Councils have proposed to delete the reference to $1 million, which was the threshold in 1995. Since January 1, 1998, past performance must be evaluated for all contracts over $100,000, regardless of when the contract was awarded. These thresholds are based on an OFPP policy memo 92–5, which has since been rescinded (FAR case 93–002, March 31, 1995). The Councils recommend changing "$100,000" to "simplified acquisition threshold" (see note for FAR 42.1502(a)).

FAR 19.1202–2(a). Federal Acquisition Circular (FAC) 97–07 was issued as an interim rule to make amendments to the FAR concerning programs for small disadvantaged business concerns. These amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement. DoJ's proposal was designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S.Ct. 2097 (1995). This rule was finalized in FAC 97–13. These thresholds tie back to the thresholds in 15 U.S.C. 637(d), which are proposed for escalation under this case. Therefore, without disturbing the principles laid out by DoJ, it would be inconsistent not to keep these thresholds the same as those in FAR Subpart 19.7.

FAR 22.103–4(b) and 22.103–5(b). These thresholds originated in the ASPR, 1 June 1967, Rev. 23 (ASPR case 64–336). This case included a review of the need for administrative controls on Government contractors and included recommendations of the Defense Industry Advisory Council to prevent abuse of overtime by contractors. The $100,000 threshold was an administrative threshold, below which the clause would be unnecessary. The Councils recommend deletion of FAR 22.103–4(b) because it is redundant to the clause prescription at FAR 22.103–5(b). The Councils recommend changing $100,000 in FAR 22.103–5(b) to the "simplified acquisition threshold."

FAR 22.1303(a) and (c), 22.1310, 52.213–4(b)(1)(iii) and (b)(1)(v), 52.222–35, and 52.222–37. This threshold, which is $25,000 in the FAR (since FAR case 1998–614), should be $100,000 (see Public Law 107–288 enacted November 7, 2002), and is still $10,000 in the DoL regulations (41 CFR 60–250). This proposed correction has been coordinated with DoL.

FAR 25.1101(a)(1). To simplify future changes, the Councils propose substitution of the term "micro-purchase threshold" rather than trying to keep up with the various micro-purchase threshold changes.

FAR 25.1103(a). There is no specific micro-purchase exception for the restrictions on certain foreign purchases. It should, therefore, not be included in the clause prescription. However, unless a clause is specifically prescribed in FAR Part 13, it will not be included in micro-purchases.

FAR 28.102–1, 28.102–2, and 28.102–3. The proposed rule corrects the statutory cites in the FAR. The Miller Act (formerly 40 U.S.C. 270a–270d) and Section 4104(b)(2) of FASA (Public Law 103–355) are now codified at 40 U.S.C. 3131 and 3132.

FAR 42.705–3(b)(4)(ii). This FAR text mentions "smaller contracts (*e.g.*, $100,000 or less)." As written, this $100,000 may not actually be a threshold. It is more appropriate to say "*i.e.*" In order to avoid the need for future separate escalation, the Councils recommend changing $100,000 to "simplified acquisition threshold."

FAR 42.709(b) and 42.709–6. Paragraph (l) of 10 U.S.C. 2324 and 41 U.S.C. 256 provides for escalation consistent with the escalation of the cost or pricing data threshold and this statute. Although this threshold should have been increased in 2000 to $550,000, it was not actually increased in the FAR until January 19, 2005. This threshold should, therefore, still be subject to another 5 years of inflation from 2000 to 2005 under this rule.

FAR 42.1502(a). The proposed rule deletes the reference to $1 million, which was the threshold in 1995. Since January 1, 1998, past performance must be evaluated for all contracts over $100,000, regardless of when the contract was awarded. These thresholds are based on an OFPP policy memo 92–5, which has since been rescinded (FAR case 93–002, March 31, 1995). The Councils recommend changing "$100,000" to "simplified acquisition threshold."

FAR 52.203–6(c). For accuracy (see 41 U.S.C. 253q (c)), simplicity, and ease of future changes, the Councils propose changing $100,000" to "simplified acquisition threshold."

FAR 52.212–1(j). The threshold for collection of the DUNS number equals the threshold for the requirement for reporting individual contract actions. With the implementation of the new FPDS-NG, the threshold for reporting individual contract actions is $2,500, which is proposed for escalation to $3,000 under this rule.

FAR 52.236–1, 52.243–7, and 52.249–1. The proposed rule modifies the clause prefaces for these three clauses because, according to the FAR Drafting Guide, the clause preface just cites the clause prescription, not restates the entire conditions of the clause prescription. These nonconforming clause prefaces came to light during the review of FAR thresholds, because they repeat thresholds that are contained in the clause prescriptions. The proposed revisions conform to the FAR Drafting Guide. Even though these thresholds are not changing this time, they are likely to increase in 5 years. This will reduce the number of places that the thresholds have to be changed.

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

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

Most of the threshold changes proposed in this rule are not expected to have any significant economic impact on small business because they are intended to maintain the status quo by adjusting for changes in the value of the dollar. For example, the prime contractor subcontracting plan floor at FAR 19.702 for other than construction contracts will be raised from $500,000 to $550,000. This is just keeping pace with inflation.

Often, any impact will be beneficial by preventing burdensome requirements from applying to more and more small dollar value acquisitions, which are the acquisitions in which small businesses are most likely to participate.

One threshold change in this rule which might temporarily impact small business is the increase of the micro-purchase threshold (FAR 2.101) from $2,500 to $3,000. Although this may reduce some burdensome requirement on small businesses, it will temporarily narrow the range of acquisitions automatically set aside for small business, because the simplified acquisition threshold of $100,000 will not increase at this time (although it is likely to increase to $150,000 in the year 2010).

To assess the impact of the increase in the micro-purchase threshold from $2,500 to $3,000, data was requested from FPDS-NG. For FY 2004, 16,031 (value of $8,083,900) of the contract actions between $2,500 and $3,000 went to small businesses. We expect that most of these awards would still go to small businesses, even if there is no longer a requirement to automatically set the procurement aside for small business.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 22, 25, 28, 30, 32, 36, 42, 48, 49, 50, 52, and 53 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2004–033), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0006, 9000–0007, 9000–0013, 9000–0026, 9000–0027, 9000–0028, 9000–0029, 9000–0037, 9000–0043, 9000–0045, 9000–0065, 9000–0066, 9000–0070, 9000–0078, 9000–0094, 9000–0115, 9000–0138, 9000–0145, 9000–0150, and 1215–0072. They maintain the current information collection requirements at the status quo by adjusting the thresholds for inflation.

List of Subjects in 48 CFR Parts 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 22, 25, 28, 30, 32, 36, 42, 48, 49, 50, 52, and 53

Government procurement.

Dated: August 16, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 22, 25, 28, 30, 32, 36, 42, 48, 49, 50, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 22, 25, 28, 30, 32, 36, 42, 48, 49, 50, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Add section 1.109 to read as follows:

1.109 Statutory acquisition-related dollar thresholds—Adjustment for inflation.

(a) Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) requires that the FAR Council periodically adjust all statutory acquisition-related dollar thresholds in the FAR for inflation, except as provided in paragraph (c) of this section. This adjustment is calculated every 5 years, starting in October 2005, using the Consumer Price Index (CPI) for all-urban consumers, and supersedes the applicability of any other provision of law that provides for the adjustment of such acquisition-related dollar thresholds.

(b) The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council.

(c) The statute does not permit escalation of acquisition-related dollar thresholds established by the Davis-Bacon Act (40 U.S.C. 3141 through 3144, 3146, and 3147), the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*), or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979 (19 U.S.C. 2511, *et seq.*).

(d) A matrix showing calculation of the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available via the Internet at *http://www.acqnet.gov/far/ProposedRules/proposed.htm.*

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 in paragraph (b), in the definition "Major system", by revising paragraph (1), and removing from paragraph (2) "$750,000 (based on fiscal year 1980 constant dollars)" and adding "$1.8 million" in its place; and in the definition "Micro-purchase threshold" by removing from the introductory paragraph "$2,500" and adding "$3,000" in its place. The revised text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

Major system * * *

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $171.5 million or the eventual total expenditure for the acquisition exceeds $806 million;

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.601 [Amended]

4. Amend section 4.601 by removing from paragraph (a) and the introductory text of paragraph (d) "$25,000" and adding "$3,000" in their place; and by removing from paragraph (e) "$5,000,000" and adding "$5.5 million" in its place.

4.602 [Amended]

5. Amend section 4.602 by removing from paragraphs (c)(1) and (c)(3) "$2,500" and adding "$3,000" in their place; and by removing paragraph (c)(4).

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Amend section 5.303 by revising paragraph (a) to read as follows:

5.303 Announcement of contract awards.

(a) *Public announcement.* Contracting officers shall make information available on awards over $3.5 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5 p.m. Washington, DC, time on the day of award. Contracts excluded from this reporting requirement include—

(1) Those placed with the Small Business Administration under Section 8(a) of the Small Business Act;

(2) Those placed with foreign firms when the place of delivery or performance is outside the United States and its outlying areas; and

(3) Those for which synopsis was exempted under 5.202(a)(1). Agencies shall not release information on awards before the public release time of 5 p.m. Washington, DC time.

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.304 [Amended]

7. Amend section 6.304 by—

a. Removing from paragraph (a)(1) "$500,000" and adding "$550,000" in its place;

b. Removing from paragraph (a)(2) "$500,000" and "$10,000,000" and adding "$550,000" and "$11.5 million", respectively, in their place;

c. Removing from paragraph (a)(3) $10,000,000", "$50,000,000", and "$75,000,000" and adding "$11.5 million", "$56.5 million", and "$77.5 million", respectively, in their place; and

d. Removing from paragraph (a)(4) "$50,000,000" and "75,000,000" and adding "$56.5 million" and "$77.5 million", respectively, in their place.

PART 7—ACQUISITION PLANNING

7.104 [Amended]

8. Amend section 7.104 by removing from paragraph (d)(2)(i)(A) "$7 million" and adding "$7.5 million" in its place; and removing from paragraph (d)(2)(i)(B) "$5 million" and adding "$5.5 million" in its place.

7.107 [Amended]

9. Amend section 7.107 by removing from paragraph (b)(1) "$75 million" and adding "$85 million" in its place; and removing from paragraph (b)(2) "$7.5 million" and "75 million" and adding "$8.5 million" and "$85 million", respectively, in their place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405–6 [Amended]

10. Amend section 8.405–6 by—

a. Removing from paragraph (f)(1) "$500,000" and adding "$550,000" in its place;

b. Removing from paragraph (f)(2) "$500,000, but not exceeding $10 million" and adding "$550,000, but not exceeding $11.5 million" in its place;

c. Removing from the introductory text of paragraph (f)(3) "$10 million", "$50 million", and "$75 million", and adding "$11.5 million", "$56.5 million", and "$77.5 million", respectively, in their place; and

d. Removing from the first sentence of paragraph (f)(4) "$50 million" and "$75 million" and adding "$56.5 million" and "$77.5 million", respectively, in their place.

PART 9—CONTRACTOR QUALIFICATIONS

9.405–2 [Amended]

11. Amend section 9.405–2 in the second sentence of the introductory text of paragraph (b) by removing "$25,000" and adding "$30,000" in its place.

9.409 [Amended]

12. Amend section 9.409 in paragraph (b) by removing "$25,000" and adding "$30,000" in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

13. Amend section 12.102 by removing from the introductory text of paragraph (f)(2) "$15,000,000" and adding "$15.5 million" in its place; and removing from paragraph (g)(1)(ii) "$25 million" and adding "$26 million" in its place.

12.203 [Amended]

14. Amend section 12.203 by removing from the last sentence "$5 million" and "$10 million" and adding "$5.5 million" and "$10.5 million", respectively, in their place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 [Amended]

15. Amend section 13.000 by removing from the second sentence "$5 million" and "$10 million" and adding "$5.5 million" and "$10.5 million", respectively, in their place.

13.003 [Amended]

16. Amend section 13.003 by—

a. Removing from the first sentence of paragraph (b)(1) "$2,500" and adding "$3,000" in its place; and in the second sentence, by adding "19.000(b) and" after the word "See"; and

b. Removing from paragraphs (c)(1)(ii) and (g)(2) "$5 million" and "$10 million" and adding "$5.5 million" and "$10.5 million", respectively, in their place.

13.005 [Amended]

17. Amend section 13.005 in paragraph (a)(2) by removing "$25,000" and adding "$30,000 (40 U.S.C. 4132).)" in its place.

13.106–1 [Amended]

18. Amend section 13.106–1 by removing from paragraph (c)(2) and the first sentence of paragraph (d) "$25,000" and adding "$30,000" in their place.

13.303–5 [Amended]

19. Amend section 13.303–5 by removing from paragraph (b)(1) "$5,000,000" and "$10,000,000" and adding "$5.5 million" and "$10.5 million" in their place; and removing from paragraph (b)(2) "$5 million" and "$10 million" and adding "$5.5 million" and "$10.5 million", respectively, in their place.

13.402 [Amended]

20. Amend section 13.402 by removing from paragraph (a) "$25,000" and adding "30,000" in its place.

13.500 [Amended]

21. Amend section 13.500 by removing from the first sentence of paragraph (a) the phrase "$5 million ($10 million" and adding the phrase "$5.5 million ($10.5 million" in its place; and removing from the introductory text of paragraph (e) "$10 million" and adding "$10.5 million" in its place.

22. Amend section 13.501 by removing from paragraph (a)(2)(i) "$500,000" and adding "$550,000" in its place; removing from paragraph (a)(2)(ii) "$500,000" and "$10,000,000" and adding "$550,000" and "$11.5 million", respectively, in their place; and revising paragraphs (a)(2)(iii) and (a)(2)(iv) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(2) * * *

(iii) For a proposed contract exceeding $11.5 million, but not exceeding $56.5 million, or for DoD, NASA, and the Coast Guard, not

exceeding $77.5 million, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iv) For a proposed contract exceeding $56.5 million, or for DoD, NASA, and the Coast Guard, over $77.5 million, the official described in 6.304(a)(4) must approve the justification and approval. This authority is not delegable except as provided in 6.304(a)(4).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

23. Amend section 15.304 by removing paragraph (c)(3)(i); redesignating paragraphs (c)(3)(ii), (c)(3)(iii), and (c)(3)(iv) as (c)(3)(i), (c)(3)(ii), and (c)(3)(iii), respectively; revising newly designated paragraph (c)(3)(i); and removing from paragraph (c)(4) "$500,000" and adding "$550,000" in its place. The revised text reads as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(3)(i) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.

* * * * *

15.403–1 [Amended]

24. Amend section 15.403–1 by removing from paragraph (c)(3)(iii) "$15,000,000" and adding "$15.5 million" in its place.

25. Amend section 15.403–4 by removing from the third sentence of the introductory text of paragraph (a)(1) "$550,000" and adding "$600,000" in its place; and revising the second sentence of paragraph (a)(1)(iii) to read as follows:

15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) * * *

(iii) * * * Price adjustment amounts must consider both increases and decreases (*e.g.*, a $200,000 modification resulting from a reduction of $500,000 and an increase of $300,000 is a pricing adjustment exceeding $600,000. * * *

* * * * *

15.404–3 [Amended]

26. Amend section 15.404–3 by removing from paragraph (c)(1)(i) "$10,000,000" and adding "$11.5 million" in its place.

15.407–2 [Amended]

27. Amend section 15.407–2 by removing from paragraphs (c)(1) and the introductory text of paragraph (c)(2) "$10 million" and adding "$11.5 million" in its place.

15.408 [Amended]

28. Amend section 15.408 in Table 15–2 following paragraph (m), in section II, Cost Elements, in the third sentence of paragraph (A)(2), by removing "$10,000.000" and adding "$11.5 million" in its place.

PART 16—TYPES OF CONTRACTS

16.503 [Amended]

29. Amend section 16.503 by removing from paragraph (d)(1) "$10,000,000" and adding "$11.5 million" in its place.

16.504 [Amended]

30. Amend section 16.504 by removing from the introductory text of paragraph (c)(2)(i) "$10 million" and adding "$11.5 million" in its place.

16.505 [Amended]

31. Amend section 16.505 by removing from paragraph (b)(1)(i) and the introductory text of paragraph (b)(2) "$2,500" and adding "$3,000" in its place.

16.506 [Amended]

32. Amend section 16.506 by removing from paragraphs (f) and (g) "$10 million" and adding "$11.5 million" in its place.

16.601 [Amended]

33. Amend section 16.601 by removing from paragraph (b)(3)(i) "$25,000" and adding "$30,000" in its place.

PART 17—SPECIAL CONTRACTING METHODS

17.108 [Amended]

34. Amend section 17.108 in paragraph (a) by removing "$10 million" and adding "$11.5 million" in its place; and in paragraph (b) by removing "$100 million" and adding "$113 million" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.502–1 [Amended]

35. Amend section 19.502–1 by removing from paragraph (b) "$2,500" and adding "$3,000" in its place.

19.502–2 [Amended]

36. Amend section 19.502–2 by removing from the first sentence of paragraph (a) "$2,500" and adding "$3,000" in its place; and removing from paragraph (d) "$25,000" and adding "$30,000" in its place.

19.702 [Amended]

37. Amend section 19.702 by removing from paragraphs (a)(1) and (a)(2) "$500,000" and adding "$550,000" in its place.

19.704 [Amended]

38. Amend section 19.704 by removing from paragraph (a)(9) "$500,000" and adding "$550,000" in its place.

19.708 [Amended]

39. Amend section 19.708 by removing from the first sentence of paragraph (b)(1) "$500,000" and adding "$550,000" in its place.

19.805–1 [Amended]

40. Amend section 19.805–1 by removing from paragraph (a)(2) "$5,000,000" and "$3,000,000" and adding "$5.5 million" and "$3.5 million", respectively, in their place.

19.1002 [Amended]

41. Amend section 19.1002 by removing from paragraph (1) of the definition "Emerging small business reserve amount", "$25,000" and adding "$30,000" in its place.

19.1007 [Amended]

42. Amend section 19.1007 by removing from paragraphs (c)(1)(i) and (c)(1)(ii) "$25,000" and adding "$30,000" in its place.

19.1008 [Amended]

43. Amend section 19.1008 by removing from paragraph (c) "$25,000" and adding "$30,000" in its place.

19.1202–2 [Amended]

44. Amend section 19.1202–2 by removing from paragraph (a) "$500,000" and adding "$550,000" in its place.

19.1306 [Amended]

45. Amend section 19.1306 by removing from paragraph (a)(2)(i) "$5,000,000" and adding "$5.5 million" in its place; and removing from paragraph (a)(2)(ii) "$3,000,000" and adding "$3.5 million" in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.103–4 [Amended]

46. Amend section 22.103–4 in paragraph (b) by removing the last sentence.

22.103–5 [Amended]

47. Amend section 22.103–5 in the introductory text of paragraph (b) by

removing "be over $100,000;" and adding "exceed the simplified acquisition threshold;" in its place.

22.305 [Amended]

48. Amend section 22.305 by removing from paragraph (a) "the simplified acquisition threshold;" and adding "$100,000;" in its place.

22.1103 [Amended]

49. Amend section 22.1103 by removing from the second sentence "$500,000" and adding "$550,000" in its place.

22.1303 [Amended]

50. Amend section 22.1303 by removing from paragraphs (a) and (c) "$25,000" and adding "$100,000" in its place.

22.1310 [Amended]

51. Amend section 22.1310 by removing from the introductory text of paragraph (a)(1) "$25,000" and adding "$100,000" in its place.

PART 25—FOREIGN ACQUISITION

52. Amend section 25.1101 in the introductory text of paragraph (a)(1) by removing "$2,500 ($15,000 for acquisitions as described in 13.201(g)(1)") and adding "the micro-purchase threshold" in its place; and revising paragraphs (e)(1) and (e)(2) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(e) * * *

(1) Exceeds the simplified acquisition threshold; or

(2) Does not exceed the simplified acquisition threshold, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions that do not exceed the simplified acquisition threshold, the contracting officer may modify paragraphs (b)(1) and (i)(2) of the clause to reduce the dollar figure.

25.1103 [Amended]

53. Amend section 25.1103 in paragraph (a) by removing "with a value exceeding $2,500, $15,000 for acquisitions as described in 13.201(g)(1)".

PART 28—BONDS AND INSURANCE

28.102-1 [Amended]

54. Amend section 28.102-1 by removing from the introductory text of paragraph (b)(1) "$25,000" and adding "$30,000" in its place.

28.102–2 [Amended]

55. Amend section 28.102–2 by removing from the heading of paragraph (c) "$25,000" and adding "$30,000" in its place.

28.102–3 [Amended]

56. Amend section 28.102–3 in the first sentence of paragraph (b) by removing "$25,000" and adding "$30,000" in its place.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201–4 [Amended]

57. Amend section 30.201–4 by removing from paragraph (b)(1) "$500,000" and "$50 million" and adding "$550,000" and "$56.5 million", respectively, in their place.

30.201–5 [Amended]

58. Amend section 30.201–5 by removing from the introductory text of paragraph (b)(1) "$15,000,000" and adding "$17 million" in its place.

PART 32—CONTRACT FINANCING

32.104 [Amended]

59. Amend section 32.104 by removing from paragraphs (d)(2)(i) and (d)(2)(ii) "$2 million" and adding "$2.5 million" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.201 [Amended]

60. Amend section 36.201 by removing from paragraph (a)(1)(i) "$500,000" and adding "$550,000" in its place.

61. Amend section 36.203 by revising paragraph (a) to read as follows:

36.203 Government estimate of construction costs.

(a) An independent Government estimate of construction costs shall be prepared and furnished to the contracting officer at the earliest practicable time for each proposed contract and for each contract modification anticipated to exceed the simplified acquisition threshold. The contracting officer may require an estimate when the cost of required work is not anticipated to exceed the simplified acquisition threshold. The estimate shall be prepared in as much detail as though the Government were competing for award.

* * * * *

62. Amend section 36.213–2 by revising paragraph (a) to read as follows:

36.213–2 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall issue presolicitation notices on any construction requirement when the proposed contract is expected to exceed the simplified acquisition threshold. Presolicitation notices may also be used when the proposed contract is not expected to exceed the simplified acquisition threshold. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

* * * * *

36.604 [Amended]

63. Amend section 36.604 by removing from the introductory text of paragraph (a) "$25,000" each time it appears (twice) and adding "$30,000" in its place.

36.605 [Amended]

64. Amend section 36.605 by removing from the first sentence of paragraph (a) "$100,000" and adding "the simplified acquisition threshold" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.705–3 [Amended]

65. Amend section 42.705–3 by removing from the fourth sentence of the introductory text of paragraph (b)(4)(ii) "(e.g., $100,000 or less") and adding "(*i.e.*, contracts that do not exceed the simplified acquisition threshold)" in its place.

42.709 [Amended]

66. Amend section 42.709 by removing from paragraph (b) "$550,000" and adding "$600,000" in its place.

42.709–6 [Amended]

67. Amend section 42.709–6 by removing from the first sentence "$550,000" and adding "$600,000" in its place.

68. Amend section 42.1502 by revising the first sentence of paragraph (a) to read as follows:

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold at the time the work under the contract is completed. * * *

* * * * *

PART 48—VALUE ENGINEERING

48.201 [Amended]

69. Amend section 48.201 by removing from the first sentence of the introductory text of paragraph (a) "be $100,000 or more," and adding "exceed the simplified acquisition threshold," in its place.

48.202 [Amended]

70. Amend section 48.202 by removing from the first sentence "be $100,000 or more," and adding "exceed the simplified acquisition threshold," in its place.

PART 49—TERMINATION OF CONTRACTS

71. Amend section 49.502 by revising the heading of paragraph (a) and the introductory text of paragraph (a)(1); and revising paragraph (b) to read as follows:

49.502 Termination for convenience of the Government.

(a) *Fixed-price contracts that do not exceed the simplified acquisition threshold (short form).*—(1) *General use.* The contracting officer shall insert the clause at 52.249–1, Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed the simplified acquisition threshold, except—

* * * * *

(b) *Fixed-price contracts that exceed the simplified acquisition threshold.*—(1)(i) *General use.* The contracting officer shall insert the clause at 52.249–2, Termination for Convenience of the Government (Fixed-Price), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold, except in contracts for—

(A) Dismantling and demolition;

(B) Research and development work with an educational or nonprofit institution on a no-profit basis; or

(C) Architect-engineer services. It shall not be used if the clause at 52.249–4, Termination for Convenience of the Government (Services) (Short Form), is appropriate (see 49.502(c)), or one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.

(2) *Construction.* If the contract is for construction, the contracting officer shall use the clause with its Alternate I.

(i) *Partial payments.* If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate II. In such contracts for construction, the contracting officer shall use the clause with its Alternate III.

(ii) *Dismantling and demolition.* The contracting officer shall insert the clause at 52.249–3, Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

50.201 [Amended]

72. Amend section 50.201 by removing from paragraph (b) "$50,000" and adding "$55,000" in its place.

50.203 [Amended]

73. Amend section 50.203 by removing from paragraph (b)(4) "$25 million" and adding "$28.5 million" in its place; and removing from paragraphs (e)(1)(i) and (e)(1)(ii) "$50,000" and adding "$55,000" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–6 [Amended]

74. Amend section 52.203–6 by revising the date of the clause to read "(Date)"; and removing from paragraph (c) of the clause "$100,000" and adding "the simplified acquisition threshold" in its place.

52.209–6 [Amended]

75. Amend section 52.209–6 by revising the date of the clause to read "(Date)"; and removing from paragraphs (a) and (b) of the clause "$25,000" and adding "$30,000" in its place.

52.212–1 [Amended]

76. Amend section 52.212–1 by revising the date of the clause to read "(Date)"; and removing from the first sentence of paragraph (j) of the clause "$25,000" each time it appears (twice) and adding "$3,000" in its place.

52.212–5 [Amended]

77. Amend section 52.212–5 by—

a. Revising the date of the clause to read "(Date)";

b. Removing from paragraph (b)(1) of the clause "(Oct 1995)" and adding "(Date)" in its place;

c. Removing from paragraph (b)(8)(i) of the clause "(July 2005)" and adding "(Date)" in its place;

d. Removing from paragraphs (b)(18) and (b)(20) of the clause "(Dec 2001)" and adding "(Date)" in its place; and

e. Removing from paragraph (e)(1)(i) "$500,000" and adding "$550,000" in its place; and removing from paragraph (e)(1)(iii) "(Dec 2001)" and adding "(Date)" in its place.

52.213–4 [Amended]

78. Amend section 52.213–4 by—

a. Revising the date of the clause to read "(Date)";

b. Removing from paragraph (a)(2)(vi) of the clause "(Dec 2004)" and adding "(Date)" in its place; and

c. Removing from paragraphs (b)(1)(iii) and (b)(1)(v) of the clause "(Dec 2001)" and "$25,000" and adding "(Date)" and "$100,000", respectively, in their place; and removing from paragraph (b)(2)(i) "(Jan 2005)" and "$25,000" and adding "(Date)" and "$30,000", respectively, in their place.

52.219–9 [Amended]

79. Amend section 52.219–9 by revising the date of the clause to read "(Date)"; and removing from paragraph (d)(9) of the clause "$500,000" and adding "$550,000" in its place.

52.222–35 [Amended]

80. Amend section 52.222–35 by revising the date of the clause to read "(Date)"; and removing from the first sentence of paragraph (g) of the clause "$25,000" and adding "$100,000" in its place.

52.222–37 [Amended]

81. Amend section 52.222–37 by revising the date of the clause to read "(Date)"; and removing from paragraph (f) of the clause "$25,000" and adding "$100,000" in its place.

52.230–1 [Amended]

82. Amend section 52.230–1 by revising the date of the provision to read "(Date)"; removing from paragraph (a) of the provision "$500,000" and adding "$550,000" in its place; and removing "$50 million" each time it appears in the provision (5 times) and adding "$56.6 million" in its place.

52.230–2 [Amended]

83. Amend section 52.230–2 by revising the date of the clause to read

"(Date)"; and removing from the last sentence of paragraph (d) of the clause "$500,000" and adding "$550,000" in its place.

52.230–3 [Amended]

84. Amend section 52.230–3 by revising the date of the clause to read "(Date)"; and removing from paragraph (d)(2) "$500,000" and adding "$550,000" in its place.

52.230–5 [Amended]

85. Amend section 52.230–5 by revising the date of the clause to read "(Date)"; and removing from paragraph (d)(2) of the clause "$500,000" and adding "$550,000" in its place.

86. Amend section 52.236–1 by revising the introductory paragraph to read as follows:

52.236–1 Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause. Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see 36.501(a)):

* * * * *

87. Amend section 52.243–7 by revising the introductory paragraph to read as follows:

52.243–7 Notification of Changes.

As prescribed in 43.107, insert the following clause:

* * * * *

52.244–6 [Amended]

88. Amend section 52.244–6 by revising the date of the clause to read "(Date)"; removing from paragraph (c)(1)(i) of the clause "$500,000" and adding "$550,000" in its place, and removing from paragraph (c)(1)(iii) of the clause "(Dec 2001)" and adding "(Date)" in its place.

52.248–3 [Amended]

89. Amend section 52.248–3 by revising the date of the clause to read "(Date)"; and removing from the first sentence of paragraph (h) of the clause "$50,000" and adding "$55,000" in its place.

90. Amend section 52.249–1 by revising the introductory paragraph to read as follows:

52.249–1 Termination for Convenience of the Government (Fixed-Price) (Short Form).

As prescribed in 49.502(a)(1), insert the following clause:

* * * * *

PART 53—FORMS

53.219 [Amended]

91. Amend section 53.219 by removing from paragraphs (a) and (b) "(Rev. 10/01)" and adding "(Date)" in its place.

53.301–294 [Amended]

92. Amend section 53.301–294 at the bottom of page 1 of the form by revising the date of the form to read "(Date)"; and on page 2 of the form, by removing from the first sentence of paragraph 3, under General Instructions, "$500,000" and adding "$550,000" in its place.

53.301–295 [Amended]

93. Amend section 53.301–295 at the bottom of page 1 of the form by revising the date of the form to read "(Date)"; and on page 2 of the form, by removing from the first sentences of paragraphs 2 and 5, under General Instructions, "$500,000" and adding "$550,000" in their place.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9901 and 9903

Cost Accounting Standards Board (CAS) Changes to Acquisition Thresholds

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Proposed rule with request for comment.

SUMMARY: The Cost Accounting Standards (CAS) Board is proposing to adjust the CAS application and full coverage thresholds for inflation in accordance with section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

DATES: Comments upon this proposed rule must be in writing and must be received by February 10, 2006.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to *casb2@omb.eop.gov*. Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–5105.

FOR FURTHER INFORMATION CONTACT: David J. Capitano, Cost Accounting Standards Board (telephone: 703–847–7486).

SUPPLEMENTARY INFORMATION:

A. Background

Analysis of Statutory Acquisition-Related Thresholds

Section 807 provides for adjustment every 5 years of acquisition-related thresholds, except for thresholds set by the Davis-Bacon Act, Service Contract Act, and trade agreements. The statute requires that the adjustment be based on inflation, using the Consumer Price Index (CPI) for all-urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are subject to 5 years of inflation. For purposes of this proposed rule, the calculation of escalation is based on the CPI from December 1999 to December 2004 (the most recent available data), which currently computes at 1.1307, as determined by the Federal Acquisition Regulatory (FAR) Council.

Once the escalation factor is applied to the acquisition-related threshold, the law requires rounding of the calculated threshold as follows:

< $10,000	Nearest $500
$10,000–<$100,000	Nearest $5,000
$100,000–<$1,000,000	Nearest $50,000
$1,000,000 or more	Nearest $500,000

Applying the 1.1307 factor and the rounding criteria described above, the CAS thresholds have been revised as follows:

(a) For contract applicability, from $500,000 to $550,000;

(b) For applicability to a business unit, from $7.5 million to $8.5 million;

(c) For waiver authority, from $15 million to $17 million;

(d) For full coverage, from $50 million to $56.5 million;

(e) For disclosure statement submissions by a company (other than educational institutions), from $50 million to $56.5 million;

(f) For disclosure statement submissions by a segment of a company, from $10 million to $11.5 million; and

(g) For disclosure statement submissions by an educational institutions, from $25 million to $28.3 million.

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes

no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

C. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this rule is not significant under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this rule will not have a significant impact on a substantial number of small businesses because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

D. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this proposed rule. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section.

List of Subjects in 48 CFR Part 9903

Accounting, Government procurement.

Joshua B. Bolten,

Director.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9901—RULES AND PROCEDURES

1. The authority citation for part 9901 is revised to read as follows:

Authority: 41 U.S.C. 422(f).

2. Revise section 9901.306 to read as follows:

§ 9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $550,000, other than contracts or subcontracts that have been exempted by the Board's regulations.

PART 9903—CONTRACT COVERAGE

3. The authority citation for part 9903 continues to read as follows:

Authority: 41 U.S.C. 422(f).

Subpart 9903.2—CAS Program Requirements

4. Section 9903.201–1 is amended by revising paragraphs (b)(2) and (b)(7) to read as follows:

§ 9903.201–1 CAS applicability.

* * * * *

(b) * * *

(2) Negotiated contracts and subcontracts not in excess of $550,000. For purposes of this paragraph (b)(2) an order issued by one segment to another segment shall be treated as a subcontract.

* * * * *

(7) Contracts or subcontracts of less than $8.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at $8.5 million or greater.

* * * * *

5. Section 9903–201–2 is amended by revising paragraphs (a)(1) and (2), (b)(1) and (2), and (c)(3) and (5) to read as follows:

§ 9903.201–2 Types of CAS coverage.

(a) * * *

(1) Receive a single CAS-covered contract award of $56.5 million or more;

(2) Receive $56.5 million or more in net CAS-covered awards during its preceding accounting period.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather than full, CAS coverage may be applied to a covered contract if less than $56.5 million awarded to a business unit that received less than $56.5 million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exceptions: if the business unit receives a single CAS-covered contract award of $56.5 million or more, the contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

* * * * *

(c) * * *

(3) Applicable Standards. Coverage for educational institutions requires that the business unit comply with all of the CAS specified in part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of $550,000, except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

* * * * *

(5) Contract Clauses. The contract clause at 9903.201–4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds $550,000. For CAS-covered contracts awarded to an FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201–4(a) or (c), as applicable, shall be incorporated.

* * * * *

6. Section 9903–201–3 is amended by revising the clause heading; by revising paragraphs (a) and (c)(3) in Part I of the clause, by revising the CAUTION paragraph following paragraph (c)(4) in Part I of the clause; and by revising Part II of the clause, to read as follows:

§ 9903.201–3 Solicitation provisions.

* * * * *

Cost Accounting Standards Notices and Certification (October 2005)

* * * * *

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $550,000 resulting from this solicitation, except for those contracts which are exempt as specified in 9903.201–1.

* * * * *

(c) * * *

(3) Certificate of Monetary Exemption. The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling $56.5 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this

proposal, the offeror will advise the Contracting Officer immediately.

(4) * * *

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $56.5 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $56.5 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $56.5 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $56.5 million or more.

* * * * *

7. Section 9903.201–4 is amended by revising:

A. The clause heading in paragraph (a)(2);

B. Paragraph (d) of the clause in paragraph (a);

C. Paragraph (c)(1);

D. The clause heading in paragraph (c)(2);

E. Paragraph (d)(2) of the clause in paragraph (c);

F. The clause heading in paragraph (e)(2); and

G. Paragraph (d) introductory text and (d)(2) of the clause in paragraph (e).

The revisions read as follows:

9903.201–4 Contract clauses.

(a) * * *

(2) * * *

Cost Accounting Standards (October 2005)

* * * * *

(d) The contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $550,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of Clause)

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $550,000 but less than $56.5 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) * * *

Disclosure and Consistency of Cost Accounting Practices (October 2005)

* * * * *

(d) * * *

(2) This requirement shall apply only to negotiated subcontracts in excess of $550,000.

* * * * *

(e) *Cost Accounting Standards—Educational Institutions.* * * *

(2) * * *

Cost Accounting Standards—Educational Institution (October 2005)

* * * * *

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that:

(1) * * *

(2) This requirement shall apply only to negotiated subcontracts in excess of $550,000.

* * * * *

8. Section 9903.201–5 is amended by revising paragraph (a) to read as follows:

9903.201–5 Waiver.

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than $17 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work:

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.

* * * * *

9903.202 Disclosure requirements.

9. Section 9903–202–1 is amended by revising (b)(1) and (2); (c); and (f)(2)(i), (ii), and (iii) to read as follows:

9903.202–1 General requirements.

* * * * *

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $56.5 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $56.5 million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $550,000, unless:

(1) The contract or subcontract is of the type or value exempted by 9903.201–1 or

(2) In the most recently completed cost accounting period the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than $11.5 million.

* * * * *

(f) *Educational institutions-disclosure requirements.*

(1) * * *

(2) * * *

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of $550,000 and is part of a college or university location

listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required, however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than $28.5 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of $28.5 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $28.5 million or more in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

* * * * *

[FR Doc. 05–23647 Filed 12–9–05; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 051110296–5296–01; I.D. 102405A]

RIN 0648–AU02

Protecting Spinner Dolphins in the Main Hawaiian Islands From Human Activities that Cause "Take," as Defined in the Marine Mammal Protection Act and Its Implementing Regulations, or To Otherwise Adversely Affect the Dolphins

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS is considering whether to propose regulations to protect wild spinner dolphins (*Stenella longirostris*) in the main Hawaiian Islands from "take," as defined in the Marine Mammal Protection Act (MMPA) and its implementing regulations, or to otherwise adversely affect the dolphins. The scope of this advance notice of proposed rulemaking (ANPR) encompasses the activities of any person or conveyance that may result in the unauthorized taking of spinner dolphins and/or that may diminish the value to the dolphins of habitat routinely used by them for resting and/or that may cause detrimental individual-level and population-level impacts. The proposed regulation would apply only to the main Hawaiian Islands and only to spinner dolphins. NMFS requests comments on whether—and if so, what type of—conservation measures, regulations, and, if necessary, other measures would be appropriate to protect spinner dolphins in the main Hawaiian Islands from the effects of these activities.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than January 11, 2006.

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

- E-mail: *0648–AU02.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AU02–NOA.
- Federal e-rulemaking Portal: *http://www.regulations.gov*.
- Mail: Marine Mammal Branch Chief, Protected Resources Division, Pacific Islands Regional Office, National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Chris Yates or Jennifer Sepez, Pacific Islands Regional Office, 808–944–2105; or Trevor Spradlin, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

Viewing wild marine mammals in Hawaii is a popular recreational activity for both tourists and residents alike. In the past, most recreational viewing focused on humpback whales (*Megaptera novaeangliae*) during the winter months when the whales migrate from their feeding grounds off the coast of Alaska to Hawaii's warm and protected waters to breed and calve. However, in recent years, recreational activities have increasingly focused on viewing small cetaceans, with a particular emphasis on spinner dolphins (*Stenella longirostris*), which are routinely found close to shore in shallow coves and bays and other areas throughout the main Hawaiian Islands. NMFS is concerned that some of these activities cause unauthorized taking of dolphins, diminish the value to the dolphins of habitat routinely used by them for resting, and cause detrimental individual-level and population-level impacts.

The biology and behavior of Hawaiian spinner dolphins has been well documented in the scientific literature. Hawaiian spinner dolphins are identified as a race of Pacific spinner dolphins found in and around the Hawaiian Islands, including both the main Islands of Hawaii and the Northwestern Hawaiian Islands (Norris *et al.* 1994, page 17). Hawaiian spinner dolphins routinely utilize shallow coves and bays and other areas close to shore during the day to rest, care for their young and avoid predators before traveling to deeper water at night to hunt for food (Würsig *et al.* 1994, Norris 1994). As the dolphins begin or end their resting period, they engage in aerial spinning and leaping behaviors that are noticeable from shore (Würsig *et al.* 1994). However, when they are in a period of deep rest, their behavior consists of synchronous dives and extended periods swimming in quiet formation along the shallow bottom (see: Norris and Dohl 1980, Norris *et al.* 1985, Wells and Norris 1994, Würsig *et al.* 1994).

Scientific research studies have documented human disturbance of Hawaiian spinner dolphins during their resting periods along the west coast of the Big Island of Hawaii, most notably in and around Kealakekua Bay. Norris and Dohl (1980) noted that "cruise boats" would seek out and run through groups of spinner dolphins during an initial study of the dolphins in 1970, and in follow up research, Norris *et al.* (1985) found that spinner dolphins were particularly sensitive to disturbance during the early stage of their entry into the bay. Forest (2001) compared sightings records of spinner dolphins in Kealakekua Bay from 1979–1980 and 1993–1994, and found that the dolphins were utilizing the bay and engaging in aerial behaviors less frequently than before, and suggested increasing human disturbance as a cause. Courbis (2004) reported high levels of vessel and swimmer traffic in Kealakekua Bay and neighboring Honaunau Bay and Kauhako Bay, and found that spinner dolphins exhibited decreased aerial activity during their entry and exit into Kealakekua Bay when compared to previous studies, as well as increased aerial activity during mid-day when dolphins typically rest. Spinner dolphins in Kealakekua Bay also appeared to have shifted their preferred resting area in response to vessel and swimmer presence. In Kauhako Bay, dolphins were documented avoiding swimmers and leaving the bay in

response to being followed, while in Honaunau Bay, dolphins were documented to spend more time at the mouth of the bay or in deep water at the center of the bay when swimmers were present. Östman-Lind *et al.* (2004) found that human disturbance was highest in mid-morning when spinner dolphins begin their rest period, and that secondary resting areas with less vessel traffic were utilized more than had been previously observed, and suggested the dolphins have been displaced from their primary resting areas. In addition, Ross (2001) found that Hawaiian spinner dolphins around Midway Atoll in the Northwest Hawaiian Islands exhibited short-term behavioral changes in response to vessels at distances of 300 meters and 100 meters.

NMFS is concerned that displacement from primary resting areas has the potential for adverse impacts on the dolphins for a number of reasons, including that these secondary resting areas may not provide for the same quality of rest and protection that primary areas do and that the activities that displaced the dolphins from primary areas are likely to follow them. NMFS scientists are concerned about the potential for individual-level and population-level effects because of anthropogenic activities. NMFS has received an increasing number of complaints from constituents alleging that spinner dolphins in the main Hawaiian Islands are routinely being disturbed by people attempting to closely approach and interact with the dolphins by vessel (motor powered or kayak) or in the water ("swim-with-wild-dolphin" activities). Concerns have been expressed by officials from the Hawaii Department of Land and Natural Resources and the U.S. Marine Mammal Commission, as well as representatives of the Native Hawaiian community, scientific researchers, wildlife conservation organizations, public display organizations, and some commercial tour operators.

Additionally, there are growing public safety concerns associated with human-dolphin interactions. Although there are no known reports of Hawaiian spinner dolphins injuring humans, people have been seriously injured while trying to interact with various species of marine mammals in the wild, including species of dolphins (Webb 1978, Shane *et al.* 1993, NMFS 1994, Wilson 1994, Orams *et al.* 1996, Seideman 1997, Christie 1998, Santos 1997, Samuels and Bejder 1998, Samuels and Bejder 2004, Samuels *et al.* 2000). In addition, researchers have documented Hawaiian spinner dolphins behaving aggressively towards people in the water by charging and making threat displays (Norris *et al.* 1985, Johnson and Norris 1994). There is also a potential risk of shark attack, since sharks prey upon spinner dolphins and often are seen with them along the coast (Johnson and Norris 1994, Norris 1994). In June 2003, an adult male swimmer was attacked by a shark while trying to swim with spinner dolphins off the coast of Oahu. The man suffered injuries to his leg, which required medical attention (Hoover and Espanol 2003).

NMFS encourages members of the public to view and enjoy spinner dolphins in the main Hawaiian Islands in ways that are consistent with the provisions of the MMPA, and supports responsible wildlife viewing as articulated in agency guidelines (see Web citations below). NMFS is concerned that some activities occurring in Hawaii are not in accordance with these guidelines, and cause unauthorized taking of spinner dolphins, diminish the value to the dolphins of habitat routinely used by them for resting, or cause detrimental individual-level and population-level impacts to these dolphins.

Current MMPA Prohibitions and NMFS Guidelines and Regulations

The Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, generally prohibits the "take" of marine mammals. Section 3(13) of the MMPA defines the term "take" as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." Except with respect to military readiness activities and certain scientific research activities, the MMPA defines the term "harassment" as "any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild, [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

In addition, NMFS regulations implementing the MMPA further describe the term "take" to include: "the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild" (50 CFR 216.3). The MMPA provides limited exceptions to the prohibition on "take" for activities such as scientific research, public display, and incidental take in commercial fisheries. Such activities require a permit or authorization, which may be issued only after a thorough agency review.

Although Hawaiian spinner dolphins are not a listed species under the Endangered Species Act (ESA), there are specific regulations for some ESA-listed marine mammals which address interactions with humans in the wild. These regulations prohibit approaches within 3 nautical miles (5.5 km) of particular Steller sea lion rookeries in the Aleutian Islands and Gulf of Alaska (50 CFR 223.202), approaches closer than 100 yards (91.4 m) to humpback whales in Hawaii, approaches closer than 100 yards (91.4 m) to humpback whales in Alaska, and approaches closer than 500 yards (460 m) to right whales in the North Atlantic (50 CFR 224.103). Documentation for these latter two regulations (66 FR 29502, May 31, 2001, and 62 FR 6729, February 13, 1997) cites rulemaking authority under both the ESA and the MMPA.

For both ESA-listed species and for MMPA-protected species, wildlife viewing must be conducted in a manner that does not cause "take." This is consistent with the philosophy of responsible wildlife viewing advocated by many federal agencies to unobtrusively observe the natural behavior of wild animals in their habitats without causing disturbance (see *http://www.watchablewildlife.org/* and *http://www.watchablewildlife.org/publications/marine_wildlife_viewing_guidelines.htm*).

Each of the six NMFS Regions has developed recommended viewing guidelines to educate the general public on how to responsibly view marine mammals in the wild and avoid causing a "take." These guidelines are available on line at: *http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html*. The guidelines developed by the NMFS Pacific Islands Regional Office for marine mammals in Hawaii are also available at: *http://www.nmfs.noaa.gov/prot_res/MMWatch/hawaii.htm*. The Regional Office viewing guidelines for Hawaii recommend that people view wild dolphins from a safe distance of at least 50 yards (45 m) and refrain from trying to chase, closely approach, surround, swim with, or touch the animals. To support the guidelines in Hawaii, NMFS has partnered with the State of Hawaii and the Hawaiian Islands Humpback Whale National Marine Sanctuary over the past several years to promote safe and responsible wildlife viewing practices through the development of outreach materials, training workshops and public service

announcements. NMFS' education and outreach efforts have also been supported by a partnership with the Watchable Wildlife program, a consortium of Federal and State wildlife agencies and wildlife interest groups that encourages passive viewing of wildlife from a distance for the safety and well-being of both animals and people (Duda 1995, Oberbillig 2000).

However, despite the regulations, guidelines and outreach efforts, interactions through swim-with-dolphins programs continue to occur and are increasing in Hawaii. Advertisements on the Internet and in local media in Hawaii promote activities that contradict the NMFS guidelines. NMFS has received letters from the Marine Mammal Commission (MMC), members of the scientific research community, environmental groups, the public display community, and members of the general public expressing the view that swimming with and other types of interactions with wild marine mammals have the potential to harass and/or disturb the animals by causing injury or disruption of normal behavior patterns. NMFS has also received inquiries from members of the public and commercial tour operators requesting clarification on NMFS' policy on these matters.

The MMC sponsored a literature review by Samuels *et al.* (2000) to compile information regarding human interactions with wild dolphins. Upon review of the report, the MMC stated:

> The information and analyses in the report provide compelling evidence that any efforts to interact intentionally with dolphins in the wild are likely to result in at least Level B harassment and, in some cases, could result in the death or injury of both people and marine mammals.

The MMC subsequently recommended that NMFS "promulgate regulations specifying that any activity intended to enable in-water interactions between humans and dolphins in the wild constitutes a taking and is prohibited" (Letter from MMC to NMFS dated May 23, 2000).

In 2002, NMFS published an ANPR requesting comments from the public on what types of regulations and other measures would be appropriate to prevent harassment of marine mammals in the wild caused by human activities directed at the animals (67 FR 4379, January 30, 2002). The 2002 ANPR was national in scope and covered all species of marine mammals under NMFS' jurisdiction (whales, dolphins, porpoises, seals and sea lions), and requested comments on ways to address concerns about the public and commercial operators closely approaching, swimming with, touching or otherwise interacting with marine mammals in the wild. Several potential options were proposed for consideration and comment, including: (1) Codifying the current NMFS Regional marine mammal viewing guidelines into regulations; (2) codifying the guidelines into regulations with additional improvements; (3) establishing minimum approach rules similar to the ones under the ESA regulations for humpback whales in Hawaii and Alaska and North Atlantic right whales; and (4) restricting activities of concern similar to the MMPA regulation prohibiting the public from feeding or attempting to feed wild marine mammals. The 2002 ANPR specifically mentioned the concerns about Hawaiian spinner dolphins and increasing human interactions. Over 500 comments were received on the 2002 ANPR regarding human interactions with wild marine mammals in United States waters and along the nation's coastlines. A portion of the comments specifically addressed Hawaii concerns and recommended a wide spectrum of measures from no action to restricting swim with activities through regulations or time-area closures.

Request for Comments

NMFS is requesting comments on whether —and if so, what type of— conservation measures, regulations, and, if necessary, other measures would be appropriate to protect spinner dolphins in the main Hawaiian Islands from human activities that result in the unauthorized taking of spinner dolphins and/or that may diminish the value to the dolphins of habitat routinely used by them for resting and/or that may cause detrimental individual-level and population-level impacts. If a rule were proposed, the agency could further delineate the definition of "take" in the Code of Federal Regulations for situations involving Hawaiian spinner dolphins, focusing on the take of individual dolphins. The agency could also design regulations to address possible adverse effects at the population level, where repeated intrusions into resting areas cumulatively have the potential to disrupt the behavioral patterns within the population of dolphins and/or have the potential to injure the stock as a whole through displacement of animals from their preferred habitat. The agency could also act to protect essential habitats, including mating grounds and areas of similar significance to the dolphins.

NMFS offers several possible options for consideration and comment:

Codify the current NMFS Pacific Islands Regional Office's marine mammal viewing guidelines—Codifying the guidelines as regulations would make them requirements rather than recommendations, and would provide for enforcement of these provisions and penalties for violations.

Codify the current NMFS Pacific Islands Regional Office's marine mammal viewing guidelines with improvements—The current guidelines could be revised to more clearly address specific activities of concern, such as those discussed below, and then codified as enforceable regulations.

Establish minimum approach rule—Similar to the minimum approach rules for humpback whales in Hawaii and Alaska, and right whales in the North Atlantic (50 CFR 224.103; 66 FR 29502, May 31, 2001), a limit could be established by regulation to accommodate a reasonable level of dolphin viewing opportunities while minimizing the potential detrimental impacts from humans. If establishing a minimum approach rule is appropriate, then NMFS would have to consider whether the current guideline of 50 yards is appropriate for this regulation. NMFS would consider exceptions for situations in which marine mammals approach vessels or humans as well as other situations in which approach is not reasonably avoidable.

Restrict individual activities of concern—Similar to the prohibition on feeding wild marine mammals (50 CFR 216.3), a regulation further delineating the definition of "take" for the case of Hawaiian spinner dolphins could clarify which specific activities are prohibited. Such activities could include actions engaged in by individuals, *e.g.*, swimming with, touching (either directly or with an object), or otherwise acting on or with a Hawaiian spinner dolphin in the wild. It could also include operating a vessel or providing other platforms from which such interactions are conducted or supported.

Restrict vessel activities of concern—Activities of concern engaged in by vessels could also be prohibited through a regulation further delineating the definition of "take" for the case of Hawaiian spinner dolphins. These activities of concern could include actions engaged in by vessels, *e.g.*, the use of vessels to herd dolphins, surround dolphins, or otherwise prevent a reasonable means of escape, to "leapfrog" dolphins by positioning in their predictable paths, separate calves from attending adults, approach at or above specified speeds, or to "run through" a group of dolphins in order to elicit bow-wake riding.

Establish time-area closures in resting bays—Similar to the prohibitions used to protect fish stocks or habitat, a regulation restricting human access to specific areas could be established. These restrictions could be for full-time, or limited to certain times of the day when dolphins have the most potential to be present. They could: restrict all human entry to the area; restrict only specified types of activities; restrict human access to an entire area or a particular zone within an area; or a closure could be any combination of the above parameters.

NMFS also recognizes that the most appropriate regulations may be some combination of the above measures, or that additional possibilities may exist.

The geographic scope of these regulations, if proposed, would be the near shore habitats off the main Hawaiian Islands, including the Big Island of Hawaii, Maui, Kohoolawe, Lanai, Molokai, Oahu, Kauai, and Niihau, and their nearby land or land-like masses (*e.g.*, Molokini, Kaohiakipu, etc.). These are the locations where activities of concern are concentrated. The Northwestern Hawaiian Islands (NWHI) do not currently have a significant level of activities of concern, and NMFS feels the remoteness of these islands makes it unlikely that they will develop at significant levels in the future. In addition, a marine sanctuary is contemplated which would encompass the NWHI. NMFS requests comments on the geographic scope of this ANPR, including whether the agency should be considering a larger or smaller overall geographic scope to protect Hawaiian spinner dolphins.

NMFS invites comment on the above options and other possible measures that will help the agency decide what type of regulations, if any, would be most appropriate to consider for protecting spinner dolphins in the main Hawaiian Islands from human activities that cause unauthorized taking of spinner dolphins, diminish the value to the dolphins of habitat routinely used by them for resting, or cause detrimental individual-level and population-level impacts to these dolphins.

Classification

This advance notice of proposed rulemaking was determined to be significant for purposes of E.O. 12866.

Dated: December 6, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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[FR Doc. 05–23928 Filed 12–9–05; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 70, No. 237
Monday, December 12, 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

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, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: January 5–6, 2006, 8 a.m. to 5 p.m. on January 5 and 8 am to 4 pm on January 6. 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: Room 107A, USDA Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250. Members of the public should enter the building through the Jefferson Drive entrance. 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 Jefferson Drive, 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 eleventh meeting of the AC21 has been scheduled for January 5–6, 2006. The AC21 consists of 19 members representing the biotechnology 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, the Committee will aim to complete major work on a paper examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years, through review and revision of the current draft Chair's text for the paper, and prepare for future work 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 January 5, 2006, 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.

Bernice Slutsky,
Special Assistant for Biotechnology.
[FR Doc. E5–7165 Filed 12–9–05; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest; California; Gemmill Thin

AGENCY: Forest Service, USDA.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement.

SUMMARY: The Shasta-Trinity National Forest proposes to thin trees and reduce existing fuels on approximately 1,700 acres of National Forest System lands in the Gemmill Thin project. The project is in T.29 and 30 N., R.10 and 11 W., Mt. Diablo Meridian, immediately north and east of the community of Wildwood, California and south of Chanchelulla Wilderness and Roadless areas. Treatments will consist of thinning harvest to remove competing understory trees, road restroation, and removal of small trees and shrubs to protect and enhance an area designated by the Forest Land and Resource Management Plan (LRMP) as Late Successional Reserve (LSR). The project falls within a 4,800 acre analysis area which includes all or portions of Hall City Creek, Wilson Creek and Chanchelulla Creek. These creeks and many of their tributaries are also identified within the LRMP as Riparian Reserves (RR).

DATES: Comments concerning the scope of the analysis must be received no later than 30 days after the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in January 2006 and the final environmental impact statement is expected in April 2006.

ADDRESSES: Send written comments to Gemmill Thin Comments, South Fork Management Unit, P.O. Box 159, Hayfork, CA 96041.

FOR FURTHER INFORMATION CONTACT: Cheryl Carrothers, Gemmill Thin IDT Lead, South Fork Management Unit, P.O. Box 159, Hayfork at (530) 628–5227 or visit the Shasta-Trinity National Forest Web site at *http://www.fs.fed.us/r5/shastatrinity/projects*.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Gemmill Thin project responds to two problems within the Upper Hayfork Creek fifth field watershed and Chanchelulla late successional reserve (LSR). 1) There is less late successional old growth (LSOG) habitat than desired; 2) The risk of losing existing and developing LSOG habitat to wildfire is increasing. Thinning the forest will improve the growing conditions for the remaining trees by making more sunlight, water and other nutrients available for use. Tree health and growth in the treated sounds would improve; LSOG habitat would development at a faster rate. Ladder fuels, the small conifers, shrubs and hardwoods in the understory, provide a

conduit for fire to travel from the ground surface into the tree canopy and put the later, older trees at greater risk of loss to fire. Removing these ladder fuels greatly reduces the likelihood that wildfire will get into the canopy. The harvest and sale of cut trees provides wood products to society and offsets the cost of the proposed treatments.

Proposed Action

The proposed action is to thin trees and shrubs and reduce existing fuels. Thinning prescriptions would be based on the following guidelines:

- On approximately 600 acres in 15 stands of mixed conifer and hardwood forest, aged 100 to 150 years, implement a low thinning. Enough trees would be removed to reduce the number of stems per acre to a stocking level that maintains a greater competitive advantage for the larger older trees and to remove fuel ladders. The largest and oldest trees would be retained, with the resulting stand averaging 60% tree canopy cover.
- On approximately 1,000 acres in 23 stands of mixed conifer and hardwood forest, aged 80 to 100 years old, implement a low thinning. Enough trees would be removed to reduce the number of stems per acre to a stocking level that maintains or increases growth rates and to remove fuel ladders. The largest and healthiest trees would be retained with the resulting stand averaging 50% tree canopy cover.

A service contract would thin trees and grind up shrubs in planted stands. Thinning and release treatments would be accomplished through hand failing and mastication on approximately 100 acres in four planted conifer stands aged 20–40 years. Enough trees and shrubs would be removed to reduce the number of stems per acre to a stocking level that maintains stand growth rate and removes shrubs that act as a fuel ladder. The resulting stand would have an average of 100 trees per acre.

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002. (530) 226–2500.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, implement an alternative action that meets the purpose and need or take no action. The decision may include a non-significant forest plan amendment that permits treatment of stands older than 80 years.

Scoping Process

Notice of the proposed action will be published in the newspaper of record, the Redding Record Searchlight. It will also be published in the Trinity Journal. Scoping letters will be mailed to interested and affected publics coincident with publication of the NOI in the **Federal Register** and information on the proposed action will be posted on the Forest Web site at *http://www.fs.fed.us/r5/shastatrinity/projects.* In addition, this proposal will be presented to and reviewed by the Trinity County Firesake council. This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Comments submitted during this scoping process should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The results of scoping will include:

(a) Identifying potential issues.

(b) Identifying issues to be analyzed in depth.

(c) Eliminating non-significant issues or those previously covered by a relevant previous environmental analysis.

(d) Exploring additional alternatives.

(e) Identifying potential environmental effects of the proposed action and alternatives.

Preliminary Issues

No preliminary issues have been identified. Issues will be identified through scoping. *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 environment 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 it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

(1) Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)].

(2) Environmental objections that could be raised by the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)].

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections and received in time for meaningful consideration and response in the final environmental impact statement.

Comments on the draft environmental impact statement should be as specific as possible, for example, refer to specific pages and/or chapters. 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: December 5, 2005.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 05–23894 Filed 12–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board Public Meeting Dates Announced

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) has announced its meeting dates for 2006. These meetings are open to the public, and public comment is accepted at any time in writing and during the last 15 minutes of each meeting for spoken comments. Persons wishing to speak are given three minutes to address the Board.

Meeting dates are the third Wednesday of each month unless otherwise indicated:

January 4 (Previously announced)
February 15
March 22 (Moved to fourth Wednesday due to Biomass Conference in Denver the previous week)
April 19
May 17
June 21
July 19
August 16 (Summer Field Trip—TBA)
September 20
October 18
November 15
December 20
January 3, 2007 (Tentative)

ADDRESSES: Meetings will be begin at 1 p.m. and end no later than 5 p.m. at the West River Ag Center, 1905 Plaza Boulevard, Rapid City, SD 57731.

Agenda: The Board will consider a variety of issues related to national forest management. Agendas will be announced in advance in the news media but principally concern implementing phase two of the forest land and resource management plan. The Board will consider such topics as integrated vegetation management (wild and prescribed fire, fuels reduction, controlling insect epidemics, invasive species), travel management (off highway vehicles, the new OHV rule, and related topics), and forest fragmentation, among others.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Committee Management Officer, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730, (605) 673–9200.

Dated: December 5, 2005.

Craig Bobzien,

Forest Supervisor.

[FR Doc. 05–23895 Filed 12–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to a request from Georgia Transmission Corporation for financing assistance from RUS to finance the construction of a 230/25 kV Substation, a 230 kV switching station, and a 230 kV transmission line in Gwinnett County, Georgia.

FOR FURTHER INFORMATION CONTACT: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Development, Utilities Programs, Engineering and Environmental Staff, USDA, Rural Development, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, Telephone: (202) 720–0468 or e-mail: *stephanie.strength@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 230 kilovolt transmission line between the Jim Moore Substation (located on Auburn Road (SR324), 3.2 miles north of Dacula, Georgia, and 14.3 miles northwest of Auburn, Georgia) to the Old Freeman Mill Road Switching Station (located 2 miles northeast of Dacula, Georgia and 0.2 miles south of State Highway 29 (Winder Highway) on Old Freemans Mill Road. The transmission line connects the Old Freeman Mill switching station in-line with the existing Lawrenceville-Winder Primary 230 kilovolt Transmission Line to the proposed Jim Moore Road 230/25 kilovolt transmission substation.

Concrete or steel poles ranging in height from 85 to 115 feet would support the conductors and would require a right-of-way of 25 to 100 feet. The approximate length of the transmission line is 4.4 miles. It is anticipated that the transmission line and substations would be in service by the summer of 2006.

Alternatives considered by RUS and Georgia Transmission Corporation include: (a) No action, (b) alternative transmission improvements, and (c) alternative transmission line corridors.

An environmental report, which describes the project further and discusses anticipated environmental impacts thereof has been prepared by Georgia Transmission Corporation.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Ms. Susan Ingall of Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–2088 telephone (770) 270–7425. Ms. Ingall's e-mail address is *susan.ingall@gatrans.com.*

Dated: December 5, 2005.

James R. Newby,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. E5–7197 Filed 12–9–05; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a briefing by conference call of the Vermont Advisory Committees will convene at 10:30 a.m. and adjourn at 11:30 a.m., Wednesday, December 7, 2005. The purpose of the conference call is to update members with news from headquarters on Commission's activities and plan a forum to be conducted spring 2006.

This conference call is available to the public through the following call-in number: 1–800–597–0731, access code: 46290994. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez of the Eastern Regional Office at 202–376–7533 by 4 p.m. on Tuesday, December 6, 2005. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 6, 2005.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. E5–7182 Filed 12–9–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 59–2005]

Foreign-Trade Zone 68—El Paso, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting authority to expand its zone in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the

Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 29, 2005.

FTZ 68 was approved on April 14, 1981 (Board Order 175, 46 FR 22918; 4/22/81). On September 30, 1982, the grant of authority was reissued to the City of El Paso, Texas (Board Order 193, 47 FR 45065, 10/13/82). The zone was expanded in 1984 (Board Order 255, 49 FR 22842, 6/1/84); in 1991 (Board Order 504, 56 FR 1166, 1/11/91); in 1999 (Board Order 1019, 64 FR 5765, 2/5/99); and, in 2000 (Board Order 1119, 65 FR 57167, 9/21/00).

FTZ 68 currently consists of five sites (3,003 acres) in the El Paso, Texas, area: *Site 1* (590 acres)—El Paso Airport's Butterfield Trail Industrial Park; *Site 2* (832 acres)—Lower Valley Site, including the Americas Avenue/Zaragosa Bridge Industrial Parks located at the Pan American Center for Industry (281 acres), El Paso Public Service Board Park (51 acres), Ivey Development/AAA Park (90 acres), Yselta Industrial Park (64 acres), Americas Industrial Park and two adjacent parcels (200 acres), and Socorro Industrial Development (145 acres); *Site 3* (1,356 acres)—East Region Site includes the Eastern Region Industrial Park sites located at Americas Avenue and Interstate 10 in eastern El Paso (579 acres), the entire 10/375 Industrial Park and two adjacent parcels (210 acres), 335-acre tract within the 2,230-acre Vista del Sol Industrial Park, and a 232-acre parcel located at Montana Avenue, east of Loop 375; *Site 4* (130 acres)—Copperfield Industrial Park located on Hawkins Boulevard at Tony Lama Street in Central El Paso; and; *Site 5* (95 acres)—WWF Industries Park located on Highway 54 in northeastern El Paso.

The applicant is now requesting authority to expand Site 1 to include the 475-acre city-owned El Paso International Airport Air Cargo Complex and adjacent industrial park (new total - 1,065 acres). The proposed site is suitable for warehousing, distribution, assembly and light manufacturing activities. The applicant is also requesting authority to remove 35 acres from zone status at Site 2–Ivey Development/AAA Park (new total - 55 acres) due to changed circumstances (new Site 2 total - 796 acres). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

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

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

1. *Submissions via Express/Package Delivery Services*: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service*: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is February 10, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 27, 2006).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the City of El Paso, 501 George Perry Boulevard, Suite 1, El Paso, Texas 79906.

Dated: November 30, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–23922 Filed 12–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–808]

Certain Corrosion-Resistant Carbon Steel Flat Products From France: Notice of Intent To Rescind Administrative Review

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

SUMMARY: On September 28, 2005, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty (AD) order on certain corrosion-resistant carbon steel flat products (CORE) from France for the period August 1, 2004, through July 31, 2005. The Department intends to rescind this review after determining that the party subject to this review did not have entries during the period of review (POR) upon which to assess antidumping duties.

EFFECTIVE DATE: December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Dena Aliadinov, 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) 482–0193 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION: On August 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CORE from France for the period August 1, 2004, through July 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005, United States Steel Corporation, petitioner, and Duferco Coating SA and Sorral SA, French producers and exporters of the subject merchandise, and Duferco Steel, Inc. (the U.S. importer of subject merchandise exported to the United States by Duferco Coating SA and Sorral SA) (collectively "Duferco"), made timely requests that the Department conduct an administrative review of Duferco.[1] In its August 31, 2005, submission, Duferco requested that the Department conduct a review of its sale of subject merchandise to an unaffiliated customer during the POR, pursuant to section 351.213(e)(1), which states that an administrative review "normally will cover, as appropriate, entries, exports, or sales of subject merchandise during the 12 months immediately preceding the most recent anniversary month." Duferco also requested that the Department rely on the entry summary date (August 11, 2004) for administrative review purposes, or align the AD administrative review period with the countervailing duty review period (*i.e.*, initiate an AD review for the period January 1, 2004, through December 31, 2004).

On September 23, 2005, petitioner formally objected to Duferco's request that the Department align the AD and CVD reviews, stating that this practice is not based on the statute, the Department's regulations, or precedent. On September 28, 2005, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of initiation of this AD administrative review. *See Initiation of*

[1] On October 6, 2005, October 26, 2005, and November 15, 2005, respectively, Ispat Inland Inc., Mittal Steel USA ISG Inc., and Nucor Corporation submitted their entries of appearance as interested parties.

Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 56631 (September 28, 2005). On October 7, 2005, the Department issued its AD questionnaire to Duferco.

Scope of the Order

For purposes of this order, the products covered are corrosion-resistant carbon steel flat products, which covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) of the United States under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from the order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from the order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Intent To Rescind Administrative Review

On October 24, 2005, the Department requested documentation relating to all entrie(s) or sale(s) made by Duferco during the POR. On November 2, 2005, Duferco responded to the Department's request for documentation by providing, among other documents, CBP Form 7501 (Entry Summary), CBP Form 3461 (Entry/Immediate Delivery), sale invoice, bill of lading and packing list. See Duferco Coating SA and Sorral SA, and Duferco Steel Inc. submission regarding documentation relating to all entrie(s) or sale(s) made by Duferco during the review period, dated November 2, 2005. The entry date (box 4) on CBP Form 7501 indicates that subject merchandise entered the United States prior to the POR. Additionally, the Department conducted an internal customs data query, which determined that Duferco had no entries of subject merchandise into the United States during the POR.

In its August 31, 2005, request for review, Duferco contends that the Department can conduct an administrative review, in accordance with section 351.213(e)(1) of the Department's regulations, because its sale to an unaffiliated customer occurred within the POR. While the Department maintains the discretion to conduct reviews of sales or exports if circumstances warrant, the Department's consistent, long-standing practice is to require that there be entries during the POR upon which to assess antidumping duties, irrespective of the export-price or constructed export-price designation of the U.S. sales. *See, e.g., Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088 (August 1, 2005), and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 69 FR 20859 (April 19, 2004). Furthermore, in *Allegheny Ludlum*, the Court of Appeals for the Federal Circuit upheld the Department's discretion to determine not to conduct annual reviews, where there were no entries during the POR. *Allegheny Ludlum Corp* v. *United States*, 346 F.3d 1368 (Fed. Cir. 2003).

In the present review, the Department has weighed case precedent, our practice under section 351.213(e), and the information on the record of this proceeding in determining whether we should rescind this administrative review. The record in this proceeding does not support a conclusion that the Department should deviate from our normal practice of conducting administrative reviews of entries rather than sales.

Additionally, Duferco could have requested that the Department review its entry in the prior administrative review. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496 (August 3, 2004) (providing an opportunity to request a review of the CORE from France AD order for the August 1, 2003–July 31 2004 POR). Duferco did not take the opportunity to request a review of its entries in the review period in which such entries occurred. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004).

Duferco argues in the alternative that the entry summary date, box 3 on Customs and Border Protection (CBP) Form 7501, is within the POR and is the date the Department should use to determine whether the entry occurred during the POR. We disagree with Duferco that the entry summary date is the date the Department should rely on for purposes of establishing when the merchandise entered the Customs territory of the United States for consumption. In *Certain Cut-to-Length Carbon Steel Plate from Romania*, the Department relied on the date on which the merchandise was released by CBP as the date of entry of the subject merchandise in that review. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Final Results of Antidumping Duty Administrative Review*, 66 FR 2879 (January 12, 2001) and corresponding Issues and Decision Memorandum at Comment 1. The "release date" appears in box 4 of CBP Form 7501 as the "entry date." According to CBP's Automated Customs System and box 4 of Duferco's CBP Form 7501, obtained from CBP and placed on the record by the Department, the entry in question was entered for consumption prior to the current POR. *See* The Department's Memorandum to the File, dated November 18, 2005, with

Duferco's CBP Form 7501 included as an attachment.

Pursuant to § 351.213(d)(3) of the Department's regulations, the Department will rescind an administrative review if it concludes that during the POR there were no entries, exports, or sales of the subject merchandise, as the case may be. In this case, the Department has determined to conduct an administrative review of entries during the POR. Because record evidence demonstrates that no such entries occurred, pursuant to section 351.213(d)(3), we intend to rescind the 2004–2005 administrative review.

Public Comment

An interested party may request a hearing within 20 days of publication of this notice. Any hearing, if requested, will be held 34 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs not later than 20 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 7 days from the case brief after the date of publication of this notice. Parties who submit arguments 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. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. We will issue our final decision concerning the conduct of the review no later than 120 days from the date of publication of this notice.

Additionally, if the Department makes a final determination to rescind the 2004–2005 administrative review, the cash-deposit rate will remain at 29.41 percent for Duferco and all other producers/exporters of subject merchandise from France. *See Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France; Notice of Final Court Decision and Amended Final Determinations*, 61 FR 51274 (October 1, 1996).

This notice is published in accordance with section 777(i) of the Act and section 351.213(d)(4) of the Department's regulations.

Dated: December 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7233 Filed 12–9–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea

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

SUMMARY: On June 6, 2005, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted-average dumping margin for Huvis Corporation is listed below in the "Final Results of the Review" section of this notice.

EFFECTIVE DATE: December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Andrew McAllister, Office 1, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3813 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2005, the Department of Commerce ("the Department") published *Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 32756 (June 6, 2005) ("*Preliminary Results*") in the **Federal Register**.

We invited parties to comment on the preliminary results of the review. On July 6, 2005, Wellman, Inc.; Arteva Specialties, Inc. d/b/a KoSa; and DAK Fibers, LLC (collectively, "the petitioners"), and the respondent,[1] Huvis Corporation ("Huvis"), filed case briefs. On July 11, 2005, the petitioners and Huvis filed rebuttal briefs.

On September 29, 2005, we extended the time limit for the final results of this administrative review, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"). *See Certain Polyester Staple Fiber from the Republic of Korea: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 70 FR 58186 (October 5, 2005). Accordingly, the final results of this administrative review are scheduled for completion by December 5, 2005.

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber ("PSF"). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Period of Review

The period of review ("POR") is May 1, 2003, through April 30, 2004.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review

[1] On March 11, 2005, the Department was informed that Arteva Specialties, Inc. d/b/a KoSa had changed its name to Invista S.a.r.l. Presently, the petitioners are Wellman, Inc.; Invista S.a.r.l.; and DAK Fibers.

are addressed in the December 5, 2005, *Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the Republic of Korea ("Decision Memorandum")*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building ("CRU"). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at www.ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751(d) the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) a certification that the company has sold the subject merchandise at not less than normal value ("NV") in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and, (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

Pursuant to 19 CFR 351.222(e)(1), Huvis requested revocation of the antidumping duty order as it pertains to Huvis. According to 19 CFR 351.222(b)(2), upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.

We find that the request from Huvis does not meet all of the criteria under 19 CFR 351.222. *See Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 32756, 32757 (June 6, 2005) ("*Preliminary Results*"). With regard to the criterion of 19 CFR 351.222(b)(2)(i), Huvis received a weighted average margin of 1.54 percent in the 2002–2003 administrative review and, thus, has not sold subject merchandise at not less than NV for a period of three consecutive years. *See Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 61341 (October 18, 2004) ("*2002–2003 PSF Final*"), covering the period May 1, 2002, through April 30, 2003. Therefore, we find that Huvis does not qualify for revocation of the order on PSF pursuant to 19 CFR 351.222(b)(2).

Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than normal value, we compared export price ("EP") to the NV. We calculated EP, NV, constructed value ("CV"), and the cost of production ("COP"), based on the same methodologies used in the Preliminary Results, with the following exceptions:

- We have adjusted Huvis' general and administrative expense ratio. See Memorandum from Team, through Julie H. Santoboni, to the File, "*Final Results Calculation Memorandum for Huvis Corporation*," dated December 5, 2005 ("*Huvis Calculation Memorandum*").
- For Huvis' affiliated suppliers, we have adjusted the sales, general and administrative expense ratios. *See Huvis Calculation Memorandum. See also Decision Memorandum, at Comment 4.*

Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product 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." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities." *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Huvis' comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Final Results of the Review

We find that the following percentage margin exists for the period May 1, 2003, through April 30, 2004:

Exporter/manufacturer	Weighted-average margin percentage
Huvis Corporation	5.87

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per-unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption, effective 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 rates for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the "all others" rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: December 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Decision Memorandum

Comment 1: Huvis's Specialty Products

Comment 2: Antidumping Duty Reimbursement

Comment 3: Credit Period Recalculation

Comment 4: SG&A Expense Ratio Calculations

Comment 5: Interest Earned on Deposits

[FR Doc. 05–23924 Filed 12–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada

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

EFFECTIVE DATE: December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Salim Bhabhrawala, at (202) 482–0631 or (202) 482–1784, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On June 7, 2005, the Department of Commerce (the Department) published the preliminary results of its second administrative review of the antidumping duty order on certain softwood lumber from Canada. The review covers the following producers of subject merchandise: Abitibi-Consolidated Inc. (Abitibi), Buchanan Lumber Sales, Inc. (Buchanan), Canfor Corporation (Canfor), Tembec Inc. (Tembec), Tolko Industries, Inc. (Tolko), Weldwood of Canada Limited (Weldwood), West Fraser Mills Ltd. (West Fraser), and Weyerhaeuser Company (Weyerhaeuser). In addition, based on the preliminary results for these respondents selected for individual review, we have also determined a weighted-average margin for those companies that requested, but were not selected for, individual review. The period of review (POR) is May 1, 2003, through April 30, 2004. We have noted the changes made since the preliminary results below in the "Changes Since the Preliminary Results" section. The final results are listed below in the "Final Results of Review" section.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2005, the Department published in the **Federal Register** the preliminary results of the second administrative review of the antidumping duty order on certain softwood lumber from Canada. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Resission: Certain Softwood Lumber from Canada*, 70 FR 33063 (June 7, 2005) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On July 25, 2005, we received case briefs from the above-mentioned respondents, the Coalition for Fair Lumber Imports Executive Committee (the petitioner), and other interested parties.[1] The parties submitted rebuttal briefs on August 8, 2005. A public hearing was requested and held on September 7, 2005.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

[1] Case briefs were also received from the British Columbia Lumber Trade Council, the Ontario Forest Industries Association, the Quebec Lumber Manufacturers Association, the Independent Lumber Remanufacturers Association, Leggett & Platt Ltd., Lignum Forest Products, Ltd., Millar Western Forest Products, Ltd., Riverside Forest Products, Ltd., TFL Forest Ltd., Central Cedar Ltd., Commonwealth Plywood Company, Ltd., Fontaine Inc., Olav Haavaldsrud Inc., Produits Forestiers P. Proulux Inc., Carrier Forest Products Ltd., Carrier Lumber Ltd., Cheslatta Forest Products Ltd., Galloway Lumber Co. Ltd., Pope & Talbot Inc., Sigurdson Bros. Logging Company Ltd., Stuart Lake Lumber Co. Ltd., Stuart Lake Marketing Corporation, Teal-Jones Group, Terminal Forest Products Ltd., West Chilcotin Forest Products Ltd., Wynndel Box & Lumber Co. Ltd., and the Maritimes Lumber Bureau and the Maritime Companies.

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

- Trusses and truss kits, properly classified under HTSUS 4418.90.
- I-joist beams.
- Assembled box spring frames.
- Pallets and pallet kits, properly classified under HTSUS 4415.20.
- Garage doors.
- Edge-glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- Properly classified complete door frames.
- Properly classified complete window frames.
- Properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): If they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box-spring frame kits:* If they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.[2]
- *Softwood lumber products contained in single family home packages or kits*,[3] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and, if included in purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

4. The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

5. The following documentation must be included with the entry documents:

- A copy of the appropriate home design, plan, or blueprint matching the entry;
- A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: Upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product

[2] For further clarification pertaining to this exclusion, see the additional language concluding the scope description below.

[3] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days, as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

satisfying the physical parameters of the softwood lumber scope.[4] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum* from Stephen J. Claeys, Deputy Assistant Secretary, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, (*Decision Memorandum*), dated December 5, 2005, which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in the Central Records Unit in Room B–099 of the main Commerce building, and can also be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary results calculation methodologies in calculating the final dumping margins in these proceedings. Brief descriptions of the company-specific changes are discussed below.

Abitibi

For the final results, we revised Abitibi's general and administrative expenses (G&A) to exclude legal fees associated with the AD/CVD proceedings and the fees associated with settlement negotiations. In addition, we have revised Abitibi's BC wood chip price and have ensured that the revised total cost of manufacturing is incorporated into the margin calculation. We have also added Produits Forestiers Saguenay Inc. (PFS) to the Abitibi Group and to all instructions to CBP.

Buchanan

The Department used the incorrect database in the calculation of Buchanan's cost of production in the preliminary margin calculation. Therefore, for the final results, we have used Buchanan's most up-to-date cost file on the record.

Canfor

We have corrected clerical errors identified by parties in Canfor's preliminary margin calculations as follows: (1) We have revised an aberrational entered value for one of Canfor's sales during the POR; (2) we have revised packing expenses to eliminate the double-counting of packing expenses associated with cost of manufacturing and made a packing cost correction as noted at verification for Slocan; (3) we have revised the profit rates for subperiod 1 and subperiod 2 of the POR; (4) we have revised the treatment of inventory carrying expenses denominated in U.S. dollars, in the comparison market programs, as they relate to the sales-below-cost test; (5) we have revised the treatment of certain Canadian rebates to correctly reflect an expense in the comparison market program and; (6) we have treated Slocan's futures profits as revenue and used them to offset indirect selling expenses (including inventory carrying cost) incurred in the United States, capped by the amount of those expenses. In addition, we revised Canfor's G&A expenses to exclude legal fees associated with the AD/CVD proceedings. We have adjusted Canfor's reported total cost of manufacturing to account for purchases of logs from affiliated parties at non-arm's length prices. For the Lakeland entity, we included other income items in G&A expenses, which Canfor did not appropriately report in the G&A expenses. In addition, we excluded sundry income from Lakeland's financial expenses, as we included the appropriate portion of that income in Lakeland's G&A expenses. For the Canfor entity, we added back an investment item to the reported G&A expenses. We also moved certain loan expenses from G&A expenses and included them in financial expenses. For the Slocan entity, we deducted AD/CVD fees which were erroneously included in the G&A expenses.

Tembec

We adjusted the total by-product revenue for certain mills as well as the variable wood cost for certain mills. We corrected clerical errors identified by parties and the Department in Tembec's preliminary margin calculations as follows: (1) We recalculated Tembec's domestic indirect selling expenses for U.S. random-length sales; (2) we adjusted Tembec's U.S. indirect and domestic indirect selling expenses using the appropriate mill codes; (3) we corrected our calculation of freight revenue, which we had incorrectly converted to U.S. dollars; (4) we recalculated Tembec's U.S. direct selling expenses to include U.S. market advertising expenses; (5) we recalculated Tembec's variable cost of manufacturing to include Tembec's byproduct offset amounts, the company's purchase costs for green rough lumber, and the company's purchase costs for dry rough lumber; (6) we corrected an error in the recalculation of U.S. credit expenses; we noted that the fee for loading lumber onto trucks and rail cars had been erroneously double-counted in both movement and indirect selling expenses, we revised the program to correctly include this loading expense (in both U.S. and Canadian dollars) only in movement expenses; (7) we incorporated the variable for freight revenue in Canadians dollars into U.S. movement expenses; (8) we used Tembec's U.S. commission fields as reported (this field had erroneously been set to zero in the *Preliminary Results*).

Finally, we have included Tembec Industries Inc., Spruce Falls Inc. Marks Lumber Ltd., Produits Forestiers Temrex Limited Partnership, and Les Industries Davidson Inc. in the Tembec Group and in all instructions to CBP.

Tolko

For the final results, we used Tolko's reported G&A expenses which excludes legal fees associated with the AD/CVD proceedings which had been added to G&A expenses in the *Preliminary Results*.

In addition, we corrected three clerical errors found by parties in Tolko's preliminary margin calculation as follows: (1) We recalculated Tolko's credit expense for sales with price adjustments using payment and shipment fields correctly converted to SAS format; (2) we included Tolko's reported warranty expenses in direct selling expenses for CEP sales and; (3) we included Tolko's switching and diversion charges incurred in the U.S. market in Tolko's U.S. movement expenses.

Weldwood

For the *Preliminary Results*, the Department included an outdated program in the sequence of programs used to calculate the cost of production. For the final results, we incorporated the most recent cost file for Weldwood into the calculation.

West Fraser

We have recalculated West Fraser's G&A expenses to exclude association

[4] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

fees paid by West Fraser to the British Columbia Lumber Trade Counsel.

Weyerhaeuser

We have recalculated the entered value of all Weyerhaeuser sales imported by unaffiliated parties based on our determination that the submitted entered values for these sales were incorrect. We used the recalculated entered values in the *de minimis* test and the calculation of review-specific average assessment rate. In addition, we removed sales made under temporary import bond from the margin calculation. In the *Preliminary Results*, we adjusted Weyerhaeuser's by-product offset. For the final results using the by-product offset amounts submitted by Weyerhaeuser. Finally, we recalculated Weyerhaeuser's G&A expenses for the final results as follows: (1) We excluded association dues associated with the AD/CVD proceedings; (2) we included Weyerhaeuser's gain on the sale of minor timberlands, which had been excluded in the *Preliminary Results*, as an offset; (3) for our denominator in the G&A ratio calculation (cost of sales), we included research and development costs, which had been excluded in the *Preliminary Results*; and (4) we corrected a ministerial error in our calculation of the G&A expenses where integration costs were inadvertently double-counted in the *Preliminary Results*.

Review-Specific Average Rate

Due to the number of mandatory selected respondents, and complex circumstances unique to this review, the Department was not able to review all companies for which a review was requested. Therefore, the Department has determined a review-specific weighted-average margin for those companies that requested, but were not selected for, individual review. The review-specific average rate for these companies can be found in the final results below. This is distinguished from the "All Others" [5] rate, which is the weighted-average margin calculated in the investigation and which continues to apply to all exporters and producers which have not participated in a review.

Final Results of Review

As a result of our review, we determine that the following weighted-average margins exist for the period of May 1, 2003, through April 30, 2004:

Producer	Weighted-average margin (percentage)
Abitibi (and its affiliates Produits Forestiers Petit Paris Inc.,Produits Forestiers La Tuque Inc., Produits Forestiers Sagenay Inc. and Societe En Commandite Scierie Opticiwan)	2.52
Buchanan (and its affiliates Atikokan Forest Products Ltd.,Long Lake Forest Products Inc., Nakina Forest Products Limited,[6] Buchanan Distribution Inc., Buchanan Forest Products Ltd.,Great West Timber Ltd., Dubreuil Forest Products Ltd.,Northern Sawmills Inc., McKenzie Forest Products Inc.,Buchanan Northern Hardwoods Inc., Northern Wood, and Solid Wood Products Inc.)	2.86
Canfor[7] (and its affiliates Canfor Wood Products Marketing Ltd., Canadian Forest Products, Ltd., Bois Daaquam Inc. / Daaquam Lumber Inc., Lakeland Mills Ltd., The Pas Lumber Company Ltd. / Winton Sales, Howe Sound Pulp and Paper Limited Partnership, Winton Global Lumber Ltd., and Skeena Cellulose)	1.36
Tembec.(and its affiliates Marks Lumber Ltd., Excel Forest Products, Les Industries Davidson Inc., Produits Forestiers Temrex Limited Partnership, Tembec Industries Inc., Spruce Falls Inc.)	4.02
Tolko.(and its affiliates Gilbert Smith Forest Products Ltd., Compwood Products Ltd., and Pinnacle Wood Products Ltd.)	3.09
Weldwood	0.61
West Fraser.(and its affiliates West Fraser Forest Products Inc. and Seehta Forest Products Ltd.)	0.51
Weyerhaeuser (and its affiliate Weyerhaeuser Saskatchewan Ltd.)	4.43

Review-Specific Average Rate Applicable to the Following Companies [8]

2 by 4 Lumber Sales Ltd.
605666 BC Ltd.
9027–7971 Quebec Inc. (Scierie Marcel Dumont)
9098–5573 Quebec Inc. (K.C.B. International)
A. L. Stuckless & Sons Limited
AJ Forest Products Ltd.
Alexandre Cote Ltee.
Allmac Lumber Sales Ltd.
Allmar International
Alpa Lumber Mills Inc.
American Bayridge Corporation
Apex Forest Products, Inc.
Apollo Forest Products Limited
Aquila Cedar Products Ltd.
Arbutus Manufacturing Limited
Ardew Wood Products, Ltd.
Armand Duhamel & Fils Inc.
Ashley Colter (1961) Limited
Aspen Planers Ltd.
Atco Lumber
Atlantic Pressure Treating Ltd.
Atlantic Warehousing Limited/Atlantic Warehousing Ltd.
Atlas Lumber (Alberta) Ltd.
AWL Forest Products
B & L Forest Products Ltd.
Bakerview Forest Products Inc.
Bardeaux et Cedres St-Honore Inc. (Bardeaux et Cedres)
Barrett Lumber Company/Barrett Lumber Company Limited

[5] *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada*, 70 FR 22636 (May 2, 2005).

[6] We note that Nakina Forest Products Limited is a division of Long Lake Forest Products, Inc., an affiliate of Buchanan Lumber Sales.

[7] Canfor's weighted-average margin is based upon a weighted-average of Canfor's and Slocan's respective cash deposit rates prior to the merger. *See* Memorandum from Salim Bhabhrawala, International Trade Compliance Analyst to The File, Re: Analysis Memorandum For Canfor Corporation (December 5, 2005). We also note that, during the POR, Sinclar Enterprises Ltd. (Sinclar) acted as an affiliated reseller for Lakeland, an affiliate of Canfor. In this review, we reviewed the sales of Canfor and its affiliates; therefore, Canfor's weighted-average margin applies to all sales of subject merchandise produced by any member of the Canfor Group and sold by Sinclar. As Sinclar also separately requested a review, any sales of subject merchandise produced by another manufacturer and sold by Sinclar will receive the "Review-Specific Average" rate. Finally, we note that Canadian Forest Products, Ltd. is a wholly owned subsidiary of Canfor and will receive Canfor's weighted-average margin.

[8] In the *Preliminary Results*, we listed companies on the review-specific rate list that did not request a review or have a review requested on them for the current review. Therefore, we have removed the following companies from the review specific-rate list for the final results: AFA Forest Products Inc., Associated Cedar Products, Ivis Wood Products, Lazy S Lumber, Mary's River Lumber, New West Lumber Ltd., Quadra Wood Products Ltd., Schols Cedar Products, Standard Building Products Ltd., Still Creek Forest Products Ltd., Taiga Forest Products, Western Cleanwood Preservers Ltd., and Western Wood Preservers Ltd. All of the above companies participated in the 1st Administrative Review and will continue to receive the review-specific average rate (3.78%) from that review.

Barrette-Chapais Ltee.
Barry Maedel Woods & Timber
Bathurst Lumber (Division of UPM-Kymmene Miramichi Inc.)
Beaubois Coaticook Inc.
Blackville Lumber (Division of UPM-Kymmene Miramichi Inc.)
Blanchette et Blanchette Inc.
Bloomfield Lumber Limited
Bois Cobodex (1995) Inc.
Bois De L'Est F.B. Inc.
Bois Granval G.D.S. Inc.
Bois Kheops Inc.
Bois Marsoui G.D.S. Inc.
Bois Neos Inc.
Bois Nor Que Wood Inc.
Boisaco Inc.
Boscus Canada Inc.
Boucher Forest Products Ltd.
Bowater Canadian Forest Products Inc.
Bowater Incorporated
Bridgeside Forest Industries, Ltd.
Bridgeside Higa Forest Industries Ltd.
Brittainia Lumber Company Limited
Brouwer Excavating Ltd.
Brunswick Valley Lumber/Brunswick Valley Lumber Inc.
Buchanan Lumber
Busque & Laflamme Inc.
BW Creative Wood
Byrnexco Inc.
C. E. Harrison & Son Ltd./C. E. Harrison & Son Limited
Caledon Log Homes (FEWO)
Caledonia Forest Products Ltd.
Cambie Cedar Products Ltd.
Canadian Lumber Company Ltd.
Cando Contracting Ltd.
Canex International Lumber Sales Ltd.
CanWel Building Materials Ltd.
CanWel Distribution Ltd.
Canyon Lumber Company Ltd.
Cape Cod Wood Siding Inc.
Cardinal Lumber Manufacturing & Sales Inc.
Careau Bois Inc.
Carrier & Begin Inc
Carrier Forest Products Ltd.
Carrier Lumber Ltd.
Carson Lake Lumber
Cattermole Timber
CDS Lumber Products
Cedarland Forest Products Ltd.
Cedrico Lumber Inc. (Bois d'Oeuvre Cedrico Inc.)
Central Cedar Ltd.
Centurion Lumber Manufacturing (1983) Ltd.
Chaleur Sawmills
Chasyn Wood Technologies Inc.
Cheminis Lumber Inc.
Cheslatta Forest Products Ltd.
Chisholm's (Roslin) Ltd.
Choicewood Products Inc.
City Lumber Sales and Services Limited
Clair Industrial Dev. Corp. Ltd./Clair Industrial Development Corp. Ltd.
Clermond Hamel Ltee.
Coast Clear Wood Ltd.
Colonial Fence Mfg. Ltd.
Columbia Mills Ltd.
Comeau Lumber Limited
Commonwealth Plywood Company Ltd. dba Bois Clo-Val (formerly Bois Clo-Val Inc.), and Les Enterprises Atlas (formerly Les Enterprises Atlas (1985) Inc.)
Cooper Creek Cedar Ltd.
Cottles Island Lumber Co. Ltd.
Cowichan Lumber Ltd.
Crystal Forest Industries Ltd.
Curley Cedar Post & Rail
Cushman Lumber Company Inc.
D. S. McFall Holdings Ltd.
Dakeryn Industries Ltd.
Deep Cove Lumber
Delco Forest Products/Delco Forest Products Ltd.
Delta Cedar Products
Devlin Timber Company (1992) Limited
Devon Lumber Co. Ltd.
Doman Forest Products Limited
Doman Industries Limited
Doman Western Lumber Ltd.
Domexport Inc.
Domtar Inc.
Downie Timber Ltd.
Dunkley Lumber Ltd.
E. Tremblay Et. Fils Ltee.
Eacan Timber Canada Ltd.
Eacan Timber Limited/Eacan Timber Ltd.
Eacan Timber USA Ltd.
East Fraser Fiber Co. Ltd.
Eastwood Forest Products Inc,
Ed Bobocel Lumber 1993 Ltd.
Edwin Blaikie Lumber Ltd.
Elmira Wood Products Limited
Elmsdale Lumber Company Ltd./Elmsdale Lumber Co., Ltd.
ER Probyn Export Ltd.
Errington Cedar Products
Evergreen Empire Mills Incorporated
EW Marketing
F.L. Bodogh Lumber Co. Ltd.
Falcon Lumber Limited
Faulkner Wood Specialties Limited
Federated Co-operatives Limited
Fenclo Ltee
Finmac Lumber Limited
Fontaine Inc. (dba J. A. Fontaine et fils Incorporee), Bois Fontaine Inc., Gestion Natanis Inc., and Les Placements Jean-Paul Fontaine Ltee.[9]
Forex Log & Lumber
Forstex Industries Inc.
Forwest Wood Specialties Inc.
Fraser Pacific Forest Products Inc.
Fraser Pacific Lumber Company
Fraser Papers Inc.
Fraser Pulp Chips Ltd.
Frasierview Cedar Products Ltd.
Frontier Mills Inc.
G.D.S. Valoribois Inc.
Galloway Lumber Co. Ltd.
Gerard Crete & Fils Inc.
Gestofor Inc.
Gogama Forest Products
Goldwood Industries Ltd.
Gorman Bros. Lumber Ltd.
Great Lakes MSR Lumber Ltd.
Greenwood Forest Products
Groupe Lebel
H. A. Fawcett & Son Limited
H. J. Crabbe & Sons Ltd.
Haida Forest Products Ltd.
Hainesville Sawmill Ltd.
Harrison's Home Building Centers
Harry Freeman & Son Ltd./Harry Freeman & Son Limited
Hefler Forest Products Ltd.
Hi-Knoll Cedar Inc.
Hilmoe Forest Products Ltd.
Hoeg Brothers Lumber Ltd.
Holdright Lumber Products Ltd.
Hudson Mitchell & Sons Lumber Inc.
Hughes Lumber Specialties Inc.
Hyak Specialty Wood Products Ltd.
Industrial Wood Specialties
Industries G.D.S. Inc.
Industries Perron Inc.
Interior Joinery Ltd.
International Forest Products Ltd.
Isidore Roy Limited
Ivor Forest Products Ltd.
J & G Logworks
J. A. Turner & Sons (1987) Limited
J.D. Irving, Ltd.
J.S. Jones Timber Ltd.
Jackpine Engineered Wood Products
Jackpine Forest Products Ltd.
Jackpine Group of Companies
Jamestown Lumber Company Limited/Jamestown Lumber Company Ltd.
Jasco Forest Products Ltd.
Jeffery Hanson
Julimar Lumber Co. Limited
Kenora Forest Products Ltd.
Kent Trusses Ltd.
Kenwood Lumber Ltd.
Kispiox Forest Products
Kitwanga Lumber Co. Ltd.
Kruger, Inc.
La Crete Sawmills Ltd.
Lakeburn Lumber Limited
Lamco Forest Products
Landmark Structural Lumber
Landmark Truss & Lumber Inc.
Langely Timber Company Ltd.
Langevin Forest Products, Inc.
Lattes Waska Laths Inc.
Lawsons Lumber Company Ltd.
Lecours Lumber Co. Limited
Ledwidge Lumber Co., Ltd.
Leggett & Platt (B.C.) Ltd.
Leggett & Platt Inc.
Leggett & Platt Ltd.
Les Bois d'Oeuvre Beaudoin & Gauthier Inc.
Les Bois S &P Grondin Inc.
Les Chantiers Chibougamau Ltee

[9] In the *Preliminary Results*, we incorrectly listed Les Placements Jean-Paul Fontaine Ltee., as Paul Fontaine Ltee., and also as Les Placements Jean-Paul Fontaine Ltee. To correct this error we have removed Paul Fontaine Ltee., from the review-specific average rate list.

Les Produits Forestiers D. G. Ltee.
Les Produits Forestiers Dube Inc.
Les Produits Forestiers F.B.M. Inc.
Les Produits Forestiers Maxibois Inc.
Les Produits Forestiers Miradas Inc. (Miradas Forest Products Inc.)
Les Scieries Du Lac St-Jean Inc.
Les Scieries Jocelyn Lavoie Inc.
Leslie Forest Products Ltd.
Lignum Ltd.
Lindsay Lumber Ltd.
Liskeard Lumber Limited
Littles Lumber Ltd.
Lonestar Lumber Inc.
Louisiana Pacific Corporation
Lousiana Malakwa
LP Canada Ltd.
LP Engineered Wood Products Ltd.
Lulumco Inc.
Lyle Forest Products Ltd.
M & G Higgins Lumber Ltd.
M. L. Wilkins & Son Ltd.
MacTara Limited
Maibec Industries Inc. (Industries Maibec Inc.)
Manitou Forest Products Ltd.
Maple Creek Saw Mills Inc.
Marcel Lauzon Inc.
Marine Way
Marwood Inc.
Marwood Ltd.
Materiaux Blanchet Inc.
Max Meilleur et Fils Ltee.
McCorquindale Holdings Ltd.
McNutt Lumber Company Ltd.
Mercury Manufacturing Inc.
Meunier Lumber Company Ltd.
MF Bernard Inc.
Mid America Lumber
Mid Valley Lumber Specialties Ltd.
Midway Lumber Mills Ltd.
Mill & Timber Products Ltd.
Millar Western Forest Products Ltd.
Millco Wood Products Ltd.
Miramichi Lumber Products
Mobilier Rustique (Beauce) Inc.
Monterra Lumber Mills Limited
Mountain View Specialty Reload Inc.
Murray A Reeves Forestry Limited
Murray Bros. Lumber Company Limited
N. F. Douglas Lumber Limited/N. F. Douglas Lumber Ltd.
Nechako Lumber Co., Ltd.
Newcastle Lumber Co. Inc.
New West Lumber
Nexfor Inc.
Nexfor Norbord
Nicholson and Cates Limited
Nickel Lake Lumber
Norbord Industries Inc.
Norbord Juniper and Norbord's sawmills at La Sarre Senneterre Quebec
NorSask Forest Products Inc.
North American Forest Products/North American Forest Products Ltd.
North American Forest Products Ltd. (Division Belanger)
North Atlantic Lumber Inc.
North Enderby Distribution Ltd. (N.E. Distribution)
North Enderby Timber Ltd.
North Mitchell Lumber Co. Ltd., Saran Cedar
North Shore Timber Ltd.
North Star Wholesale Lumber Ltd.
Northchip Ltd.
Northland Forest Products Ltd.
Olav Haavaldsrud Timber Company Limited
Olympic Industries Inc.
Optibois Inc.
P.A. Lumber & Planning Limited
Pacific Lumber Company
Pacific Lumber Remanufacturing Inc.
Pacific Northern Rail Contractors Corp.
Pacific Specialty Wood Products Ltd. (formerly Clearwood Industries Ltd.)
Pacific Wood Specialties
Pallan Timber Products Ltd.
Palliser Lumber Sales Ltd.
Pan West Wood Products Ltd.
Paragon Ventures Ltd. (Vernon Kiln and Millwork, Ltd. and 582912 BC, Ltd.)
Parallel Wood Products Ltd.
Pastway Planing Limited
Pat Power Forest Products Corporation
Patrick Lumber Company
Paul Vallee Inc.
Peak Forest Products Ltd.
Pharlap Forest Products Inc.
Pheonix Forest Products Inc.
Pleasant Valley Remanufacturing Ltd.
Pope & Talbot Inc./Pope & Talbot Ltd.
Porcupine Wood Products Ltd.
Portbec Forest Products Ltd. (Les Produits Forestiers Portbec Ltee.)
Portelance Lumber Capreol Ltd.
Power Wood Corp.
Precibois Inc.
Preparabois (2003) Inc.
Prime Lumber Limited
Pro Lumber Inc.
P. Proulx Forest Products Inc. (aka Proulx, Proulx Forest Products Inc. and Produits Forestiers P. Proulx Inc.)
Promobois G.D.S. Inc.
R. Fryer Forest Products Limited
Raintree Forest Products Inc.
Raintree Lumber Specialties Ltd.
Ramco Lumber Ltd.
Redtree Cedar Products Ltd.
Redwood Value Added Products Inc.
Rembos Inc.
Rene Bernard Inc.
Ridgewood Forest Products Ltd./ Ridgewood Forest Products Limited
Rielly Industrial Lumber Inc.
Riverside Forest Products Limited
Rocam Lumber Inc. (Bois Rocam Inc.)
Rojac Cedar Products Inc.
Rojac Enterprises Inc.
Roland Boulanger & Cie Ltee
Russell White Lumber Limited
Sauder Moldings, Inc. (Ferndale)
Sauder Industries Limited
Scierie A&M St-Pierre Inc.
Scierie Adrien Arseneault Ltee
Scierie Alexandre Lemay & Fils Inc.
Scierie Chaleur/Scierie Chaleur Associes
Scierie Dion et Fils Inc.
Scierie Gallichan Inc.
Scierie Gauthier Ltee.
Scierie La Patrie, Inc.
Scierie Landrienne Inc.
Scierie Lapointe & Roy Ltee.
Scierie Leduc, Division of Stadacona Inc.
Scierie Nord-Sud Inc. (North-South Sawmill Inc.)
Scierie P.S.E. Inc.
Scierie St. Elzear Inc.
Scierie Tech Inc.
Scieries du Lac St. Jean Inc.
Selkirk Specialty Wood Ltd.
Sexton Lumber/Sexton Lumber Co. Limited
Seycove Forest Products Limited
Seymour Creek Cedar Products Ltd.
Shawood Lumber Inc.
Sigurdson Bros. Logging Company Ltd./ Sigurdson Brothers Logging Company Ltd.
Silvermere Forest Products Inc.
Sinclar Enterprises Ltd.*
South Beach Trading Inc.
South River Planing Mills Inc.
South-East Forest Products Ltd.
Spray Lake Sawmills (1980) Ltd.
Spruce Forest Products Ltd.
Spruce Products Ltd.
St. Anthony Lathing Ltd.
Stag Timber
Stuart Lake Lumber Co. Ltd.
Stuart Lake Marketing Inc./Stuart Lake Marketing Corporation
Sunbury Cedar Sales Ltd.
Suncoast Lumber & Milling
Sundance Forest Industries
SWP Industries Inc.
Sylvanex Lumber Products Inc.
Taiga Forest Products
Tall Tree Lumber Company
Tarpin Lumber Incorporated
Taylor Lumber Company Ltd.
Teal Cedar Products Ltd.
Teal-Jones Group
Teeda Corp
Terminal Forest Products Ltd.
T.F. Specialty Sawmill
TFL Forest Ltd./TimberWest Forest Corp. / Timber West Forest Company
Timber Ridge Forest Products
TimberWorld Forest Products Inc.
T'loh Forest Products Limited
Top Quality Lumber Ltd.
T. P. Downey & Sons Ltd.
Treeline Wood Products Ltd.
Triad Forest Products
Twin Rivers Cedar Products Ltd.
Tyee Timber Products Ltd.
Uneeda Wood Products
Uniforet Inc.
Uniforet Scierie-Pate
Vancouver Specialty Cedar Products/ Vancouver Specialty Cedar Products Ltd.

Vanderhoof Specialty Wood Products
Vandermeer Forest Products (Canada) Ltd.
Vanderwell Contractors (1971) Ltd.
Vanport Canada, Co.
Vernon Kiln and Millwork, Ltd.
Visscher Lumber Inc.
W. C. Edwards Lumber (formerly The W.C. Edwards Co. Ltd.)
W. I. Woodtone Industries Inc.
Welco Lumber Corporation
Wentworth Lumber Ltd.
Werenham Forest Products
West Bay Forest Products & Manufacturing Ltd./West Bay Forest Products and Manufacturing Ltd./ West Bay Forest Products & Mfg. Ltd.
West Can Rail Ltd.
West Chilcotin Forest Products Ltd.
West Hastings Lumber Products
Weston Forest Corp.
West-Wood Industries/West-Wood Industries Ltd.
White Spruce Forest Products Ltd.
Wilfrid Paquet & Fils Ltee
Wilkerson Forest Products Ltd.
Williams Brothers Limited/Williams Brothers Ltd.
Winnipeg Forest Products, Inc.
Woodko Enterprises, Ltd.
Woodland Forest Products Ltd.
Woodline Forest Products Ltd.
Woodtone Industries Inc.
Woodwise Lumber Ltd.
Wynndel Box & Lumber Co. Ltd.
Zelensky Bros. Forest Products—2.11%

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. For the companies requesting a review, but not selected for examination and calculation of individual rates, we will calculate a weighted-average assessment rate based on all importer-specific assessment rates excluding any which are *de minimis* or margins determined entirely on adverse facts available. Furthermore, the Department has calculated a unique importer-specific duty assessment rate for all producers/exporters of Maritimes Province origin lumber, which takes into account the exclusion of products from the Maritimes from the companion countervailing duty order.[10] The Department will issue appropriate assessment instructions directly to CBP not before the 41st day after the date of publication of these final results of review.

Cash Deposits

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930 (the Act), as amended: (1) For companies covered by this review, the cash deposit rate will be the rate listed 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 investigation, but the producer 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 producers or exporters will be 11.54 percent, the "All Others" rate calculated in the Department's recent determination under section 129 of the Uruguay Round Agreement Act. *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada*, 70 FR 22636 (May 2, 2005). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

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

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

Dated: December 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

I. General Issues

II. Company-Specific Issues

Issues Specific to Abitibi

Issues Specific to Buchanan

Issues Specific to Canfor

[10] *See Decision Memorandum* at Comment 2.

[FR Doc. 05–23932 Filed 12–9–05; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 8, 2005, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 45675 (August 8, 2005) (*Preliminary Results*). This review covers one manufacturer/exporter, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox), of the subject merchandise to the United States during the period July 1, 2003 to June 30, 2004. Based on our analysis of the comments received, we have made changes in the margin calculation; therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Angela Strom, Maryanne Burke or Robert James, AD/CVD Operations, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2704, (202) 482–5604 and (202) 482–0649 respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period July 1, 2003 to June 30, 2004. *See Preliminary Results*. In response to the Department's invitation to comment on the preliminary results of this review, Mexinox and Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers of America, AFL–CIO/CLC (collectively, petitioners) filed their case briefs on September 7, 2005. Mexinox and petitioners submitted their rebuttal briefs on September 14, 2005.

Period of Review

The period of review (POR) is July 1, 2003, to June 30, 2004.

Scope of the Order

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used

in the manufacture of razor blades. *See* chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6." [5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Stephen Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated December 6, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision 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 the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

directly via the Internet at 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 the comments received, we have made the following changes to the margin calculation:

- We have recalculated Mexinox's general and administrative expenses (G&A) ratio and have applied it to Mexinox's reported cost of manufacture (COM).
- In accordance with the major input test we made adjustments to the reported costs of direct material costs for certain grades. See Cost of Production and Constructed Value Calculation Adjustments for the Final Results—ThyssenKrupp Mexinox S.A. de C.V dated December 6, 2005.
- We have used U.S. dollar invoice prices (GRSUPRUH) and applicable billing adjustments (BILLADJ1UH and BILLADJ2UH) for certain dollar-denominated sales reported in the home market.
- We have revised the U.S. indirect selling expense (INDIRSU) ratio to include selling expenses incurred and revenues received in the United States relating to Mexinox's affiliates, Mexinox USA and ThyssenKrupp Nirosta North America (TKNNA).

These changes are discussed in the relevant sections of the Decision Memorandum and the December 6, 2005, "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. (Mexinox) for the Final Results of Stainless Steel Sheet and Strip in Coils from Mexico (A–201–822)" (Analysis Memorandum).

Final Results of Review

We determine the following weighted-average percentage margin exists for the period July 1, 2003 to June 30, 2004:

Manufacturer / Exporter	Weighted Average Margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V.	2.96 percent

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), we will issue appraisement instructions directly to U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. To determine whether the duty-assessment rate covering the period is *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated an importer-specific assessment *ad valorem* rate by aggregating the dumping margins calculated for all U.S. sales to the sole importer of ThyssenKrupp Mexinox S.A. de C.V.'s subject merchandise and dividing this amount by the total entered value of the sales to that importer. Where the importer-specific *ad valorem* rate is greater than *de minimis* and because the respondent has reported reliable entered values, we will instruct CBP to apply the assessment rate to the entered value of the importer's entries during the period of review. Pursuant to 19 CFR 356.8, the Department will issue appropriate assessment instructions directly to CBP on or after the 41st day after publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act): (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less than fair value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 30.86 percent, which is the "All Others" rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 30790 (June 8, 1999). 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 final reminder to importers of their responsibility under 19 CFR section 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.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR section 351.305, that continues to govern business proprietary information in this segment of the proceeding. 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 the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Adjustments to Normal Value

Comment 1: Peso-Based Interest Rate for Home Market Sales.
Comment 2: Whether Home Market Database is Complete.

Adjustments to United States Price

Comment 3: U.S. Indirect Selling Expenses.
Comment 4: Mexico-incurred Indirect Selling Expenses.

Cost of Production

Comment 5: General and Administrative Expenses.
Comment 6: Adjustment to Major Input Analysis.
Comment 7: Financial Expenses.

Margin Calculations

Comment 8: Offsetting for Export Sales that Exceed Normal Value.
Comment 9: Circumstance of Sale

Adjustment.

[FR Doc. 05–23920 Filed 12–9–05; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey.

SUMMARY: On June 7, 2005, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube ("welded pipe and tube") from Turkey. This review covers two producers/exporters of the subject merchandise. The period of review ("POR") is May 1, 2003, through April 30, 2004. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, George McMahon, or Jim Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161, (202) 482–1167 or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers two producers/exporters of the subject merchandise: (1) the Yücel Group ("Yücel"), which includes Çayirova Boru Sanayi ve Ticaret A.S. and its affiliate, Yücel Boru Ithalat–Ihracat ve Pazarlama A.S. (collectively referred to as "Çayirova") and (2) the Borusan Group ("Borusan").[1] On June 7, 2005, the Department published the preliminary results of this review and invited interested parties to comment on those results.[2] On July 21, 2005, we received case briefs from Çayirova, Borusan, and domestic interested parties.[3] On July 28, 2005, we received rebuttal briefs from the same parties. A public hearing was held on August 4, 2005.[4]

Scope of the Order

The products covered by this order include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipe and Tube from Turkey" from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated December 5, 2005 ("Decision Memorandum"), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are addressed 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 recommendation in the Decision Memorandum, which is on file in the CRU, 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://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

We calculated export price ("EP") and normal value ("NV") based on the same methodology used in the preliminary results, except for changes detailed in the Decision Memorandum. For Çayirova, we have made the contract date as the date of sale, changed the weighting factors matching home market and U.S. market sales, and applied the countervailing duty adjustment.[5] For Borusan, we have restored certain U.S. and home market sales.[6]

Cost of Production

We calculated the cost of production ("COP") for the merchandise based on the same methodology used in the preliminary results.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margins exist for the period May 1, 2003, through April 30, 2004:

Manufacturer/Exporter	Margin (percent)
Borusan	0.86
Çayirova	3.52

[1] The Borusan Group includes Borusan Birlesik Boru Fabrikalari A.S., Mannesmann Boru End strisi T.A.S., Borusan Mannesmann Boru Sanayii ve Ticaret A.S., and Istikbal Ticaret T.A.S.

[2] *Notice of Preliminary Results of Antidumping Administrative Review: Ceratin Welded Carbon Steel Pipe and Tube from Turkey*, 70 FR 33084 (June 7, 2005).

[3] Petitioners are Allied Tube and Conduit Corporation, and Wheatland Tube Company.

[4] A copy of the transcript of the hearing is available in the Cental Records Unit ("CRU") of the Department.

[5] Decision Memorandum, December 5, 2005, at comments 1, 3 and 4.

[6] *Id.*, at comment 5.

The Department shall determine, and the U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Tariff Act of 1930, as amended ("the Act"): (1) for the companies named above, the cash deposit rate will be the rate listed above, except where the margin is zero or *de minimis* no cash deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 14.74 percent, the "All-others" rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping and 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 and countervailing duties occurred, and in the subsequent assessment of antidumping duties increased by the amount of antidumping and/or countervailing duties reimbursed.

This notice also is the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

Comment 1: Date of Sale
Comment 2: ASTM Pipe in the Home Market

Comment 3: Weighting Factors in the Model Match Program
Comment 4: CVD Adjustment
Comment 5: Certain United States and Home Market Sales
Comment 6: Cash Deposit Rate
Comment 7: Duty Drawback
Comment 8: Test for Below-Cost Sales

[FR Doc. 05–23923 Filed 12–9–05; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada

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

SUMMARY: On June 7, 2005, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain softwood lumber products (subject merchandise) from Canada for the period April 1, 2003, through March 31, 2004. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088 (June 7, 2005) (*Preliminary Results*). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of comments received, the Department has revised the net subsidy rate. For further discussion, see the accompanying Issues and Decision Memorandum from Stephen Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, concerning the final results of the second countervailing duty administrative review of certain softwood lumber products from Canada (Decision Memorandum) dated December 5, 2005. The final net subsidy rate is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Copyak (202) 482–2209, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2005, the Department published in the **Federal Register** the *Preliminary Results*. We invited interested parties to comment on the results. Since the *Preliminary Results*, the following events have occurred.

On June 10, 2005, petitioners submitted, pursuant to 19 CFR 351.301(c), rebuttal/clarifying evidence in response to new factual information placed on the record of the review by the Department at the time of the *Preliminary Results*.[1] On June 20, 2005, Canadian parties submitted factual information in response to petitioners' June 10, 2005 filing. On July 1, 2005, the Department extended the deadline for filing case and rebuttal briefs until August 11 and August 18, respectively. *See* the July 1, 2005 memorandum to the file from Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement III.

On November 2, 2005, we issued a supplemental questionnaire to the GOC as well to the provincial governments in which we requested that they respond

[1] Petitioners are the Coalition for Fair Lumber Imports Executive Committee.

to the pass-through appendix included in the Department's September 8, 2004 initial questionnaire. On November 10, 2005, the Canadian parties responded to our supplemental questionnaire. Further, pursuant to the due dates established in our November 2, 2005 supplemental questionnaire, on November 16, 2005, interested parties submitted case briefs limited to the Canadian parties' questionnaire response. Interested parties submitted rebuttal comments on November 18, 2005.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *www.ia.ita.doc.gov/frn*, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) if the importer establishes to the satisfaction of U.S. Customs and Border Protection (CBP) that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[2] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box-

[2] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language was further clarified to specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with section 777(A)(e)(2)(B) of the Act, we have calculated a single country-wide *ad valorem* subsidy rate of 8.70 percent to be applied to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from the order.

The Department has previously excluded the following companies from this order:

- Armand Duhamel et fils Inc.
- Bardeaux et Cedres
- Beaubois Coaticook Inc.
- Busque & Laflamme Inc.
- Carrier & Begin Inc.
- Clermond Hamel
- J.D. Irving, Ltd.
- Les Produits Forestiers D.G., Ltee
- Marcel Lauzon Inc.
- Mobilier Rustique
- Paul Vallee Inc.
- Rene Bernard, Inc.
- Roland Boulanger & Cite. Ltee
- Scierie Alexandre Lemay
- Scierie La Patrie, Inc.
- Scierie Tech, Inc.
- Wilfrid Paquet et fils, Ltee
- B. Luken Logging Ltd.
- Frontier Lumber
- Sault Forest Products Ltd.
- Interbois Inc.
- Les Moulures Jacomau
- Richard Lutes Cedar Inc.
- Boccam Inc.
- Indian River Lumber
- Sechoirs de Beauce Inc.

See Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada, 67 FR 36068 (May 22, 2002), as corrected (67 FR 37775, May 30, 2002), *Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 68 FR 24436 (May 7, 2003), and *Final Results, Reinstatement, Partial Rescission of Countervailing Duty Expedited Reviews, and Company Exclusions: Certain Softwood Lumber Products From Canada*, 69 FR 10982 (March 9, 2004). The exclusion applies to all subject merchandise produced and exported by the companies listed above.

Finally, certain softwood lumber products from the Maritime Provinces are exempt from this countervailing duty order. This exemption, however, does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other province.

Pursuant to 19 CFR 356.8, the Department shall not order liquidation until the "forty-first day after the date of publication of the notice ..." following an administrative review of merchandise exported from Canada or Mexico. Accordingly, we will instruct CBP, on or after the 41st day after publication of the final results of this review, to liquidate shipments of certain softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption from April 1, 2003, through March 31, 2004, at the above indicated aggregate ad valorem net subsidy rate. We will direct CBP to exempt from the application of the order only entries of softwood lumber products from Canada which are accompanied by an original Certificate of Origin issued by the Maritime Lumber Bureau (MLB), and those of the excluded companies listed above.

In addition, we will instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above of the f.o.b. price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

Return or Destruction of Proprietary Information

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

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

[3] *See* the scope clarification message (# 3034202). dated February 3, 2003, to CBP, regarding treatment of U.S. origin lumber on file in Room B-099 of the Central Records Unit (CRU) of the Main Commerce Building.

Dated: December 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I

METHODOLOGY AND BACKGROUND INFORMATION

Subsidies Valuation Information

A. *Allocation Period*
B. *Recurring and Non-Recurring Benefits*
C. *Benchmarks for Loans*
D. *Aggregate Subsidy Rate Calculations*
1. Provincial Crown Stumpage Programs
2. Other Programs
E. *Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates*[4]
1. Aggregate Numerator and Denominator
2. Adjustments to Account for Companies Excluded from the Countervailing Duty Order
3. Pass-Through

ANALYSIS OF PROGRAMS

I. Provincial Stumpage Programs Determined to Confer Subsidies

A. *Financial Contribution and Specificity*
B. *Benefit*
1. Use of First-Tier Benchmarks in Measuring Stumpage Programs Administered by the GOA, GOBC, GOO, GOQ, GOM, and GOS
2. Private Stumpage Prices in New Brunswick and Nova Scotia May Serve as a First-Tier Benchmark in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan
C. *Application of Maritime Prices*
1. Indexing
2. Costs That Must Be Paid in Order to Harvest Private Standing Timber in New Brunswick and Nova Scotia
3. Weighting of Studwood in the Nova Scotia Benchmark
D. *Selection of Benchmark Price Used for British Columbia*
E. *Application of U.S. Log Prices*
1. Selection of Data Sources
2. Derivation of U.S. Log Prices on a per Unit Basis for Use in Comparison to Log Prices on the B.C. Coast and Interior
F. *Calculation of Provincial Benefits*
1. Methodology for Adjusting the Unit Prices of the Crown Stumpage Programs Administered by the GOA, GOS, GOM, GOO, and GOQ
2. Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC
G. *Calculation of Provincial and Country-Wide Rate*

II. Non-Stumpage Programs Determined To Confer Subsidies

A. *Programs Administered by the Government of Canada*
1. Western Economic Diversification Program (WDP): Grants and Conditionally Repayable Contributions
2. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies
B. *Programs Administered by the Government of British Columbia*
1. Forestry Innovation Investment Program (FIIP)
2. British Columbia Private Forest Property Tax Program
C. *Programs Administered by the Government of Quebec*
Private Forest Development Program

III. Programs Determined Not to Confer a Benefit

A. *Programs of the Government of Canada*
1. Federal Economic Development Initiative in Northern Ontario (FEDNOR)
2. Payments to the Canadian Lumber Trade Alliance (CLTA) & Independent Lumber Remanufacturing Association (ILRA)
B. *Programs of the Government of British Columbia*
Forest Renewal B.C. Program/Land Base Investment Program
C. *Programs of the Government of Quebec*
1. Assistance Under Article 28 of Investment Quebec
2. Assistance from the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)

IV. Total Ad Valorem Rate

V. Analysis of Comments

A. *Company-Specific Review Comments*
Comment 1: Company-Specific Reviews
B. *Subsidy Valuation Comments*
1. Numerator
a. Treatment of Company-Specific Data of Excluded Companies
Comment 2: Whether Benefits to Excluded Companies Should Be Deducted from Numerator of Net Subsidy Calculation
b. Pass-Through
Comment 3: U.S. Law and WTO Agreements Require the Department to Conduct a Pass-Through Analysis
Comment 4: Whether the Department's Evaluation Criteria Is Relevant to a Pass-through Analysis
Comment 5: Whether Company-Specific Details are Required for the Department to Conduct a Pass-through Analysis
Comment 6: Benchmark to Be Used When Conducting a Pass-through Analysis
Comment 7: Whether the Department Rejected The GOO's Pass-through Claim Based on an Incorrect Understanding of Record Evidence
Comment 8: Whether the Department's November 2, 2005, Supplemental Questionnaire Imposed Unreasonable Burdens on Canadian Parties
2. Denominator
Comment 9: Attribution of Stumpage Benefit
C. *Provincial Stumpage Program Comments*
1. Scope and Specificity
Comment 10: Scope of the Order
Comment 11: Whether the Provincial Stumpage Programs Are Specific
2. Whether Private Stumpage Prices from Inside the Respective Subject Provinces Are Viable Benchmarks[5]
a. Alberta
Comment 12: Whether Timber Damage Assessment Data May Serve as a Benchmark in Alberta
b. British Columbia
Comment 13: Whether the BCTS Auction Sales Are Distorted or Suppressed by Crown Stumpage Rates
Comment 14: Whether BCTS Auction Prices for Timber are Valid First-Tier benchmarks
Comment 15: B.C. Domestic Log Prices Constitute Valid Third-Tier Benchmark
c. Ontario
Comment 16: The Department Should Compare the Price for Ontario Crown Softwood Timber with Private Stumpage Prices in Ontario
Comment 17: Ontario Crown Stumpage Was Provided for More than Adequate Remuneration in Comparison to Ontario's Unsubsidized Domestic Log Market
d. Quebec
Comment 18: Whether Prices for Private Standing Timber in Quebec Are Distorted by Prices Charged in Quebec's Public Forest
Comment 19: Basis for the Department's Findings Regarding Quebec's Private Forest
3. Private Stumpage Prices from the Maritime Provinces
Comment 20: Whether the Law Requires That the Benefit Be Determined Using

[4] The denominators used for non-stumpage programs are discussed below in the individual program write-ups.

[5] The GOS and GOM did not submit any private stumpage prices for consideration by the Department. Therefore, these provinces are not addressed in this section of the decision memorandum.

[FR Doc. 05–23921 Filed 12–9–05; 8:45 am]
BILLING CODE 3510–DS–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–540 and 541 (Second Review)]

Certain Welded Stainless Steel Pipe From Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on certain welded stainless steel pipe from Korea and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on certain welded stainless steel pipe from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews 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, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On December 5, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 52124, September 1, 2005) was adequate but that the respondent interested party group response was inadequate. However, the Commission found that other circumstances warranted conducting full reviews.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 7, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7245 Filed 12–9–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

Technology Administration

Request for Nominations of Members to Serve on the National Medal of Technology Nomination Evaluation Committee

AGENCY: Technology Administration, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Department of Commerce (Technology Administration) is requesting nominations of individuals to serve on the National Medal of Technology Nomination Evaluation Committee. Technology Administration will consider nominations received in response to this notice as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations within 30 days of the publication of this notice.

ADDRESSES: Submit nominations to Mildred Porter, Director, National Medal of Technology Program, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4817, Washington, DC 20230. Nominations also may be submitted via fax at 202–482–6275, or e-mail to: *nmt@technology.gov*.

FOR FURTHER INFORMATION CONTACT: Mildred Porter, Director, National Medal of Technology Program, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4817, Washington, DC 20230, telephone (202) 482–5572.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2). The following provides information about the Committee and membership.

1. Committee members are appointed by and serve at the discretion of the Secretary of Commerce. The Committee provides advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711). Public Law 105–309; 15 U.S.C. 3711, Section 10, approved by the 105th Congress in 1998, added the National Technology Medal for Environmental Technology.

2. The Committee functions solely as an advisory body under the FACA. Members are appointed to the 12-member Committee for a period of three-years. Each will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Selection of membership is made in accordance with applicable Department of Commerce guidelines.

3. Members are responsible for reviewing nominations and making recommendations for the Nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the Committee have an understanding of, and experience in, developing and utilizing technological innovation and/or they are familiar with the education, training, employment and management of technological human resources.

4. Under the FACA, membership in a committee must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses or with special expertise in the following sub sectors of the technology enterprise:

- Medical Innovations/Bioengineering and Biomedical Technology
- Technology Management/Computing/IT/Manufacturing Innovation
- Technology Manpower/Workforce Training/Education

Committee members are present or former Chief Executive Officers, former winners of the National Medal of Technology; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. As such, they not only offer the stature of their positions but also possess intimate knowledge of the forces determining future directions for their organizations and industries. The Committee as a whole is balanced in representing geographical, professional, and diversity interests.

Nomination Information:

1. Nominees must be U.S. citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology, and must uphold the confidential nature of an independent peer review and competitive selection process.

2. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Michelle O'Neill,

Acting Under Secretary for Technology, Technology Administration.

[FR Doc. E5–7185 Filed 12–9–05; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the

[1] Chairman Stephen Koplan and Commissioners Jennifer A. Hillman and Shara L. Aranoff dissenting.

Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 10, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness)(Military Personnel Policy/ Accession Policy), ATTN: Mr. Dennis Drogo, Room 2B271, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–9268.

Title, Associated Form, and OMB Control Number: DoD Loan Repayment Program (LRP); DD Form 2475; OMB Control Number 0704–0152.

Needs and Uses: Military Services are authorized to repay student loans for individuals who meet certain criteria and who enlist for active military service or enter Reserve service for a specific obligated period. Applicants who qualify for the program forward the DD Form 2475, "DoD Loan Repayment Program (LRP) Annual Application", to their Military Service Personnel Office for processing. The Military Service Personnel Office verifies the information and fills in the loan repayment date, address, and phone number. For the Reserve Components, the Military Service Personnel Office forwards the DD Form 2475 to the lending institution. For active-duty Service, the Service mails the form to the lending institution. The lending institution confirms the loan status and certification and mails the form back to the Military Service Personnel Office.

Affected Public: Business or other for-profit.

Annual Burden Hours: 5,167.

Number of Respondents: 31,000.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Public Laws 99–145 and 100–180 authorize the Military Services to repay student loans for individuals who agree to enter the military in specific occupational areas for a specified obligation period. The legislation requires the Services to verify the status of the individual's loan prior to repayment. The DD Form 2475, "DoD Loan Repayment Program (LRP) Annual Application," is used to collect the necessary verification data from the lending institution.

Dated: December 5, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–23882 Filed 12–9–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; system of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on January 11, 2006, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Directives and Records Management Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on December 5, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated: February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 6, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

DHA 11

SYSTEM NAME:

Defense Medical Personnel Preparedness Database (February 25, 2005, 70 FR 9282).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "non-appropriated fund employees and foreign nationals" and replace with: "non-appropriated fund employees, foreign nationals, DoD contractors and volunteers."

* * * * *

DHA 11

SYSTEM NAME:

Defense Medical Personnel Preparedness Database.

SYSTEM LOCATION:

Department of Defense, TRICARE Management Activity, 5205 Leesburg Pike. Suite 1100, Falls Church, VA 22041–3238.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Military, Reserve, National Guard, and DoD civilian employee, to include non-appropriated fund employees and foreign nationals, DoD contractors, and volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, gender, work address and telephone number, Social Security Number, medical training information including class names and class dates, and personnel readiness documentation that includes immunization and other health information required to determine an individual's fitness to perform their duties related to the mission of the Armed Forces and the Military Health System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; E.O. 12656, Assignment of Emergency Preparedness Responsibilities; DoD–I 1322.24, Military Medical Readiness Skills Training; DoD 6013.13–M, Medical Expense Performance Reporting System (MEPRS) for Fixed, Medical/Dental Treatment Facilities; DoD 5136.1–P, Medical Readiness Strategic Plan (MRSP); and E.O. 9397 (SSN).

PURPOSE(S):

The Office of the Secretary is establishing a single Department of Defense electronic database that provides the preparedness of DoD medical personnel to meet national security emergencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in computers and computer output products.

RETRIEVABILITY:

Records are retrieved by individual's name and Social Security Number.

SAFEGUARDS:

The records are maintained in a government-controlled facility. Physical access is limited to personnel with appropriate clearance and need-to-know. Access to computerized data is restricted by password. Passwords are changed periodically.

RETENTION AND DISPOSAL:

Maintained for as long as DoD medical personnel are active and in Military Health Services System. Upon death or disenrollment from system, records are marked for inactive file and kept an additional five years. Storage media containing data with personal identifiers will be erased (degaussed) after the five-year inactive record retention.

SYSTEM MANGER(S) AND ADDRESS:

Program Manager, Resources Information Technology Program Office, 5205 Leesburg Pike, Suite 1100, Falls Church, VA 22041–3238.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the TRICARE Management Activity Privacy Office, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3238.

Requests must contain the individual's full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained within the system should address written inquiries to the TRICARE Management Activity Privacy Office, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3238.

Requests must contain the individual's full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

Individuals may request a record be amended. Correspondence should be sent to TRICARE Management Activity Privacy Office, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3238. Individual must include as much information, documentation, or other evidence as needed to support your request to amend the pertinent record.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Information about individuals in the records is obtained primarily from DoD Pay and Personnel Systems, the Military Medical Eligibility System (know as the Defense Enrollment Eligibility Reporting System), and from personnel who work at DoD Medical facilities. Additional information may be obtained from DoD supervisors or DoD operational records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23881 Filed 12–9–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 6, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Consolidated State Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 14,652.

Burden Hours: 40,332.

Abstract: This information collection package contains the Consolidated State Performance Report (CSPR). It collects data that is required under section 1111 of the No Child Left Behind Act (NCLB) which mandates the requirements for the Secretary's report to Congress and information necessary for the Secretary to report on the Department's Government Performance and Results Act (GPRA) indicators.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2872. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. E5–7186 Filed 12–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Preparation to Improve Services and Results for Children With Disabilities—Center on High Quality Personnel in Inclusive Preschool Settings; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325S.

Dates: Applications Available: December 13, 2005.

Deadline for Transmittal of Applications: January 30, 2006.

Deadline for Intergovernmental Review: March 31, 2006.

Eligible Applicants: Institutions of higher education (IHEs).

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Preparation to Improve Services and Results for Children with Disabilities program for FY 2006, of which we intend to use an estimated $500,000 for the Center on High Quality Personnel in Inclusive Preschool Settings competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants or toddlers with disabilities, or children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(d) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Center on High Quality Personnel in Inclusive Preschool Settings

Background

Research has demonstrated that preschoolers with and without disabilities can make positive developmental and school readiness gains by participating in high quality inclusive preschool programs (Odom et al., 2003). However, simply placing a child with disabilities in an inclusive setting does not guarantee these benefits. Adequate support is necessary to make inclusive preschool settings successful learning environments for all children.

Research consistently shows that teacher quality is strongly related to outcomes for students at all educational levels. Because the preschool years are so critical in fostering the development of skills needed for later school success, it is extremely important that programs serving preschoolers are staffed by personnel who are trained to implement evidence-based inclusion models and practices. To this end, support for such programs should include professional development and training activities that focus on implementing evidence-based preschool inclusion models and practices. The activities supported through this priority have the potential to improve the quality and accessibility of professional development and training activities available to prepare personnel to work in inclusive preschool settings.

Priority

The purpose of this priority is to support a Center that will increase the number of high quality early childhood personnel who serve preschoolers with disabilities in inclusive settings. The Center will accomplish this goal, in part, by developing State networks that are designed to improve the quality and accessibility of rigorous, on-going professional development and training opportunities that will prepare personnel to work in inclusive preschool settings. Specifically, the Center will: (1) Develop State networks that include, at a minimum, State and local early childhood program administrators (including part B section 619 coordinators, child care

administrators, and Head Start State Collaboration Offices), local early care and education providers, early childhood teacher trainers (IHEs and community colleges) and technical assistance providers; (2) assist each network in developing a plan for the ongoing provision of rigorous, research-based training and professional development activities in inclusive preschool settings within a specific, ambitious timeframe; and (3) coordinate the provision of research-based professional development and training opportunities for early childhood special educators, related services personnel, pre-Kindergarten teachers, Head Start teachers, and child care providers.

To meet the requirements of this priority, at a minimum, the Center must:

(a) Assist at least ten States in establishing State personnel preparation networks that focus primarily on enhancing the quality of inclusive preschool settings by ensuring increased availability of, and access to, rigorous professional development and other training opportunities for staff who work in inclusive preschool settings. Training and professional development should focus on ensuring that personnel who will work in inclusive preschool programs are trained to implement evidence-based preschool inclusion models and practices. The Center must prioritize work with States most in need;

(b) Describe in its application the process and criteria for choosing States. This process should involve consultation with the Office of Special Education Programs (OSEP), the HHS Child Care Bureau, Head Start Bureau, and other federal programs serving young children. States that are selected to work with the Center should demonstrate a commitment to developing State personnel preparation networks and plans for improving inclusive preschool training and professional development opportunities;

(c) Develop a State preschool inclusion needs assessment plan that focuses on the area(s) of training and professional development that will guide the State preschool inclusion networks;

(d) Describe in its application a proposed model for the State preschool inclusion networks. States may choose to coordinate with other early childhood networks that exist in that State;

(e) Establish a cadre of national training consultants and a system for communication and interaction among the States developing preschool inclusion networks;

(f) Describe in its application the research-based professional development and other training activities that will be promoted through the Center;

(g) Describe in its application the research-based preschool inclusion models and practices that will be promoted through the Center;

(h) Prepare and disseminate reports, documents, and training and professional development materials on "best practices" in preschool inclusion and related topics for specific audiences, such as early childhood special educators, related services personnel, pre-Kindergarten teachers, Head Start teachers, child care personnel, early childhood program administrators, trainers of early care and education personnel, and technical assistance providers. This content would also be made available for use by the Information and Technical Assistance Providers funded by the Head Start and HHS Child Care Bureaus, as well as Child Care Resource and Referral Agencies. This effort must include the development and dissemination of materials to assist local communities in increasing the number of high quality early childhood personnel who serve young children with disabilities in inclusive settings. These materials must also assist early childhood technical assistance providers in developing training materials;

(i) Maintain communication and collaboration with early childhood technical assistance providers (including those funded by OSEP, Head Start, and the HHS Child Care Bureau) and organizations (including the Council for Exceptional Children's Division of Early Childhood, the National Association for the Education of Young Children, and others);

(j) Establish, maintain, and meet at least annually in Washington DC with an advisory committee. The advisory committee should consist of representatives from State and local agencies and programs serving preschool-age children, trainers of early care and education personnel (including representatives from IHEs and community colleges), early childhood technical assistance providers, parents of young children with disabilities, early care and education providers, professional organizations, advocacy groups, researchers, and other appropriate stakeholders;

(k) Conduct an evaluation of the State preschool inclusion networks to: (1) Identify and document the most effective ways to improve the quality of training and professional development for staff in inclusive preschool settings; and (2) identify, examine, and document the most promising strategies for increasing the number of high quality early childhood personnel who serve preschoolers with disabilities in inclusive settings;

(l) Prior to developing any new product, paper or electronic. submit a proposal to OSEP for approval describing the content and purpose of the product to a designated OSEP Project Officer and to the document review board at OSEP's Dissemination Center;

(m) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project; and

(n) Maintain a Web site that includes relevant information and documents in a format that meets government or industry-recognized standards for accessibility.

Statutory Requirements: To be considered for an award, an applicant must also satisfy the following requirements contained in section 662(e) through (f) of the IDEA:

(a) Demonstrate that the activities described in the application will address needs identified by the State or States the applicant proposes to serve and that the State or States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities (see sections 662(e)(2)(A) and 662(f)(2) of the IDEA). Letters from the State or States that the project proposes to serve could be one method for addressing this requirement; and

(b) Demonstrate that the applicant and one or more State educational agencies—or, if appropriate, State appointed lead agencies responsible for providing early intervention services—or local educational agencies will cooperate in carrying out and monitoring the proposed project (see section 662(e)(2)(B) of IDEA).

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481(d).

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Preparation to Improve Services and Results for Children with Disabilities program for FY 2006, of which we intend to use an estimated $500,000 for the Center on High Quality Personnel in Inclusive Preschool Settings competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The project funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.325S.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject your application if:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 13, 2005.

Deadline for Transmittal of Applications: January 30, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: March 31, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Center on High Quality Personnel in Inclusive Preschool Settings-CFDA Number 84.325S is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for The Center on High Quality Personnel in Inclusive Preschool Settings at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability. If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325S), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325S), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention:

(CFDA Number 84.325S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Department intends to document the effectiveness of the activities supported under the priority established in this notice in a variety of ways. If funded, in addition to conducting the required evaluation(s), applicants will be required to collect and report data on grant-supported activities annually. These data will include: (1) The number of States that have established State personnel preparation networks that meet all of the requirements established in this priority; (2) the number(s) of individuals who participate in, and complete, research-based training and professional development in each State as a result of the State's network activities; and (3) the extent to which the curricula of training programs funded under this competition reflect the current knowledge base of effective practices.

We will notify grantees of any additional data collection and reporting requirements once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Beth Caron, U.S. Department of Education, 400 Maryland Avenue, SW., room 4052, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7293.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 7, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–7238 Filed 12–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 5, 2006. 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–211, Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Discussion on Ways to Visually Depict Areas of Residual Contamination at Rocky Flats
2. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on December 5, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E5–7199 Filed 12–9–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06-114-000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on November 30, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 530 proposed to be effective January 1, 2006. Algonquin states that it is making this filing to remove the five-year term matching cap from the ROFR bidding process in its tariff.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7214 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–115–000]

Alliance Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on November 30, 2005, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 10, proposed to become effective January 1, 2006.

Alliance states that the proposed revised tariff sheet sets forth the revised ACA unit charge established by the Commission and applicable to the Recourse Rates set forth in the tariff.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–7215 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–128–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on December 1, 2005, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2 Sixteenth Revised Sheet No. 570 and First Revised Sheet No. 570A, with a proposed effective date of January 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7228 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06-130-000]

CenterPoint Energy Gas Transmission Company; Notice of Revenue Credit Report

December 6, 2005.

Take notice that on December 1, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing its annual report of penalty revenue credits, covering such activity during the twelve month reporting period ended July 31, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7230 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–124–000]

Cheyenne Plains Gas Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Filing

December 6, 2005.

Take notice that on November 30, 2005, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing one firm Transportation Service Agreement, a precedent agreement, and Second Revised Sheet No. 1 to its FERC Gas Tariff, Original Volume No. 1.

Cheyenne Plains that the transportation service agreement supports the Commission's approved expansion of the Cheyenne Plain's pipeline system approved in Docket No. CP04–345–000. The accompanying tariff sheet is proposed to become effective January 1, 2006.

Cheyenne Plains states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7224 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–33–000]

The Cincinnati Gas & Electric Company; Notice of Filing

December 6, 2005.

Take notice that on November 30, 2005, The Cincinnati Gas & Electric Company (CG&E) and American Electric Power Service Corporation on behalf of Ohio Power Company and Indiana & Michigan Electric Company (AEP) (collectively, Applicants) tendered for filing an application requesting all necessary authorizations under section 203 of the Federal Power Act for CG&E and AEP to engage in a transfer of limited transmission assets from AEP to CG&E.

Applicants state copies of this filing have been served on the Public Utilities Commission of Ohio.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7210 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–123–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on November 30, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, Fortieth Revised Sheet No. 11A , to become effective January 1, 2006.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7223 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–31–000]

Cross-Sound Cable Company, LLC et al.; Notice of Filing

December 6, 2005.

Take notice that on November 23, 2005, Cross-Sound Cable Company, LLC et al., (Applicants) pursuant to section 203 of the Federal Power Act submitted an application for transfer of certain assets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7231 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–131–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 6, 2005.

Take notice that on December 1, 2005, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets to become effective January 1, 2006:

Original Sheet No. 284G.01
Substitute Original Sheet No. 284K.01

EPNG states that these tariff sheets implement the pro forma tariff provisions accepted by the Commission in Docket No. CP05–2–000.

EPNG states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7209 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–122–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on November 30, 2005, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective December 31, 2005:

1st Rev Twenty-Fifth Revised Sheet No. 1
First Revised Sixth Revised Sheet No. 2

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7222 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–127–000]

Enbridge Pipelines (KPC); Notice of Refund Report

December 6, 2005.

Take notice that on December 1, 2005, Enbridge Pipelines (KPC) tendered for filing its Annual Excess Interruptible Revenue Refund Report for the twelve month period ending September 30, 2005.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time December 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7227 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–117–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on November 30, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Sixth Revised Sheet No. 6, to become effective January 1, 2006.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7217 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–116–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on November 30, 2005, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 227B, proposed to be effective January 1, 2006.

Maritimes states that copies of its filing have been served upon all affected customers of Maritimes and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7216 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–118–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on November 30, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty Seventh Revised Sheet No. 8, with a proposed effective date of January 1, 2006.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7218 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–119–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 6, 2005.

Take notice that on November 30, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eighty Fourth Revised Sheet No. 9 and Ninth Revised Sheet No. 43 to its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7219 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–120–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 6, 2005.

Take notice that on November 30, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eighty Third Revised Sheet No. 9, to become effective December 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7220 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–121–000]

Questar Pipeline Company; Notice of Tariff Filing

December 6, 2005.

Take notice that on November 30, 2005, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of January 1, 2006:

First Revised Volume No. 1
Thirty-Eighth Revised Sheet No. 5.
Nineteenth Revised Sheet No. 5A.
Original Volume No. 3
Forty-Third Revised Sheet No. 8.

Questar states that the tendered tariff sheets revise Questar's Fuel Gas Reimbursement Percentage (FGRP) from the currently effective 2.10% to 1.99%.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7221 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–126–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 6, 2005.

Take notice that on November 30, 2005, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2006.

Sixty-Sixth Revised Sheet No. 14.
Eighty-Seventh Revised Sheet No. 15.
Sixty-Sixth Revised Sheet No. 16.
Eighty-Seventh Revised Sheet No. 17.
Fiftieth Revised Sheet No. 18.
Fifth Revised Sheet No. 26.
Fourth Revised Sheet No. 27.
Fourth Revised Sheet No. 28.
Forty-Fourth Revised Sheet No. 29.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7226 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–129–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2005.

Take notice that on December 1, 2005, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Volume No.

1, Fourth Revised Sheet No. 12, to become effective January 1, 2006.

Southern states that copies of the tariff sheets are being provided to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7229 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–125–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

December 6, 2005.

Take notice that on November 30, 2005, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, its cashout report for the September 2004 through August 2005 period.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7225 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 6, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–2562–003.

Applicants: Competitive Energy Services, LLC.

Description: Competitive Energy Services, LLC submits its revised triennial updated market power analysis as instructed in Commission's Order issued November 3, 2005.

Filed Date: November 25, 2005.

Accession Number: 20051129–0134.

Comment Date: 5 p.m. Eastern Time on Friday, December 16, 2005.

Docket Numbers: ER02–580–004.

Applicants: Pawtucket Power Associates Limited Partnership.

Description: Pawtucket Power Associates L.P. reports that on November 10, 2005 Maxim Power Inc acquired 100% of the partnership interests of Pawtucket Power.

Filed Date: November 28, 2005.

Accession Number: 20051201–0017.

Comment Date: 5 p.m. Eastern Time on Monday, December 19, 2005.

Docket Numbers: ER03–478–007; ER06–200–001; ER03–1326–002; ER05–534–003; ER05–1262–001; ER03–296–005; ER01–3121–004; ER02–418–003; ER03–416–006; ER05–332–003; ER06–1–001; ER03–951–005; ER04–94–003; ER97–2801–009; ER02–417–003; ER05–1146–003; ER05–481–003.

Applicants: PPM Energy, Inc.; Big Horn Wind Project LLC; Colorado Green Holdings LLC; Eastern Desert Power LLC; Flat Rock Windpower, LLC; Flying Cloud Power Partners, LLC; Klamath Energy LLC; Klamath Generation LLC; Klondike Wind Power LLC; Klondike Wind Power II LLC; Leaning Juniper Wind Power LLC; Moraine Wind LLC; Mountain View Power Partners III, LLC; PacifiCorp; Phoenix Wind Power LLC; Shiloh I Wind Project, LLC Trimont Wind I LLC.

Description: PPM Energy Inc et al notifies FERC of potential departure from the characteristics relied upon by FERC in its various order accepting the

Filing Parties' respective market-based rate tariffs.

Filed Date: November 22, 2005.

Accession Number: 20051201–0182.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 13, 2005.

Docket Numbers: ER03–563–056; EL04–102–012.

Applicants: Devon Power LLC.

Description: ISO New England Inc. submitted sixth Compliance Report of updating progress made in the siting, permitting and construction of transmission and generation upgrades.

Filed Date: November 28, 2005.

Accession Number: 20051128–5064.

Comment Date: 5 p.m. Eastern Time on Monday, December 19, 2005.

Docket Numbers: ER05–1416–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits compliance filing providing for a revision to the Service Agreement for Long-Term Firm Point-to-Point Transmission Service Agreement.

Filed Date: November 28, 2005.

Accession Number: 20051129–0219.

Comment Date: 5 p.m. Eastern Time on Monday, December 19, 2005.

Docket Numbers: ER05–287–002; ER00–1147–000.

Applicants: Granite Ridge Energy, LLC.

Description: Granite Ridge Energy, LLC submits a revisions to its Market-Based Rate Tariff, in compliance with FERC's November 17, 2005 Order.

Filed Date: November 28, 2005.

Accession Number: 20051129–0223.

Comment Date: 5 p.m. Eastern Time on Monday, December 19, 2005.

Docket Numbers: ER06–145–001.

Applicants: Commonwealth Electric Company.

Description: Commonwealth Electric Co submits a substitute Merchants Way Interconnection Agreement with New England Power Co.

Filed Date: November 28, 2005.

Accession Number: 20051129–0163.

Comment Date: 5 p.m. Eastern Time on Monday, December 19, 2005.

Docket Numbers: ER06–251–000.

Applicants: New England Power Company.

Description: New England Power Co on behalf of Massachusetts Electric Co., provides notice of cancellation of NEP Rate Schedule No. 438 and MECO Rate Schedule No. 68.

Filed Date: November 28, 2005.

Accession Number: 20051129–0218.

Comment Date: 5 p.m. Eastern Time on Monday, December 19, 2005.

Docket Numbers: ER06–267–000; OA06–1–000; TS06–4–000.

Applicants: Wolverine Creek Energy LLC and Wolverine Creek Goshen Interconnection LLC.

Description: Wolverine Creek Goshen Interconnection, LLC and Wolverine Creek Energy LLC, submit a Common Facilities Agreement with Ridgeline Airtricity Energy, LLC et al.

Filed Date: November 18, 2005.

Accession Number: 20051202–0057.

Comment Date: 5 p.m. Eastern Time on Friday, December 9, 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7232 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

December 6, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands and Waters.

b. *Project No:* 2146–112.

c. *Date Filed:* November 14, 2005.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* The Coosa River Project, which includes the Weiss Lake development.

f. *Location:* The proposed action will take place at the Weiss Lake development at Kessler's Subdivision on Three Mile Creek, which is located in Cherokee County, Alabama approximately 21 stream miles above the Weiss powerhouse.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, Sr. Engineer; Alabama Power Company Hydro Services; 600 18th Street North, Birmingham, AL 35203; (205) 257–1403.

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406, or by e-mail: *Lesley.Kordella@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 3, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2146–112) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee has requested Commission approval to construct a 22 slip boat house and boat ramp for use by individual owners of the Kessler subdivision on Three Mile Creek. The proposed dock structure and boat ramp would be located on a community access waterfront lot at the east end of the subdivision, which consists of approximately 90 feet of shoreline. The proposed boat dock would be constructed of treated lumber and supported on driven piles. The proposed boat ramp is to be a single land ramp constructed of concrete. Minimal grading is expected. There will be no septic tanks or field lines, or facilities for fueling or sewage pump out. There will be no dredging during construction and the boat dock structure will be built on site.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7211 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

December 6, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands and Waters.

b. *Project No:* 516—410.

c. *Date Filed:* May 19, 2005 (Supplemented on November 15, 2005).

d. *Applicant:* South Carolina Electric & Gas Company (SCE&G).

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* The Saluda Hydroelectric Project is located in Newberry County, Columbia, South Carolina. The project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r), 799 and 801.

h. *Applicant Contact:* Mr. James M. Landreth, SCE&G; Mail Code: K61, Columbia, South Carolina 29218.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 3, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–516–410) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* SCE&G has requested authorization to allow Mr. Richard F. Douglas, III to excavate 850 cubic yards of project land to return the lake depth to its original level for the purpose of improving boat navigation. The excavation would be performed during lake drawdown (in the dry) adjacent to 618 W. McCarthy Road in Newberry County, SC.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be

presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7212 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM04–9–000]

Electronic Notification of Commission Issuances; Notice of New Service List Download Options

December 6, 2005.

Take notice that on December 6, 2005, the Commission released a new version of its Web Service List system. The new version allows users to download the postal addresses only for those persons who do not have an e-mail address on the service list. Previously, the only option for postal addresses was to download the postal addresses for all contacts, including those who could be served by e-mail.

The three download options are:

1. *E-mail:* Downloads the e-mail addresses for all contacts on the service list that are linked to an eRegistration account. The addresses are placed in a text file with a semicolon delimiter. It may be necessary to change the delimiter if your e-mail product requires a different delimiter. Once the delimiter is correct, you can copy/paste the addresses into an e-mail address field. Please note that pasting numerous addresses in a single e-mail may trigger some spam-prevention programs.

2. *Postal contacts without e-mail:* Downloads the postal addresses only for those contacts that are not linked to an eRegistration account for the applicable service list. The download format options are the same as before: Delimited with a semicolon, comma, space, tab, or tilde; fixed length; Excel; Database file (dbf); or XML format. Options 1 and 2 together account for all contacts on the service list.

3. *All contacts:* Downloads the postal addresses for all contacts, whether they are linked to an eRegistration account or not, with the same format options as above. Option 3 also accounts for all contacts on the service list.

The record format for the postal address download options is identical to the previous version. However, if you use the "Postal contacts without e-mail" option, the downloaded file will contain blank entries in any record where one or both of the contacts had an e-mail address. This means that some users may need to revise a macro or other program used to generate mail labels to account for the blank entries.

The Commission encourages any party intervening in Commission proceedings to efile the motion to intervene and to ensure that all contacts for the party and for a law firm that may represent the party have validated eRegistration accounts. The eFiling system allows persons filing a motion to intervene to specify all of the parties to the motion, all legal representatives of the party or parties, and any other contacts for the parties that should be served.

Contacts for entities filing applications, petitions, or requests with the Commission should also have validated eRegistration accounts even if the application, petition, or request itself cannot be submitted to the Commission electronically. This will enable the Commission's Registry staff to select the eRegistration account for each contact so that the contact's e-mail address will appear on the service list.

All persons with eRegistration accounts should maintain those accounts to reflect current address and other information. If an account holder's e-mail address changes, and the account holder wants to preserve links to existing service lists and eSubscriptions, that person should edit the e-mail address in the existing account instead of creating a new account. Persons should create new accounts only when, as a result of a move to another company or firm, there is no need to preserve links to service lists and eSubscriptions linked to the previous account.

For additional guidance on using FERC Online for eRegistration, eFiling, and eService, refer to the FERC Online Reference Guide at *http://www.ferc.gov/docs-filing/fol-ref-guide.pdf.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–7213 Filed 12–9–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:30 p.m. on Monday, December 5, 2005, the Corporation's Board of Directors determined, on motion of Director John C. Dugan (Director, Comptroller of the Currency), seconded by Director Thomas J. Curry (Appointive), concurred in by Director John M. Reich (Director, Office of Thrift Supervision) and Acting Chairman Martin J. Gruenberg, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a personnel matter.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: December 7, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman

Executive Secretary.

[FR Doc. E5–7208 Filed 12–9–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235,

Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Minor Revision, of the Following Reports

1. *Report title:* Survey of Terms of Lending.
Agency form number: FR 2028A, FR 2028B, and FR 2028S.
OMB control number: 7100–0061.
Frequency: Quarterly.
Reporters: Commercial banks; and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S only).
Annual reporting hours: 7,317 hours.
Estimated average hours per response: FR 2028A, 3.7 hours; FR 2028B, 1.2 hours; and FR 2028S, 0.1 hours.
Number of respondents: FR 2028A, 398; FR 2028B, 250; and FR 2028S, 567.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The Survey of Terms of Lending provides unique information concerning both price and certain nonprice terms of loans made to businesses and farmers during the first full business week of the mid-month of each quarter (February, May, August, and November). The survey comprises three reporting forms: the FR 2028A, Survey of Terms of Business Lending; the FR 2028B, Survey of Terms of Bank Lending to Farmers; and the FR 2028S, Prime Rate Supplement to the Survey of Terms of Lending. The FR 2028A and B collect detailed data on individual loans made during the survey week, and the FR 2028S collects the prime interest rate for each day of the survey from both FR 2028A and FR 2028B respondents. From these sample data, estimates of the terms of business loans and farm loans extended during the reporting week are constructed. The estimates for business loans are published in the quarterly E.2 release, Survey of Terms of Business Lending, while estimates for farm loans are published in the quarterly E.15 release, Agricultural Finance Databook.
Current Actions: On September 29, 2005, the Federal Reserve published a notice soliciting comments on proposed revisions to the Survey of Terms of Lending (70 FR 56897). The comment period ended on November 28, 2005. The notice described the Federal Reserve's proposal to revise the FR 2028A and FR 2028B by increasing to $3,000 the minimum size of loans reported. No changes were proposed to the FR 2028S. The Federal Reserve did not receive any comments on the proposed revisions. The revisions will be effective for the May 2006 survey week.

2. *Report title:* Report of Terms of Credit Card Plans.
Agency form number: FR 2572.
OMB control number: 7100–0239.
Frequency: Semi-annual.
Reporters: Commercial banks, savings banks, industrial banks, and savings and loans associations.
Annual reporting hours: 75 hours.
Estimated average hours per response: 0.25 hours.
Number of respondents: 150.
General description of report: This information collection is voluntary (15 U.S.C. § 1646(b)) and is not given confidential treatment.
Abstract: This report collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards to the general public. The information is reported to the Congress and made available to the public in order to promote competition within the industry.
Current Actions: On September 29, 2005, the Federal Reserve published a notice soliciting comments on the proposed revisions to the Report of Terms of Credit Card Plans (70 FR 56897). The comment period ended on November 28, 2005. The Federal Reserve did not receive any comments. The changes will be implemented as proposed. The Federal Reserve will clarify the FR 2572 reporting form and instructions with regard to items 56 through 58, in which the fee amounts for cash advances, late payments, and exceeding the credit limit are reported. Clarification is needed to ensure that only one of two mutually exclusive responses is reported. Responses must diverge according to whether the particular fee is uniform or variable over the card plan's geographic area of availability.

Discontinuation of the Following Report

Report title: Monthly Survey of Industrial Electricity Use.
Agency form number: FR 2009.
OMB control number: 7100–0057.
Frequency: Monthly.
Reporters: FR 2009a/c, Electric utility companies; and FR 2009b, cogenerators.
Annual reporting hours: FR 2009a/c, 1,920 hours; and FR 2009b, 900 hours.
Estimated average hours per response: FR 2009a/c, 1 hour; and FR 2009b, 30 minutes. Number of respondents: FR 2009a/c, 160; and FR 2009b, 150.
General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, 353 *et seq.*, and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: This voluntary survey collected information on the volume of electric power delivered during the month to classes of industrial customers. There were three versions of the survey: the FR 2009a and FR 2009c collected information from electric utilities, the FR 2009a in Standard Industrial Codes and the FR 2009c in North American Industry Classification System codes. The FR 2009b collected information from manufacturing and mining facilities that generate electric power for their own use. The electric power data were used in deriving the Federal Reserve's monthly index of industrial production as well as for calculating the monthly estimates of electric power used by industry.
Current Actions: On September 29, 2005, the Federal Reserve published a notice soliciting comments on the proposed revisions to the Monthly Survey of Industrial Electricity Use (70 FR 56897). The comment period ended on November 28, 2005. The Federal Reserve did not receive any comments. This information collection has been discontinued. The reliability of the FR 2009 data has decreased in recent years due to industry consolidation that resulted from the deregulation of the electricity markets. Since 1997 the panel size has decreased by about 30 percent and the coverage of the panel in terms of the amount of electric power used by industry has also fallen about 30 percent. Consequently, the electric power data have become unacceptably volatile and have required a significant increase in resources to continue the use of these data in the construction of industrial production.

Board of Governors of the Federal Reserve System, December 7, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7207 Filed 12–9–05; 8:45 am]
BILLING CODE 6210–01–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 December 27, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Lynda L. Cameron 2005 Family Trust, Oklahoma City, Oklahoma; to become a member of a group acting in concert to acquire voting shares of First Fidelity Bancorp, Inc., and thereby indirectly acquire voting shares of First Fidelity Bank, N.A., both in Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, December 7, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7202 Filed 12–12–05; 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 Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2006.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Rabobank Nederland B.V. and Rabobank International Holdings B.V., both of Utrecht, the Netherlands, and their direct and indirect subsidiaries Utrect-America Holdings, New York, New York and VIB Corporation, El Centro, California; to acquire 100 percent of the voting shares of Central Coast Bancorp, and thereby indirectly acquire voting shares of Community Bank of Central California, Salinas, California.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Fishback Financial Corporation, Brookings, South Dakota; to acquire 100 percent of the voting shares of FMB Bankshares, Inc., Sioux, Falls, South Dakota, and thereby indirectly acquire voting shares of First American Bank & Trust, National Association, Sioux Falls, South Dakota.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank of Choice Holding Company, Greeley, Colorado; to acquire 100 percent of the voting shares of The First National Bank of Arvada, Arvada, Colorado.

Board of Governors of the Federal Reserve System, December 7, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7201 Filed 12–9–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501–3520). The FTC is seeking public comments on its proposal to extend through November 30, 2008, the current PRA clearance for information collection requirements contained in its regulations under the Fair Packaging and Labeling Act, 15 U.S.C. 1451–1461 ("FPLA"). On October 14, 2005, the OMB granted the FTC's request for a short-term extension of this clearance to December 30, 2005.

DATES: Comments must be filed by January 11, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "FPLA Regulations: FTC File No. P868423" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H 135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *paperworkcomment@ftc.gov.* However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." [1]

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Stephen Ecklund, Investigator, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2841.

SUPPLEMENTARY INFORMATION: On September 27, 2005, the FTC sought comment on the information collection requirements associated with the FPLA, 16 CFR parts 500 through 503 (OMB Control Number: 3084–0110). *See* 70 FR 56468. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before January 11, 2006.

The FPLA was enacted to eliminate consumer deception concerning product size representations and package content information. The regulations that implement the FPLA, 16 CFR parts 500 through 503, establish requirements for the manner and form of labeling applicable to manufacturers, packagers, and distributors of "consumer commodities." [2] Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product.

Estimated annual hours burden: 6,534,000 total burden hours, rounded to the nearest thousand (solely relating to disclosure [3]).

Staff conservatively estimates that approximately 653,397 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 6,533,970 hours. As in the past, Commission staff has used census data to estimate the number of companies. Based on a revised approach to the commodity categories in the Retail Trade census data, staff has eliminated much of the overlapping redundancies and lowered the estimate of the number of retailers that sell products subject to the Commission's FPLA regulations.

Estimated annual cost burden: $114,998,000, rounded to the nearest thousand (solely relating to labor costs).

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $50) and nine hours of clerical time per covered entity (at an estimated average hourly rate of $14), for a total of $114,997,872 ($176 per covered entity × 653,397 entities).

Total capital and start-up costs are de minimis. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered entities in the ordinary course of business independent of the FPLA and implementing regulations. Similarly, firms provide in the ordinary course of business the information that the statute and regulations require be placed on packages and labels.

William Blumenthal,
General Counsel.

[FR Doc. E5–7179 Filed 12–9–05; 8:45 am]

BILLING CODE 6750–01–P

[2] "Consumer commodity" means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use." 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://www.ftc.gov/os/statutes/fpla/outline.html.*

[3] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate "cents off," "introductory offer," and/or "economy size" claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

FEDERAL TRADE COMMISSION

[File No. 052 3096]

DSW, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 2, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "DSW, Inc., File No. 052 3096," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Jessica Rich (202) 326–3224, Bureau of Consumer Protection, Room NJ–3158, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 1, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/12/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted a consent agreement, subject to final approval, from DSW Inc. ("DSW").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

As described in the Commission's proposed complaint, DSW sells footwear for men and women at approximately 190 stores in 32 states. Consumers pay for their purchases with cash, credit cards, debit cards, and personal checks. In the course of seeking approval for credit and debit card purchases, DSW collects consumers' personal information, including name, card number and expiration date, and other information, from magnetic stripes on the cards. The information collected from the magnetic stripe is particularly sensitive because it contains a security code which can be used to create counterfeit cards that appear genuine in the authorization process. In the course of seeking approval for personal check purchases, DSW also collects consumers' personal information, including routing number, account number, check number, and the consumer's driver's license number and state, from the check using Magnetic Ink Character Recognition ("MICR") technology.

The Commission's proposed complaint alleges that DSW stored consumers' personal information on computers on networks located at both the store and corporate levels and failed to employ reasonable and appropriate security measures to protect the information. The complaint alleges that this failure was an unfair practice because it caused or was likely to cause substantial consumer injury that was not reasonably avoidable and was not outweighed by countervailing benefits to consumers or competition. In particular, the complaint alleges that until at least March 2005, DSW engaged in a number of practices which, taken together, failed to provide reasonable security for sensitive personal information, including: (1) Creating unnecessary risks to personal information collected at its stores by storing it in multiple files when it no longer had a business need to keep the information; (2) failing to use readily available security measures to limit access to its computer networks through wireless access points on the networks; (3) storing the information in unencrypted files that could be accessed easily by using a commonly known user ID and password; (4) failing to sufficiently limit the ability of computers on one in-store computer network to connect to computers on other in-store and corporate networks; and (5) failing to employ sufficient measures to detect unauthorized access.

The complaint further alleges that there have been fraudulent charges on accounts that consumers had used at DSW's stores. Additionally, some consumers whose checking account information was compromised were advised to close their accounts, thereby losing access to those accounts, and incurred out-of-pocket expenses such as the cost of ordering new checks.

The proposed order applies to personal information from or about consumers that DSW collects in connection with its business. It contains provisions designed to prevent DSW from engaging in the future in practices similar to those alleged in the complaint.

Specifically, part I of the proposed order requires DSW to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information it collects from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to DSW's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected. Specifically, the order requires DSW to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of consumer information that could result in unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.
- Evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to its operation or business arrangements, or any other circumstances that DSW knows or has reason to know may have a material impact on the effectiveness of its information security program.

Part II of the proposed order requires that DSW obtain within 180 days, and on a biennial basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) DSW has in place a security program that provides protections that meet or exceed the protections required by part I of the proposed order, and (2) DSW's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected. This provision is substantially similar to comparable provisions obtained in prior Commission orders under section 5 of the FTC Act. *See, e.g., BJ's Wholesale Club, Inc.*, FTC Docket No. C–4148 (Sept. 20, 2005).

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires DSW to retain documents relating to compliance. For the assessments and supporting documents, DSW must retain the documents for three (3) years after the date that each assessment is prepared. Part IV requires dissemination of the order now and for the next ten (10) years to persons with supervisory responsibilities. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that DSW submit compliance reports to the FTC. Part VII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E5–7178 Filed 12–9–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the third meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: January 17, 2006 from 8:30 a.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey building (200 Independence Ave., SW., Washington, DC 20201), conference room 800.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit.*

SUPPLEMENTARY INFORMATION: A Web cast of the third Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/.* If you have special needs for the meeting please contact Amanda Smith at *Amanda.Smith@hhs.gov* or (202) 690–7385.

Dated: December 1, 2005.

Dana Haza,

Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 05–23925 Filed 12–9–05; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following committee meeting.

Name: Board of Scientific Counselors (BSC), NCHS.

Times and Dates: 2 p.m.–5:30 p.m., January 26, 2006. 8:30 a.m.–2 p.m., January 27, 2006.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be Discussed: The agenda will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below by January 6, 2006. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by the Agenda items are subject to change as priorities dictate.

For Further Information Contact: Robert Weinzimer, Executive Secretary, NCHS, 3311 Toledo Road, Room 7108, Hyattsville, Maryland 20782, telephone (301) 458–4565, fax (301) 458–4021.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 5, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–23906 Filed 12–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Case-Level Report.

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (P.L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801.

Respondents: States, District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	20	4,480

Estimated Total Annual Burden Hours: 4,480.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 5, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–23908 Filed 12–9–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: TANF Time Limits Interview Guides for Site Visits.

OMB No.: New Collection.

Description: The imposition of federally imposed time limits on the receipt of cash assistance under the Temporary Assistance to Needy Families (TANF) program was a central part of welfare reform. The Task Order on Temporary Assistance to Needy Families (TANF) Separate State Programs, Time Limits and Participation Requirements seeks to understand how states have implemented TANF time limits and what effects they have had on families receiving TANF. It provides an update to a previous TANF time limits study now that most states now have had several years of experience with the 60-month time limit under varying economic conditions. The project draws on qualitative research conducted through eight site visits as well as quantitative reserach using state administrative records.

The site visits will include interviews with state TANF administrators, local TANF office managers, and TANF caseworkers. The interviews will be used to understand what decisions state administrators made in designing time limit policies and how local managers and line workers implement these decisions on a daily basis. The interview guides will focus on the following topics: The basic time limit policies in each state, how information is communicated to families reaching time limits, what the process is for cases approaching time limits, under what circumstances families can continue to receive TANF benefits beyond the time limits, and whether there is any follow-up with families that have reached time limits.

The quantitative research will draw on administrative records that states routinely report to ACF. However, in some cases, it may be necessary to conduct follow-up calls to state TANF officials to ask questions about the data. In addition, in states that only report data on subs samples of TANF families to ACF, it may be necessary to request additional information that is maintained in reports that states produce for their own internal management purposes.

Respondents: The respondents for the site visits will include state TANF administrators, local TANF office administrators, and caseworkers in eight states. An average of two local welfare offices will be visited in each state. The states will be selected based on the following criteria: (1) States with large TANF caseloads; (2) states with smaller TANF caseloads where a substantial number of families have reached time limits; and (3) states that make extensive use of segregated funds or separate state programs. In addition, the study will focus on states where little prior research has been conducted.

The respondents for the questions on administrative records will include state TANF officials who are knowledgeable about administrative data. It is estimated that calls will be made to 25 states.

The annual burden estimates are detailed below, and the substantive content of each survey will be detailed in the supporting statement attached to the forthcoming 30-day notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interview guide for state administrators	8	1	90 minutes or 1.5 hrs	12
Interview guide for local office managers	16	1	60 minutes or 1 hr	16
Interview guide for case workers	64	1	60 minutes or 1 hr	64
Questions on state administrative data	25	1	60 minutes or 1 hour	25

Estimated Total Annual Burden Hours: 117.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 5, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–23910 Filed 12–9–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[USCBP–2005–0040]

Agency Information Collection Activities: Harbor Maintenance Fee

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Harbor Maintenance Fee. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58458) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 11, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility:

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: Forms 349 and 350.

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Estimated Number of Respondents: 5,200.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 2,816.

Estimated Total Annualized Cost on the Public: $42,240.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: December 5, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–23941 Filed 12–9–05; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Request for Site Inspection (FF 90–1) and Landowner's Authorization/ Ingress-Egress Agreement (FF 90–31).

OMB Number: 1660–0030.

Abstract: FEMA's Temporary Housing Assistance is used to provide mobile homes, travel trailers, or other forms of readily prefabricated forms of housing for the purpose of providing temporary housing to eligible applicants or victims of federally declared disasters. This information is required to determine the feasibility of the site for installation of the housing unit and ensures written permission of the property owner is obtained to allow the housing unit on to the property to include ingress and egress permission.

Affected Public: Individuals or Households.

Number of Respondents: 1,000 respondents.

Estimated Time per Respondent: 20 minutes or .33 hours (10 minutes for FF 90–1 and 10 minutes for FF 90–31).

Estimated Total Annual Burden Hours: 367 hours.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before January 11, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: December 6, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E5–7243 Filed 12–9–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–61]

Notice of Submission of Proposed Information Collection to OMB; Contractor's Requisition-Project Mortgages

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Contractor's monthly application for distribution of insured mortgage proceeds for construction costs. Multifamily HUD Centers ensure that work is actually completed satisfactorily. The prevailing wages certification ensures compliance with prevailing wage rate.

DATES: *Comments Due Date:* January 11, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0028) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Contractor's Requisition–Project Mortgages.

OMB Approval Number: 2502–0028.

Form Numbers: HUD–92448.

Description of the Need for the Information and Its Proposed Use: Contractor's monthly application for distribution of insured mortgage proceeds for construction costs. Multifamily HUD Centers ensure that work is actually completed satisfactorily. The prevailing wages certification ensures compliance with prevailing wage rate.

Frequency of Submission: Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,300	12		6		93,600

Total Estimated Burden Hours: 93,600.

Status: Extension of an existing collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 2, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–7168 Filed 12–9–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–62]

Notice of Submission of Proposed Information Collection to OMB; Requisition for Disbursement of Sections 202 and 811 Capital Advance/Loan Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Owner entities submit requisitions periodically (generally monthly) to HUD during construction to obtain Section 202/811 capital advance/loan funds. This collection identifies the owner, project, type of disbursement, items covered, name of the depository, and account number.

DATES: *Comments Due Date:* January 11, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0187) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Requisition for Disbursement of Sections 202 and 811 Capital Advance/Loan Funds.

OMB Approval Number: 2502–0187.

Form Numbers: HUD–92403–CA and HUD–92403–EH.

Description of the Need for the Information and Its Proposed Use: Owner entities submit requisitions periodically (generally monthly) to HUD during construction to obtain Section 202/811 capital advance/loan funds. This collection identifies the owner, project type of disbursement, items covered, name of the depository, and account number.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	annual responses	×	Hours per response	=	Burden hours
Reporting Burden	266	9.24		0.5		1,230

Total Estimated Burden Hours: 1,230

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 2, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–7173 Filed 12–9–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–63]

Notice of Submission of Proposed Information Collection to OMB; Single Family Premium Collection Subsystem-Periodic (SFPCS–P)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The SFPCS–P is used to collect monthly mortgage insurance premiums (MIP) from mortgagees. The Credit Reform Act of 1990 requires FHA to report case level mortgage insurance payment information for each endorsement. In addition, 24 CFR 203.264 requires mortgagees to pay monthly MIP's and 24 CFR 203.269 requires that the MIP's be remitted electronically.

DATES: *Comments Due Date:* January 11, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0536) and should be sent to: HUD Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Single Family Premium Collection Subsystem—Periodic (SFPCS–P).

OMB Approval Number: 2502–0536.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The SFPCS–P is used to collect monthly mortgage insurance premiums (MIP) from mortgagees. The Credit Reform Act of 1990 requires FHA to report case level mortgage insurance payment information for each endorsement. In addition, 24 CFR 203.264 requires mortgagees to pay monthly MIP's and 24 CFR 203.269 requires that the MIP's be remitted Electronically.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,150	12		0.15		5,670

Total Estimated Burden Hours: 5,670.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 2, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–7175 Filed 12–9–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–EL, WYW164826]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Ark Land Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 43 N., R. 71 W., 6th P.M., Wyoming

Sec. 23: Lots 1 through 16;
Sec. 26: Lots 1 through 16;
Sec. 35: Lots 1 through 16.

Containing 1976.69 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain coal structure and quality data and to assess the reserves contained in a potential lease. The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW164826): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604. The written notice should be sent to the following addresses: Ark Land Company, Attn: Michael Lincoln, P.O. Box 460, Hanna, WY 82327, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in "The News-Record" of Gillette, WY, once each week for two consecutive weeks beginning the week of December 12, 2005, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Ark Land Company, as provided in the **ADDRESSES** section above, no later than thirty days after publication of this invitation in the **Federal Register.**

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: October 25, 2005.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. E5–6974 Filed 12–9–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1310–DB]

Notice of Availability of Draft Environmental Impact Statement for the Atlantic Rim Natural Gas Development Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement (DEIS) for the Atlantic Rim Natural Gas Development Project, Rawlins, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Atlantic Rim Natural

Gas Development Project DEIS. The DEIS analyzes the environmental consequences of a proposed natural gas development and production operation on the 270,080 acre Atlantic Rim project area. The area is located within the administrative jurisdiction of the BLM Rawlins Field Office, and runs in an arc between Rawlins and Baggs in Townships 12–20 North, Ranges 89–93 West, Sixth Principal Meridian, Carbon County, Wyoming.

DATES: The DEIS will be available for review and comment for 60 calendar days starting on the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**. The BLM can best utilize your comments and resource information submissions within the 60 day review period provided above.

ADDRESSES: A copy of the DEIS has been sent to affected Federal, State, and local government agencies and to interested parties. The document may be available electronically on the following Web site: *http://www.blm.gov/nhp/spotlight/state_info/planning.htm*. If you are interested in viewing material referenced or posted to the BLM Web site, please contact the Rawlins Field Office as to its availability.

Copies of the DEIS will be available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION: Contact Mr. David Simons, Project Lead, BLM Rawlins Field Office, 1300 N. Third Street, Rawlins, WY 82301. Requests for information may be sent electronically to: *rawlins_wymail@blm.gov* with "Attention: Atlantic Rim DEIS Information Request" in the subject line. Mr. Simons may also be reached at (307) 328–4328.

SUPPLEMENTARY INFORMATION: Anadarko Petroleum is lead proponent for a proposal to explore for and develop natural gas resources from coal and other formations in the Atlantic Rim project area. Petroleum Development Corporation (PEDCO), Merit Energy Company, and Double Eagle Petroleum and Mining Company are also participating in this proposal. The companies propose to drill up to 2,000 wells, 1800 completed to coal formations and 200 to other geologic targets for natural gas. Over approximately the next 20 years, the Operators propose to explore for and develop the oil and gas resources held through their existing leases within the Atlantic Rim Project Area. Life-of-Project is expected to be 30 to 50 years. Well density completed in coal formations would usually be 8 wells per 640 acre section of land; wells in other geologic formations would be spaced no tighter than 4 wells per section.

This proposal arises from the results of exploratory drilling under an interim drilling plan. Prior to preparation of the Atlantic Rim EIS, 6 exploratory plans of development (pods) of up to 24 wells each were completed in areas believed to have potential for commercial quantities of natural gas within the project area. Approximately 325 oil and gas wells have been drilled or approved for drilling within the Atlantic Rim project area; up to 2,000 additional wells could be drilled over the next 20 years.

The BLM published its Notice of Intent to prepare an EIS for the Atlantic Rim Natural Gas Development Project in the **Federal Register** on June 26, 2001. Based upon issues and concerns identified during scoping and throughout the NEPA process, the Atlantic Rim DEIS focuses on impacts to air quality, biological and physical resources, transportation, socio-economics, and cumulative effects. In compliance with Section 7(c) of the Endangered Species Act, as amended, the DEIS includes a biological assessment for the purpose of identifying endangered or threatened species which may be affected by the Proposed Action.

The Atlantic Rim DEIS analyzed four alternatives in detail:

1. The Proposed Action Alternative, as described below;
2. The No Action Alternative, which means the project as proposed would be rejected by the BLM;
3. Alternative A—Phased development; and,
4. Alternative B—Special protection of sensitive resources.

The agency's preferred alternative is Alternative B.

The Atlantic Rim DEIS analyzes the impacts of the Proposed Action (development of 2,000 natural gas wells), principally including the construction of access roads, pipelines, and other ancillary facilities (gas processing plant, compressor stations, water disposal sites, etc.). In the No Action alternative, BLM would reject the proposed action, as submitted. Alternative A analyzes the sequential development of the Atlantic Rim proposed action in three phases. The development period for each phase would be 6 to 7 years over the 20 year period envisioned in the proposed action. For Alternative B, development would occur as in the proposed action, but would be intensively mitigated or limited where sensitive resource values exist or overlap. Examples of sensitive resources include threatened, endangered, and sensitive wildlife; fish and plant species; fragile soils; and unique cultural values.

How To Submit Comments

The BLM welcomes your comments on the Atlantic Rim DEIS. Comments may be submitted as follows:

1. Comments may be electronically mailed to *rawlins_wymail@blm.gov*. Please submit electronic comments with "Attn: Atlantic Rim Project Manager" in the subject line and avoid using special characters and any form of encryption. Please do not include any attachments, as the BLM e-mail security system will not accept them. If you do not receive a confirmation from our system that your comment has been received, please contact Mr. David Simons, Project Lead, Rawlins Field Office, (307) 328–4328.
2. Written comments may be mailed or delivered to the BLM at: Atlantic Rim DEIS, Project Manager, Bureau of Land Management Rawlins Field Office, 1300 N. Third Street, P.O. Box 2407, Rawlins, WY 82301.

The BLM will only accept comments on the Atlantic Rim DEIS if they are submitted using one of the methods described above. To be given consideration by BLM, all DEIS comment submittals must include the commenter's name and street address.

Our practice is to make comments, including the names and street addresses of each respondent, available for public review at the BLM office listed above during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be disclosed as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold any information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: October 25, 2005.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 05–23933 Filed 12–9–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau of Land Management Districts and National Forests Within the Range of the Northern Spotted Owl; Western Oregon and Washington, and Northwestern California; Removal of Survey and Manage Mitigation Measure Standards and Guidelines

AGENCY: Bureau of Land Management, USDI; Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) and USDA Forest Service (collectively the Agencies) will prepare a supplemental environmental impact statement (SEIS) to address the order of Judge Marshal J. Pechman, United States District Court, Western District of Washington. (*Northwest Ecosystem Alliance* v. *Rey*, August 1, 2005) Specifically, the court found that the 2004 Final Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guideline (2004 SEIS) was deficient because the Agencies failed to: (1) "* * analyze potential impacts to Survey and Manage species if they are not added to or are removed from the Forest Service's and BLM's respective programs for special status species;" (2) "* * * provide a thorough analysis of their assumption that the late-successional reserves would adequately protect species that the Survey and Manage standard was introduced to protect, particularly in light of their previous positions in earlier environmental impact statements;" and (3) "* * * disclose and analyze flaws in their methodology for calculating the acreage in need of hazardous fuel treatments. Part of the cost analysis was similarly flawed because it relied on the acreage in need of hazardous fuel treatments in calculating the cost of the Survey and Manage standard." The SEIS will provide additional information and analysis necessary to fully address the deficiencies noted by the court in the 2004 SEIS.

DATES: Comments concerning the analysis should be received in writing by January 11, 2006.

ADDRESSES: Send written comments concerning this proposal to: Comments, 2006 SEIS for Survey and Manage, PO Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Michael J. Haske, Chief, Branch of Forest Resources and Special Status Species, BLM, PO Box 2965, Portland, Oregon 97208 or Alan Christensen, Group Leader, Wildlife, Fisheries, Watershed, Soils and Range, USDA Forest Service, 333 SW., First Avenue, Portland, Oregon 97204.

SUPPLEMENTARY INFORMATION: The 2004 SEIS addressed National Forest System lands and public lands administered by the BLM within the range of the northern spotted owl, generally in western Oregon and Washington, and in northwestern California.

Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). However, at their discretion the Agencies are inviting comments at this time. Comments are sought to help the Agencies identify specific information needs and analytical methodologies necessary to fully address the court identified deficiencies. For comments to be most useful, they should be as specific as possible and submitted in writing by the date identified above.

A notice will be prepared and circulated to affected Federal, State, and local agencies, affected tribes, and individuals and organizations previously expressing an interest in the 2004 SEIS. This notice, along with background information, will also be posted on the Internet: *http://www.reo.gov.s-m2006/index.htm*. The USDA Forest Service and BLM will be joint lead agencies for this analysis. The responsible officials for National Forest System lands will be the Secretary of Agriculture, Jamie L. Whitten Federal Building, 12th & Jefferson Drive, SW., Washington, DC 20250. The responsible official for public lands administered by the BLM will be the Secretary of the Interior, 1849 C Street, NW., Mailstop 7229–MIB, Washington, DC 20240.

Larry Benna,

Deputy Director, Operations, Bureau of Land Management, Department of the Interior.

[FR Doc. 05–23893 Filed 12–9–05; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 18N]

Commerce in Explosives; List of Explosive Materials (2005R–14P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: Notice of List of Explosive Materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). This notice publishes the 2005 List of Explosive Materials.

DATES: The list becomes effective upon publication of this notice on December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Penny Patterson, ATF Specialist; Explosives Industry Programs Branch; Arson and Explosives Programs Division; Bureau of Alcohol, Tobacco, Firearms and Explosives; United States Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–2310).

SUPPLEMENTARY INFORMATION: The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material is not on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

The Department has not added any new terms to the list of explosives or removed or revised any listing since its last publication.

This list supersedes the List of Explosive Materials dated December 20, 2004 (Docket No. ATF 14N, 69 FR 76010).

Notice of List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.

Ammonium perchlorate composite propellant.
Ammonium perchlorate explosive mixtures.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.

Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

Approved: December 2, 2005.

Carl J. Truscott,

Director.

[FR Doc. E5–7183 Filed 12–9–05; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 70 FR 55174, and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. 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 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Comment: On September 20, 2005, we published in the **Federal Register** (70 FR 55174) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending November 21, 2005. One comment was received in response to the public notice from B. Sachau of Florham Park, NJ, via e-mail on September 20, 2005. Ms. Sachau objected to the information collection but had no specific suggestions for altering the data collection plans other than suggesting that " * * * (t)he "bonds" between NSF and industry have become far too strong, so that the full public interest is becoming lost with this agency."

Response: NSF believes that because the comment does not pertain to the collection of information on the required forms for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

Title: Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships.

OMB Control Number: 3145–0194.

Abstract: The National Science Foundation (NSF) requests extension of data collection (annual reports) called "Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships". The current data collection, designed to measure the Science and Technology Centers' progress and plans, had been approved for use through January 2006. The annual reports have proven an effective means for efficiently gathering data from Centers. The data gathered through the annual reports under the current OMB approval has been used in making decisions about continued funding of individual Centers. In addition, a database of Centers' characteristics, activities, and outcomes has been created using data from these annual reports.

The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. Thus, new knowledge created is meaningfully linked to society.

In addition, STCs enable and foster excellence in education, the integration of research and education, and the creation of bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in Center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

All Centers will be required to submit annual reports on progress and plans that are used as a basis for performance review and determining the level of continued funding. This continues the practice established under the previously approved data collection. To support this review and the management of a Center, new STCs are required to develop a set of management and performance indicators (continuing Centers have already developed these indicators). These indicators are submitted annually to NSF via FastLane. These indicators are both quantitative and descriptive and include, for example, the characteristics of Center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents and licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STCs efforts. The reporting will be added to the STC program database that has been compiled by an NSF evaluation technical assistance contractor to support decisions for continued funding of the Centers and will be made available for the 2007 program evaluation. This database captures specific information that demonstrates progress towards achieving the goals of the individual Centers and the goals of the program. Such reporting requirements are included in the cooperative agreement that is binding between the academic institution and the NSF.

Each Center's annual report provides information about the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management, and (7) budget issues.

For each of the categories the report describes overall objectives for the year, problems the Center has encountered in making progress towards goals for the year, specific outputs and outcomes for the year, and expected accomplishments and anticipated problems in the coming year.

Use of the Information: NSF will use the information to make decisions on continued funding for the Centers, to evaluate the yearly progress of the program and to inform the upcoming 2007 Program Evaluation. The data will be analyzed to evaluate progress towards specific goals of the STC program.

Estimate of Burden: Total hours per center are estimated to be 90–120 hours, on average approximately 100 hours; the maximum burden is expected in the first year of reporting. In the years that follow, the burden often is reduced given that a Center's internal practices and procedures are established. In most cases, the burden in subsequent years is reduced to 75% of the hourly burden in the first year, although we provide estimates allowing for the average maximum anticipated effort in the first year.

Total number of hours for 17 centers: approximately 1700 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the 13 funded Centers and 4 anticipated Centers.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (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.

Dated: December 6, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–23888 Filed 12–8–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 70 FR 58243, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. 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 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Title: eRecruit.

OMB Control Number: 3145–0184.

Abstract: National Science Foundation (NSF), Division of Human Resources Management (HRM), as part of its Workforce Planning efforts, is continuing to reengineer its business processes. Part of this reengineering effort is devoted to making the application and referral process for both internal and external applicants easier to use, more efficient and timely. Applicants apply on-line using a web-based resume, which prompts them to provide pertinent personal data necessary to apply for a position.

Use of the Information: The information is used by NSF to provide applicants with the ability to apply electronically for NSF positions and receive notification as to their qualifications, application dispensation and to request to be notified of future vacancies for which they may qualify.

In order to apply for vacancies, applicants are encouraged to submit certain data in order to receive consideration. Users only need access to the Internet for this system to work. This information is used to determine which applicants are best qualified for a position, based on applicant responses to a series of job related "yes/no" or "multiple choice" questions. The resume portion requires applicants to provide the same information they would provide were they submitting a paper OF–612. The obvious benefit being that the applicant may do so on-line, 24 hours a day/seven days a week and receive electronic notification about the status of their application or information on other vacancies for which they may qualify. Staff members of the Division of Human Resource Management and the selecting official(s) for specific positions for which applicants apply are the only ones privy to the applicant data. The most significant data is not the applicant personal data as address or phone number but rather their description of their work experience and their corresponding responses to those questions, which determine their overall rating, ranking, and referral to the selecting official.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes to create the on line resume and potentially less than 45 minutes to apply for jobs on-line.

There is no financial burden on the applicant, in fact this relieves much of the burden the former paper-intensive process puts on applicants.

Respondents: Individuals. 7,104 applicants applied for NSF vacancies between October 2004 and September 2005.

Average Number of Applicants: Approximately 63 responses per job opening for vacancy announcements between October 2004 and September 2005.

Estimated Total Annual Burden on Respondents: Approximately 45 minutes per respondent total time is all that is needed to complete the on-line application, for a total of 5,328 hours annually.

Frequency of Responses: Applicants need only complete the resume one time, and they may use that resume to apply as often as they wish for any NSF job opening.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (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.

Dated: December 7, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–23919 Filed 12–9–05; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 FR 72866, December 7, 2005.

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

A closed meeting has been scheduled for Thursday, December 15, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii)

and (10) permit consideration of the scheduled matter at the closed meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, December 15, 2005 will be:

Formal orders of investigations;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and
Amicus consideration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: December 8, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–23963 Filed 12–8–05; 11:30 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 FR 72318, December 2, 2005.

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

An additional closed meeting has been scheduled for Thursday, December 8, 2005 at 11 a.m.

Commissioners and certain staff members who have an interest in the matter will attend the closed meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the closed meeting.

Commissioner Nazareth, as duty officer, voted to consider the item listed for the closed meeting in closed session and that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Thursday, December 8, 2005 will be:

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: December 8, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–23964 Filed 12–8–05; 11:30 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52893; File No. SR–Amex–2005–067]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change To Expand Its $2.50 Strike Price Interval Program

December 5, 2005.

I. Introduction

On June 17, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Commentary .06 to Amex Rule 903 to expand the $2.50 Strike Price Interval Program for individual equity options to allow the listing of options with $2.50 strike price intervals for strike prices between $50 and $75. The Commission published the proposed rule change for comment in the **Federal Register** on November 3, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The $2.50 Strike Price Interval Program ("Program") was initially adopted in 1995 as a joint pilot program of the options exchanges, which permits them to list options with $2.50 strike price intervals up to $50 on a total of up to 100 option classes.[4] The Program was later expanded and permanently approved in 1998 to allow the options exchanges collectively to select up to 200 classes on which to list options with $2.50 strike price intervals.[5] Of these 200 option classes eligible for the Program, 51 classes were allocated to Amex pursuant to a formula approved by the Commission as part of the permanent approval of the Program. Each options exchange, in addition, is permitted to list options with $2.50 strike price intervals on any option class that another exchange selects as part of its Program. Under the Program currently, an option with a $2.50 strike price interval may be listed only if the strike price is between $25 and $50.[6]

The Exchange proposes to amend Commentary .06 to Amex Rule 903 to allow the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $75. However, the $2.50 strike price intervals between $50 and $75 must be no more than $10 from the closing price of the underlying stock in its primary market on the preceding day. For example, and as expressly described in the proposed change to Commentary .06 to Amex Rule 903, if an option class has been selected as part of the Program, and the underlying stock closes at $48.50 in its primary market, Amex could list options with strike prices of $52.50 and $57.50 on the next business day. If the underlying stock closes at $54, Amex could list options with strike prices of $52.50, $57.50, and $62.50 on the next business day. The proposed rule change does not increase the total number of option classes that Amex may select for the Program.

In addition, the Exchange has proposed other technical changes to Commentary .06 to Amex Rule 903, including expressly noting in the rule text that: (1) the total number of option classes, *i.e.*, 51, that the Amex has been allocated of the 200 classes that are eligible for the Program; and (2) an option class shall remain in the Program until otherwise designated by the Exchange and a decertification notice is sent to the Options Clearing Corporation.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 52690 (October 27, 2005), 70 FR 66869.

[4] *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12).

[5] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26].

[6] *See, e.g.*, Amex Rule 903, Commentary .06.

[7] In approving this rule proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[8] The Commission believes that this proposal is a reasonable means of providing investors with greater flexibility to establish equity options positions that can be better tailored to meet their investment objectives.

The Commission has previously noted a concern with the pressures on system capacity caused by the proliferation of illiquid options series. However, this proposal should not exacerbate the problem of increased quote traffic. As a result of this proposal, Amex will be permitted to list options with $2.50 strike price intervals with strike prices between $50 and $75, but the total number of classes that Amex is authorized to list pursuant to its $2.50 Strike Price Interval Program remains unchanged.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2005–067) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7189 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52881; File No. SR–Amex–2005–119]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Certain Changes Pertaining to the Enforcement of Decorum Policies

December 2, 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 November 18, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 22 to authorize two Floor Officials, in consultation with a designated senior executive officer of the Exchange, to summarily exclude a member or person associated with a member or member organization from the Exchange premises for not longer than the remainder of the trading day for specified violations of the Exchange's decorum policies.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, the Amex, 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 proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change Purpose

1. Purpose

In 2002, the Commission approved a Chicago Board Options Exchange, Inc. ("CBOE") rule change allowing two CBOE Floor Officials, in consultation with a designated senior executive officer of that exchange, to summarily exclude from the CBOE's premises a member or person associated with a member for the following serious violations of floor decorum: physical violence, unbusinesslike conduct, harassment, failure to abide by a Floor Official's ruling, property damage, enabling or assisting a suspended member or associated person to gain improper access to the floor, and failure to supervise a visitor.[5]

The Exchange believes that it should have similar explicit authority to summarily exclude for short periods of time members and associated persons that commit serious breaches of floor decorum. In this regard, the Amex proposes to adopt a summary exclusion rule similar CBOE Rule 6.20.

The proposed Amex rule, like CBOE's Rule 6.20, would permit the summary suspension of a member or person associated with a member or member organization for the balance of a trading day by two Floor Officials, acting in consultation with a designated senior executive officer of the Exchange. Summary suspension from the Amex floor would be permitted in situations involving the following serious violation of floor decorum: physical violence, unbusinesslike conduct,[6] harassment (as set forth in Amex Rule 16), failure to abide by a Floor Official's ruling, property damage, enabling or assisting a suspended member or associated person to gain improper access to the floor, and failure to supervise a visitor. The proposed Amex rule also would permit an excluded person to request reinstatement to the trading floor from two Floor Officials after a sufficient cooling-off period has elapsed so that the excluded person no longer poses an immediate threat to the safety of persons or property or to the orderly conduct of business. The proposed rule requires that at least one of the Floor Officials who considers a request for reinstatement must have participated in the initial suspension decision to ensure that the persons considering reinstatement are adequately apprised of the circumstances of the suspension.

The Amex believes that having the authority to temporarily exclude disruptive or potentially dangerous persons from the Exchange's premises would assist the Exchange in defusing volatile situations, safeguarding trading floor personnel and facilities. The Amex further believes that the proposal also may benefit investors by minimizing disruptions to the maintenance of a fair and orderly market. The procedures for

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[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[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] *See* Securities Exchange Act Release No. 46823 (November 13, 2002), 67 FR 70275 (November 21, 2002).

[6] In general, "unbusinesslike conduct" is conduct, other than harassment, that disrupts trading.

readmission would permit an excluded person to return to the Floor once he or she no longer poses a threat to persons or property or no longer threatens the maintenance of a fair and orderly market.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, in that it is 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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–Amex–2005–119 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–119. 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 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 No. SR–Amex–2005–119 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7194 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 10 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52895; File No. SR–BSE–2005–48]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Requiring Its Member To Provide Electronic Mail Addresses to the Exchange

December 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 October 28, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 23, 2005, the BSE 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 BSE proposes to amend its rules to require members and member organizations to provide e-mail addresses to the Exchange for use in transmitting notices and other communications. Below is the text of the proposed rule change. Proposed new language is in italics.

Rules of the Boston Stock Exchange

Chapter XXV—Registration of Member-Corporations

SEC. 1. A member of the Exchange may register a corporation as a member-corporation of the Exchange, upon application by the member and the corporation, subject to the following terms and conditions:

(a)—(n) No change.

Designation of Electronic Mail Addresses

(o) Every member and member organization shall designate one or more electronic mail addresses for the purpose of receiving Exchange notices and communications and shall promptly update those electronic mail addresses when those addresses change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, BSE made clarifying changes to its statement of purpose for the proposed rule change.

or are no longer valid. An authorized representative of the Exchange may elect to transmit notices or other communications to members and member organizations electronically; provided, however, that nothing in this rule shall be construed to supersede or modify either the method for service of process or other materials in any disciplinary proceeding or any other provisions of Exchange rules setting out a specific method for the receipt of information from the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its rules to require each member and member organization to provide the Exchange with an electronic mail address that the Exchange may use to distribute notices and communications. In addition, each member and member organization would be required to promptly update those electronic mail addresses when those addresses change or are no longer valid. The Exchange represents that the proposal is designed to allow the Exchange to take advantage of technology to communicate with members in a more efficient and cost-effective manner, for routine communications as well as in appropriate emergency situations. Among other things, the Exchange anticipates that it would be able to provide members with electronic copies of the Regulatory Circulars, which today are circulated to Exchange Members in hard copies.

Importantly, the Exchange's proposed rule change specifically notes that it does not supersede or modify any rule that sets out a different method of service required as part of a disciplinary proceeding,[4] or any other provisions of the Exchange rules setting out a specific method for the receipt of information from the Exchange. The Exchange represents that those materials would continue to be provided by the more conventional means set out in the rules.

2. Statutory Basis

The Exchange believes the proposal, as amended, is consistent with Section 6(b) of the Act [5], in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because it would promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest by allowing the Exchange to take advantage of available technology to communicate with its members in a more efficient and cost-effective manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, 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–BSE–2005–48 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–BSE–2005–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2005–48 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7188 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Chapter XXX of BSE rules ("Disciplining of Members-Denial of Membership").

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52892; File No. SR–CBOE–2005–39]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Amend Its $2.50 Strike Price Interval Program

December 5, 2005.

I. Introduction

On May 13, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 5.5, Interpretation and Policy .05, to allow the listing of options with $2.50 strike price intervals for strike prices between $50 and $75. The Commission published the proposed rule change for comment in the **Federal Register** on November 3, 2005.[3] The Commission received two comments each from two different commenters on the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

The $2.50 Strike Price Interval Program ("Program") was initially adopted in 1995 as a joint pilot program of the options exchanges, which permits them to list options with $2.50 strike price intervals up to $50 on a total of up to 100 option classes.[5] The Program was later expanded and permanently approved in 1998 to allow the options exchanges collectively to select up to 200 classes on which to list options with $2.50 strike price intervals.[6] Of these 200 option classes eligible for the Program, 60 classes were allocated to CBOE pursuant to a formula approved by the Commission as part of the permanent approval of the Program. Each options exchange, in addition, is permitted to list options with $2.50 strike price intervals on any option class that another exchange selects as part of its Program. Under the Program currently, an option with a $2.50 strike price interval may be listed only if the strike price is between $25 and $50.[7]

The Exchange proposes to amend CBOE Rule 5.5, Interpretation and Policy .05, to allow the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $75. However, the $2.50 strike price intervals between $50 and $75 must be no more than $10 from the closing price of the underlying stock in its primary market on the preceding day. For example, and as expressly described in the proposed change to CBOE Rule 5.5, if an option class has been selected as part of the Program, and the underlying stock closes at $48.50 in its primary market, CBOE could list options with strike prices of $52.50 and $57.50 on the next business day. If the underlying stock closes at $54, CBOE could list options with strike prices of $52.50, $57.50, and $62.50 on the next business day. The proposed rule change does not increase the total number of option classes that CBOE may select for the Program.

In addition, the Exchange has proposed other technical changes to CBOE Rule 5.5, Interpretation and Policy .05, including expressly noting in the rule text that: (1) The total number of option classes, *i.e.*, 60, that CBOE has been allocated of the 200 classes that are eligible for the Program; and (2) an option class shall remain in the Program until otherwise designated by the Exchange and a decertification notice is sent to the Options Clearing Corporation.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[9] The Commission believes that this proposal is a reasonable means of providing investors with greater flexibility to establish equity options positions that can be better tailored to meet their investment objectives. The Commission notes that both commenters supported the proposal.

The Commission has previously noted a concern with the pressures on system capacity caused by the proliferation of illiquid options series. However, this proposal should not exacerbate the problem of increased quote traffic. As a result of this proposal, CBOE will be permitted to list options with $2.50 strike price intervals with strike prices between $50 and $75, but the total number of classes that CBOE is authorized to list pursuant to its $2.50 Strike Price Interval Program remains unchanged.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2005–39) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–7191 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 52689 (October 27, 2005), 70 FR 66871.

[4] *See* e-mail from Marc Brown, Managing Partner, Equitec/Brown, to Cyndi Rodriguez, Special Counsel, Commission, dated September 2, 2005; e-mail from Marc Brown, Managing Partner, Equitec/Brown, to the Commission, dated November 16, 2005; e-mail from Peter Bottini, Executive Vice President, optionsXpress, Inc., to Cyndi Rodriguez, Special Counsel, Commission, dated September 7, 2005; letter from Peter Bottini, Executive Vice President, optionsXpress, Inc., to Jonathan G. Katz, Secretary, Commission, dated November 22, 2005.

[5] *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995)(approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–OPPSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12).

[6] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998)(approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[7] *See, e.g.*, CBOE Rule 5.5, Interpretation and Policy .05.

[8] In approving this rule proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52888; File No. SR–CBOE–2005–83]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to the SizeQuote Mechanism

December 5, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to modify its pilot SizeQuote Mechanism for the execution of large-sized orders in open outcry to make clear that Floor Brokers ("FBs") may facilitate such orders with firm facilitation orders and/or solicited orders. The Exchange is also proposing to correct the text of the pilot rule in order to capitalize the phrase "SizeQuote Order" for consistency throughout the text. This change is merely a non-substantive, typographical correction. No other changes to the pilot are being requested at this time. The text of the proposed rule change is below. Proposed additions are *italicized*; proposed deletions are in brackets.

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 6.74 "Crossing" Orders

RULE 6.74. (a)–(e) No change.

(f) Open Outcry "SizeQuote" Mechanism

(i) SizeQuotes Generally: The SizeQuote Mechanism is a process by which a floor broker ("FB") may execute and facilitate large-sized orders in open outcry. Floor brokers must be willing to facilitate the entire size of the order for which they request SizeQuotes (the "SizeQuote Order") *or to execute it against one or more solicited orders, or against a combination of solicited and facilitation orders.* The appropriate Market Performance Committee shall determine the classes in which the SizeQuote Mechanism shall apply. The SizeQuote Mechanism will operate as a pilot program which expires February 15, 2006.

(A) Eligible Order Size: The appropriate MPC shall establish the eligible order size however such size shall not be less than 250 contracts.

(B) In-crowd Market Participants: The term "in-crowd market participants" ("ICMPs") shall be as defined in CBOE Rule 6.45A.

(C) Public Customer Priority: Public customer orders in the electronic book have priority to trade with a SizeQuote [o]*O*rder over any ICMP providing a SizeQuote response at the same price as the order in the electronic book.

(D) DPM Participation Rights: The DPM participation entitlement shall not apply to SizeQuote transactions.

(E) FBs may not execute a SizeQuote [o]*O*rder at a price inferior to the national best bid or offer ("NBBO"). Unless a SizeQuote request is properly canceled in accordance with paragraph (iv), a FB is obligated to execute the entire SizeQuote [o]*O*rder at a price that is not inferior to the NBBO in situations where there are no SizeQuote responses received or where such responses are inferior to the NBBO.

(ii) SizeQuote Procedure: Upon request by a FB for a SizeQuote, ICMPs may respond with indications of the price and size at which they would be willing to trade with a SizeQuote [o]*O*rder. After the conclusion of time during which interested ICMPs have been given the opportunity to provide their indications, the FB must execute the SizeQuote [o]*O*rder with ICMPs and/or with a firm facilitation order *and/or solicited order(s)* in accordance with the following procedures:

(A) Executing the Order at ICMP's Best Price: ICMPs that provided SizeQuote responses at the highest bid or lowest offer ("best price") have priority to trade with the SizeQuote Order at that best price. Allocation of the order among ICMPs shall be pro rata, up to the size of each ICMP's SizeQuote response. The FB must trade at the best price any contracts remaining in the original SizeQuote Order that were not executed by ICMPs providing SizeQuote responses.

(B) Executing the Order at a Price that Improves upon ICMP's Price by One Minimum Increment: ICMPs that provided SizeQuote responses at the best price ("eligible ICMPs") have priority to trade with the SizeQuote Order at a price equal to one trading increment better than the best price ("improved best price"). Allocation of the order among eligible ICMPs at the improved best price shall be pro rata, up to the size of each eligible ICMP's SizeQuote response. The FB must trade at the improved best price any contracts remaining in the original SizeQuote Order that were not executed by eligible ICMPs.

(C) Trading at a Price that Improves upon ICMP's Price by More than One Minimum Increment: A FB may execute the entire SizeQuote [o]*O*rder at a price two trading increments better than the best price communicated by the ICMPs in their responses to the SizeQuote request.

(iii) Definition of Trading Increments: Permissible trading increments are $0.05 for options quoted below $3.00 and $0.10 for all others. In classes in which bid-ask relief is granted pursuant to CBOE Rule 8.7(b)(iv), the permissible trading increments shall also increase by the corresponding amount. For example, if a series trading above $3.00 has double-width bid-ask relief, the permissible trading increment for purposes of this rule shall be $0.20.

(iv) It will be a violation of a FB's duty of best execution to its customer if it were to cancel a SizeQuote [o]*O*rder to avoid execution of the order at a better price. The availability of the SizeQuote Mechanism does not alter a FB's best execution duty to get the best price for its customer. A SizeQuote request can be canceled prior to the receipt by the FB of responses to the SizeQuote request. Once the FB receives a response to the SizeQuote request, if he or she were to cancel the order and then subsequently attempt to execute the order at an inferior price to the previous SizeQuote response, there would be a presumption that the FB did so to avoid execution of its customer order in whole or in part by others at the better price.

* * * * *

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 CBOE 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.74(f), which relates to the open outcry "SizeQuote" Mechanism, was approved on a pilot basis in February 2005 and will expire in February 2006.[3] This pilot rule provides a process by which a FB, using his or her exercise of due diligence to execute orders at the best price(s), may execute and facilitate large-sized orders in open outcry. For purposes of the pilot

[3] *See* Securities Exchange Act Release No. 51205 (February 15, 2005), 70 FR 8647 (February 22, 2005) (approving SR–CBOE–2004–72 on a pilot basis through February 15, 2006).

rule, the minimum qualifying order size is 250 contracts[4] and FBs must stand ready to facilitate the entire size of the order for which they request SizeQuotes (referred to as the "SizeQuote Order"). The SizeQuote procedure currently works in the following manner:

• A FB holding an order for at least 250 contracts must specifically request a SizeQuote from in-crowd market participants ("ICMPs").[5] Upon such a request by a FB, ICMPs may respond with indications of the price and size at which they would be willing to trade with a SizeQuote Order. ICMPs may respond with any size and price they desire (subject to the rules governing the current market maker obligation requirements) and as such are not obligated to respond with a size of at least 250 contracts.[6] The rule provides that FBs may not execute a SizeQuote Order at a price inferior to the national best bid or offer ("NBBO"). Paragraph (f)(i)(E) clarifies that unless a SizeQuote request is properly canceled in accordance with paragraph (iv), a FB is obligated to execute the entire SizeQuote Order at a price that is not inferior to the NBBO in situations where there are no SizeQuote responses received or where such responses are inferior to the NBBO.

• After the conclusion of the time during which interested ICMPs have been given the opportunity to provide their indications, the FB will execute the SizeQuote Order he or she is holding with ICMPs or with a facilitation order, or both, in accordance with procedures specified in the rule, which vary depending upon whether the SizeQuote Order is being executed at the ICMP's best price,[7] at a price that improves upon the ICMP's price by one minimum increment,[8] or at a price that improves upon the ICMP's best price by more than one minimum increment.[9]

• The Rule also provides that it will be a violation of a FB's duty of best execution to its customer if it were to cancel a SizeQuote Order to avoid execution of the order at a better price. The availability of the SizeQuote Mechanism does not alter a FB's best execution duty to get the best price for its customer. A SizeQuote request can be canceled prior to the receipt by the FB of responses to the SizeQuote request. Once the FB receives a response to the SizeQuote request, if he or she were to cancel the order and then subsequently attempt to execute the order at an inferior price to the previous SizeQuote response, there would be a presumption that the FB did so to avoid execution of its customer order in whole or in part by others at the better price.

CBOE is now proposing to modify the pilot program to enable a FB to execute a SizeQuote Order with either a firm facilitation order, one or more solicited orders, or a combination of the FB's facilitation order and such solicited order(s). CBOE believes that making this change to the pilot rule is consistent with existing Exchange rules that enable members to facilitate large customer orders by crossing them with orders for firm accounts or orders solicited from other sources.[10] The procedures for executing a SizeQuote Order will remain unchanged under Rule 6.74(f), as amended, and solicited orders will be treated as facilitated orders in all respects for purposes of the operation of the SizeQuote Mechanism algorithm.

The Exchange believes it is reasonable to modify the pilot program in order to clarify that it includes solicited orders. The revisions, in pertinent part, benefit FB customers by expanding the number of potential "facilitations" (and thus enable customers to receive executions on orders that may not have been otherwise executable) and benefit members by allowing them to facilitate customer orders in crossing transactions without exposing their own capital to market risk, while at the same time maintaining the existing in-crowd market participation opportunities through the auction market.

Finally, the Exchange is also proposing to correct the text of the pilot rule in order to capitalize the phrase "SizeQuote Order" for consistency throughout the text. This change is merely a non-substantive, typographical correction.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[4] The appropriate Exchange committee determines the classes in which SizeQuote operates and may vary the minimum qualifying order size, provided that such number may not be less than 250 contracts.

[5] Pursuant to CBOE Rule 6.45A, "Priority and Allocation of Trades on the CBOE Hybrid System," in-crowd market participant includes an in-crowd Market-Maker, an in-crowd DPM, and a floor broker representing orders in the trading crowd.

[6] CBOE Rule 8.7(d), "Market Making Obligations in Applicable Hybrid Classes," requires Market-Makers to respond to any request by a FB for a market with a legal-width (as defined in CBOE Rule 8.7(b)(iv)), 10-contract minimum size quote in classes trading on the CBOE Hybrid System.

[7] ICMPs that provided SizeQuote responses at the highest bid or lowest offer ("best price") have priority to trade with the SizeQuote Order at that best price. For example, assume a FB requests a SizeQuote and ICMPs respond with a market quote of $1.00—1.20 for 1,000 contracts. This quote constitutes the "best price" and those ICMPs that responded have priority at those prices. If the FB chooses to trade at either of those prices, the SizeQuote order will be allocated pro-rata to those ICMPs that responded with a quote at the best price, up to the size of their respective quotes. If in the above example the SizeQuote order is for more than 1,000 contracts, the FB *must* trade the balance with a facilitation order at the best price. ICMPs that did not respond to the SizeQuote response would not be eligible to participate in the allocation of this trade.

[8] ICMPs that provided SizeQuote responses at the best price ("eligible ICMPs") have priority to trade with the SizeQuote Order at a price equal to one minimum increment better than the best price ("improved best price"). Minimum increments are governed by CBOE Rule 6.42, "Minimum Increments for Bids and Offers." The term "minimum increment" is synonymous with "trading increment." Accordingly, using the example above, eligible ICMPs, if they desire, have priority at prices of $1.05 and $1.15 of up to 1,000 contracts. If the FB chooses to trade at either of those prices, the SizeQuote order will be allocated pro-rata at the improved best price to those eligible ICMPs that responded with a quote at the best price, up to the size of their respective quotes. If the SizeQuote order is for more than 1,000 contracts, the FB *must* trade the balance with a facilitation order at the improved best price. ICMPs that did not respond to the SizeQuote response would not be eligible to participate in the allocation of this trade.

[9] A FB may execute the entire SizeQuote Order with a facilitation order at a price two minimum increments better than the best price communicated by the ICMPs in their responses to the SizeQuote request. Using the example in note 7 above, a FB could trade the SizeQuote order with a facilitation order at $1.10. ICMPs would not be able to participate in the trade at that price.

[10] *See* Securities Exchange Act Release No. 22273 (July 29, 1985), 50 FR 31449 (August 2, 1985) (SR–CBOE–85–23) (order approving a proposed change to CBOE Rules 6.74 and 6.53 to expand the provisions governing facilitations to allow for the crossing of a public customer order with a "facilitation" order solicited from another source).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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–CBOE–2005–83 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–CBOE–2005–83. 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 the CBOE. 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–CBOE–2005–83 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7192 Filed 12–9–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52889; File No. SR–CBOE–2005–94]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Exposure Period for Crossing Orders in the Hybrid Trading System

December 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 November 4, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to decrease the exposure period for crossing orders in its Hybrid Trading System ("Hybrid") from 30 seconds to 10 seconds. The text of the proposed rule change is provided below (additions are *italicized;* deletions are [bracketed]).

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 6.45A.—Priority and Allocation of Equity Option Trades on the CBOE Hybrid System

(a)–(e) No change.

* * * Interpretations and Policies:

.01 Principal Transactions: Order entry firms may not execute as principal against orders they represent as agent unless: (i) Agency orders are first exposed on the Hybrid System for at least [thirty (30)]*ten (10)* seconds, (ii) the order entry firm has been bidding or offering for at least [thirty (30)]*ten (10)* seconds prior to receiving an agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the crossing rules contained in Rule 6.74.

.02 Solicitation Orders: Order entry firms must expose orders they represent as agent for at least [thirty (30)]*ten (10)* seconds before such orders may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.

* * * * *

Rule 6.45B—Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System

(a)–(d) No change.

* * * Interpretations and Policies:

.01 Principal Transactions: Order entry firms may not execute as principal against orders they represent as agent unless: (i) Agency orders are first exposed on the Hybrid System for at least [thirty (30)]*ten (10)* seconds, (ii) the order entry firm has been bidding or offering for at least [thirty (30)]*ten (10)* seconds prior to receiving an agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the crossing rules contained in Rule 6.74.

.02 Solicitation Orders. Order entry firms must expose orders they represent as agent for at least [thirty (30)]*ten (10)* seconds before such orders may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.

* * * * *

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 CBOE 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

CBOE rules provide that an order entry firm may not execute an order it represents as agent with a facilitation or solicited order (referred to herein as "crossing orders") using Hybrid unless it first complies with the 30-second exposure requirement. Specifically, order entry firms may not execute a facilitation cross unless (i) the agency order is first exposed on Hybrid for at least 30 seconds, (ii) the order entry firm has been bidding or offering for at least 30 seconds prior to receiving the agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the floor-based open outcry crossing rules contained in CBOE Rule 6.74, *"Crossing" Orders*. Similarly, order entry firms may not execute a solicitation cross unless the agency order is first exposed on Hybrid for at least 30 seconds. During this 30 second exposure period for crossing orders, other members may enter orders to trade against the exposed order.

The Exchange proposes to shorten the duration of the exposure period contained in the rules governing such transactions, as set forth in Interpretations and Policies .01 and .02 to CBOE Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, from 30 seconds to 10 seconds. This shortened exposure period is fully consistent with the electronic nature of Hybrid. Market participants on the CBOE have implemented systems that monitor any updates to the CBOE market including any changes resulting from orders being entered into Hybrid and can automatically respond based on pre-set parameters. Thus, an exposure period of 10 seconds will permit exposure of orders on the CBOE in a manner consistent with the Exchange's electronic market.

By reducing the exposure time from 30 seconds to 10 seconds, the CBOE believes that members will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which Hybrid was developed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[3] in general and furthers the objectives of section 6(b)(5) of the Act[4] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all crossing orders in the CBOE marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–CBOE–2005–94 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–CBOE–2005–94. 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 CBOE. 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–CBOE–2005–94 and should be submitted on or before January 3, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange,[6] and in particular with section 6(b)(5) of the Act.[7] The Commission believes that, in the electronic environment of Hybrid, reducing the exposure period to 10 seconds could facilitate the prompt execution of orders, while providing participants in Hybrid with an adequate opportunity to compete for exposed bids and offers.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, pursuant to section 19(b)(2)

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b).

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

of the Act,[8] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change will allow the Exchange to remain competitive with other exchanges that permit the crossing of orders after a 10-second exposure period.[9]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2005–94) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7193 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52894; File No. SR–ISE–2005–45]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of Position and Exercise Limits on NDX Options

December 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 September 21, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. On November 14, 2005, the ISE 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. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to eliminate position and exercise limits for options on the Nasdaq 100 Index ("NDX"). The text of the proposed rule change, as amended, is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Rule 2004. Position Limits for Broad-Based Index Options

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by this Rule 2004. There may be no position limit for certain Specified (as provided in Rule 2000) broad-based index options contracts. All other broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in the chart below.

Broad-based underlying index	Standard limit (on the same side of the market)	Restrictions
S&P SmallCap 600 Index	100,000 contracts	No more than 60,000 near-term.
S&P MidCap 400 Index	45,000 contracts	No more than 25,000 near-term.
Reduced Value S&P 1000 Index	50,000 contracts	No more than 30,000 near-term.
Micro S&P 1000 Index	500,000 contracts	No more than 300,000 near-term.
Nasdaq 100 Index	*None* [75,000 contracts]	None.
Mini Nasdaq 100 Index	750,000 contracts	None.

Remainder of the Chart—No Change.

* * * * *

(b)–(d) No Change.

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Rule 2006. Exemptions from Position Limits

(a) Broad-based Index Hedge Exemption. The broad-based index hedge exemption is in addition to the other exemptions available under Exchange Rules, interpretations and policies. The following procedures and criteria must be satisfied to qualify for a broad-based index hedge exemption:

(1)–(4) No Change.

(5) Positions in broad-based index options that are traded on the Exchange are exempt from the standard limits to the extent specified below.

Broad-based index option type	Broad-based index hedge exemption (is in addition to standard limit)
Nasdaq 100 Stock Index (1/10th value) (MNX)	1,500,000 contracts.
[Nasdaq 100 Stock Index (full value) (NDX)]	[150,000 contracts].
Other broad-based indexes	75,000.

(6)–(12) No Change.

(13) Each member (other than Exchange market-makers) that maintains a broad-based index option[s] position on the same side of the market in excess of *100,000 contracts in NDX* [a Specified (as provided in Rule 2000) number of contracts] for its own account or for the account of a customer, shall report information as to whether the positions are hedged and provide documentation as to how such contracts

[8] 15 U.S.C. 78s(b)(2).

[9] *See, e.g.,* Securities Exchange Act Release No. 52814 (November 21, 2005), 70 FR 71591 (November 29, 2005) (SR–PCX–2005–85).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced and superseded the original filing in its entirety, added certain reporting requirements and margin provisions and expanded on the purpose of the proposed rule change.

are hedged, in the manner and form required by the Exchange. The Exchange may impose other reporting requirements *as well as the limit at which the reporting requirement may be triggered.*

(14) Whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged *NDX* options position[in Specified (as provided in Rule 2000) broad-based indices], the Exchange may impose additional margin upon the account maintaining such under-hedged position pursuant to its authority under Rule 1204. The clearing firm carrying the account also will be subject to capital charges under Rule 15c3–1 under the Exchange Act to the extent of any margin deficiency resulting from the higher margin requirements.

(b) 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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate position and exercise limits for options on the NDX, a broad-based securities index. Under ISE Rule 2004, the current position and exercise limit for options on the NDX is 75,000 contracts on the same side of the market. Given the institutional demand for options on the NDX, the Exchange believes the current position and exercise limit of 75,000 contracts to be too low and a deterrent to the successful trading of the product. Additionally, the ISE believes that these limits for options on the NDX no longer serve their stated purpose. The Commission has previously stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contacts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[4]

The Commission has previously granted relief from position and exercise limits with respect to options on indexes that the ISE believes are similar to the NDX without any adverse affects on the market as a result.[5] The Exchange believes that the circumstances and considerations relied upon in approving the elimination of position and exercise limits for options on the SPX, OEX, and DJX on the CBOE equally apply to the Exchange's proposed rule change regarding position and exercise limits for options on the NDX.

In approving the elimination of position and exercise limits for options on the SPX, OEX, and DJX, the Commission noted their active trading volume and the deep, liquid markets for the securities underlying the indexes, as well as their market capitalization.[6] The Exchange notes that the average daily trading volume ("ADTV") of the underlying components of and options on the NDX as well as the market capitalization of the index are comparable to the ADTV and market capitalization figures for SPX, OEX, and DJX. As of October 18, 2005, the approximate market capitalizations of SPX, OEX and DJX were $10.87 trillion, $5.95 trillion and $3.53 trillion, respectively. The ADTVs for all underlying components of the indexes were 1,825 million, 800 million, and 370 million shares, respectively, and the ADTV for options on the indexes were 288,644 contracts, 74,725 contracts, and 22,282 contracts, respectively.[7] The market capitalization of the NDX was $1.82 trillion, the ADTV for the underlying securities of the index was 716 million shares, and the options ADTV was 51,661 contracts.

Additionally, in approving the elimination of position and exercise limits for options on the SPX, OEX, and DJX, the Commission also noted the financial requirements imposed by both the CBOE and the Commission in an effort to guard against a CBOE member or its customer(s) from maintaining a large unhedged position in those securities. The Exchange believes that the current financial requirements imposed by the ISE and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in NDX options. The Exchange notes that, under its rules, it has the authority to impose additional margin upon accounts maintaining underhedged positions,[8] and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3–1 under the Act[9] to the extent of any resulting margin deficiency.[10] It also should be noted that the Exchange has the authority under ISE Rule 1204 to impose higher margin requirements upon a member when the Exchange determines that higher requirements are warranted. Additionally, ISE Rule 415, which requires members to file reports with the Exchange for any customer who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.

Finally, in approving the elimination of position and exercise limits for options on the SPX, OEX, and DJX, the Commission relied on the CBOE's ability to provide surveillance and reporting safeguards to detect and deter trading abuses that could arise from the elimination of position and exercise limits in those securities. The Exchange believes that the updated surveillance procedures and reporting requirements

[4] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[5] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order granting permanent approval to a Chicago Board Options Exchange, Incorporated ("CBOE") pilot program to eliminate position and exercise limits for options on the S&P 500 Index ("SPX"), the S&P 100 Index ("OEX"), and the Dow Jones Industrial Average ("DJX")) ("SPX/OEX/DJX Permanent Approval Order"). *See also* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the CBOE's original pilot program) ("SPX/OEX/DJX Pilot Approval Order"). Telephone conversation between Samir M. Patel, Assistant General Counsel, ISE, and Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, on November 23, 2005 ("Telephone Conversation with ISE").

[6] *See* SPX/OEX/DJX Pilot and Permanent Approval Orders. Telephone Conversation with ISE.

[7] ADTVs are calculated over the previous three months of trading.

[8] *See, e.g.* Commentary .02 to ISE Rule 412.

[9] *See* 17 CFR 240.15c3–1.

[10] *See also* the proposed change to ISE Rule 2006(a)(14), to include a specific reference to options on the NDX. Telephone Conversation with ISE.

at the ISE,[11] coupled with the surveillance procedures and reporting requirements of the other options exchanges, are capable of properly identifying unusual and/or illegal trading activity. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and in underlying stocks. Additionally, the Exchange intends to impose a reporting requirement on ISE members (other than Exchange market-makers) who trade NDX options.[12] This reporting requirement would require Exchange members who maintain in excess of 100,000 NDX contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange.[13] The Exchange also would be permitted to specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.[14]

The Exchange believes that eliminating position and exercise limits for NDX options will allow ISE members and their customers greater hedging and investment opportunities.

2. Statutory Basis

The ISE believes the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

[11] The Exchange has separately submitted, on a confidential basis, updated surveillance procedures regarding trading in NDX options.

[12] ISE does not currently trade options on any security for which there are no position and exercise limits. As such, the Exchange has never imposed this reporting requirement on its members. The Exchange will issue a Regulatory Information Circular to its members informing them of the elimination of position and exercise limits for options on the NDX and the resulting reporting requirement.

[13] *See* proposed changes to ISE Rule 2006(a)(13).

[14] *Id.*

[15] U.S.C. 78f(b).

[16] U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has 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. 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–2005–45 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–ISE–2005–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–ISE–2005–45 and should be submitted on or before January 3, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position, and to reduce the possibility for the disruption of the options market itself.

The Commission notes that it continues to believe that the fundamental purposes of position and exercise limits remain valid. Nevertheless, the Commission believes that experience with the trading of index options as well as enhanced reporting requirements and exchange surveillance capabilities make it possible to approve the elimination of position and exercise limits on certain broad-based index options. Thus, in 2001, the Commission approved a CBOE proposal to eliminate permanently position and exercise limits for options on the SPX, OEX, and DJX,[19] and in 2002 approved a proposal by the American Stock Exchange LLC ("Amex") to eliminate permanently position and exercise limits for options on the Major Market Index ("XMI") and the Institutional Index ("XII"). Recently the Commission also approved proposals by the CBOE and the Amex to eliminate position and exercise limits for options on the NDX trading on those

[17] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* SPX/OEX/DJX Permanent Approval Order, *supra* note 5.

exchanges.[20] The Commission believes that the considerations upon which it relied in approving those proposals equally apply with respect to the instant proposed rule change by the ISE.

As noted by the Exchange, the market capitalization of the NDX as of October 18, 2005 was $1.82 trillion. The ADTV for a period of three months prior to that date for all underlying components of the index was 716 million shares. As it stated in the CBOE and Amex NDX Approval Orders, the Commission believes that the enormous market capitalization of the NDX and the deep, liquid markets for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. Removing position and exercise limits for NDX options may also bring additional depth and liquidity, in terms of both volume and open interest, to NDX options without significantly increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.

In addition, the Commission believes that financial requirements imposed by both the Exchange and the Commission adequately address concerns that a ISE member or its customer may try to maintain an inordinately large unhedged position in NDX options. Current risk-based haircut and margin methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[21] As specified in the proposal, the ISE also would have the authority under its rules to impose a higher margin requirement upon an account maintaining an under-hedged position in NDX options when it determines a higher requirement is warranted. As also noted in the applicable ISE rules, the clearing firm carrying the account would be subject to capital charges under Rule 15c3–1 under the Act to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, in approving the elimination of position and exercise limits for options on the indexes noted above, the Commission took note of the enhanced surveillance and reporting safeguards that the relevant exchange had adopted to allow it to detect and deter trading abuses that might arise as a result.[22] The ISE's updated safeguards, including the 100,000-contract reporting requirement described above, would allow the ISE to monitor large positions in order to identify instances of potential risk and to assess and respond to any market concerns at an early stage. In this regard, the Commission expects the ISE to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. Moreover, as previously noted, the Exchange has the flexibility to specify other reporting requirements, as well as to vary the limit at which the reporting requirements may be triggered.

The ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. As already noted, the Commission recently approved similar proposals eliminating position and exercise limits for NDX options on the CBOE and the Amex. The Commission believes that granting accelerated approval of the proposal will allow the ISE to conform its rules to those of other exchanges trading NDX options without delay. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[23] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–ISE–2005–45), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jonathan G. Katz,

Secretary.

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[20] *See* Securities Exchange Act Release Nos. 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (order approving File No. SR–CBOE–2005–41); and 52649 (October 21, 2005), 70 FR 62146 (October 28, 2005) (order approving File No. SR–Amex–2005–063) ("CBOE and Amex NDX Approval Orders").

[21] *See* SPX/OEX/DJX Pilot Approval Order, *supra* note 5.

[22] *See*, in particular, SPX/OEX/DJX Pilot Approval Order, *supra* note 5.

[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52897; File No. SR–NASD–2005–099]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

December 6, 2005.

On August 19, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc. ("Certificate"). On September 30, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has proposed to amend its Certificate to afford the holders of its 3.75% Series A Convertible Notes due October 2012 ("Series A Notes") and its 3.75% Series B Convertible Notes due 2012 ("Series B Notes" and, collectively with the Series A Notes, the "Notes") the right to vote with Nasdaq stockholders. The Series A Notes and the Series B Notes were issued in connection with Nasdaq's entry into a definitive agreement and plan of merger with Instinet Group Incorporated ("Instinet"), under which Nasdaq will acquire all outstanding shares of Instinet for an aggregate purchase price of approximately $1.878 billion in cash and Instinet will merge into a wholly owned subsidiary of Nasdaq.[4]

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 24, 2005.[5] The Commission received no comments on the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made minor edits to the originally filed proposed rule change and clarified the proposed definition of "Broker Affiliate" set forth in Paragraph C.6. of the Certificate to include a broker or dealer or an affiliate thereof. In Amendment No. 1, Nasdaq also reflected approval of the proposal by the Board of Directors of Nasdaq and by its stockholders.

[4] The Commission notes that Nasdaq has filed a proposed rule change to establish rules governing the operation of the INET system. *See* Securities Exchange Act Release No. 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005).

[5] *See* Securities Exchange Act Release No. 52574 (October 7, 2005), 70 FR 61484 ("Notice").

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association.[6] In particular, the Commission believes that the proposed rule change, as amended, is consistent with sections 15A(b)(2) and (6) of the Act,[7] which require, among other things, that a national securities association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance with the provisions of the Act, and that its rules 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.

The Commission notes that the proposed rule change, as amended, provides holders of the Notes the same rights and subjects them to the same restrictions under Paragraphs C.1. and C.2. of the Certificate that currently apply to holders of Nasdaq's 4.0% Convertible Subordinated Notes due 2006, which are being retired. Specifically, the holders will be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq. The holders' ability to vote is limited in Paragraph C.2. of the Certificate, which provides that holders of the Notes and common stock cannot vote any shares that they own excess of five percent of the then-outstanding shares of stock generally entitled to vote as of the record date in respect of such matter. Paragraph C.6.(b) of the Certificate, however, gives Nasdaq's Board of Directors ("Board") the authority to exempt certain persons from the five percent voting restriction. If the Board grants such an exemption to any person, then the holders would be permitted to receive a similar exemption from the voting restriction.[8] The Board, however, is not permitted to grant exemptions from the five percent voting restriction to any registered broker or dealer or an affiliate thereof ("Broker Affiliate").[9] The Commission believes that it would be inconsistent with Nasdaq's Certificate for the Board to grant an exemption from the five percent voting restriction to any person if, as a consequence, a Broker Affiliate received a similar exemption.[10]

The Commission finds that, since this proposal extends the same rights and obligations under the Nasdaq Certificate to certain new holders of the Notes, the proposal is consistent with the Act. In addition, the Commission believes that the five percent voting restriction should limit the ability of any entity, particularly a registered broker or dealer, from controlling Nasdaq.[11]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–NASD–2005–099), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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[6] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3(b)(2) and (6).

[8] The Commission notes that, currently, one of the holders is a Broker Affiliate. Nasdaq represented in the Notice that if the Board were to consider granting a waiver to any person, it would have to consider that such action would trigger an exemption for the holders that would be deemed inconsistent with the provision in Paragraph C.6. *See* Notice, *supra* note 5, at note 9.

[9] Nasdaq has stated that the definition of "Broker Affiliate" set forth in Paragraph C.6. includes a broker or a dealer or an affiliate thereof. *See* Notice, *supra* note 5, at note 11.

[10] Nasdaq states that, if in the future the Board exempts any Broker Affiliate from the five percent voting restriction, the holders of the Notes would automatically receive the same percentage voting rights or the highest percentage voting rights to which their Notes and shares held entitled them at the time. As noted, Paragraph C.6. prohibits the Board from granting any exemption from the five percent voting restriction to a Broker Affiliate. Accordingly, the Board is not permitted to grant such an exemption under its current authority and any change to this authority would have to be filed with, and approved by, the Commission pursuant to Section 19(b) of the Act.

[11] *See* Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (SR–NASD–00–27).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52887; File No. SR–NYSE–2005–82]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Pilot Program Relating to Minimum Numerical Standards in Section 102.01A of the Listed Company Manual

December 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. On December 1, 2005, NYSE filed Amendment No. 1 to the proposed rule change.[3] NYSE has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposed rule change 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 NYSE is proposing to amend, on a six-month pilot program basis (the "Pilot Program"), to expire on May 31, 2006, section 102.01A of the Exchange's Listed Company Manual (the "Manual") regarding the minimum numerical listing standards.[6] The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the principal office of the NYSE, 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 NYSE 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 NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE made a technical change to Exhibit 5 (text of the proposed rule change). The correction to Exhibit 5 does not make any changes to the current initial listing distribution criteria for companies listing in connection with a transfer or quotation, but only adds missing rule text that was inadvertently excluded in the filing submitted by the Exchange on November 23, 2005.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Annemarie Tierney, Assistant General Counsel, NYSE, on December 2, 2005 (clarifying that the pilot program expires on May 31, 2006).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to introduce a Pilot Program to amend certain of its minimum numerical standards for the listing of domestic equity securities on the NYSE. Section 102.01A of the Manual sets out minimum initial requirements for size and volume that must be met in order for a company to be listed. Currently, companies that are listing in conjunction with an initial public offering are required to demonstrate that there are at least 2,000 or more round lot holders [7] of the security to be listed in order to be authorized to list. If a company cannot confirm that it satisfies the 2,000 round lot holder threshold prior to the date that trading commences, the security is ineligible for listing.

The Exchange states that it is increasingly being approached by companies that are ultimately unable to list due to special circumstances that result in the company's inability to satisfy the 2,000 round lot holder requirement prior to commencement of trading. For example, companies listing following emergence from bankruptcy and companies affiliated with a currently listed company that were created in conjunction with a private placement or similar transaction generally do not meet the round lot holder threshold unless the company conducts a public offering simultaneously with listing. To accommodate the listing of these types of companies absent a public offering, the Exchange proposes to adopt alternative round lot holder distribution standards for affiliated companies and companies listing upon emergence from bankruptcy so that these types of companies will be eligible to list if they can demonstrate that they have at least 400 round lot holders prior to commencement of trading. The additional distribution criteria for number of publicly held shares and aggregate market value of publicly held shares that are set forth in section 102A of the Manual are not proposed to be amended.

[7] A "round lot" is a trading unit equivalent to 100 shares (or an otherwise defined unit of trading). Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Annemarie Tierney, Assistant General Counsel, NYSE, on December 2, 2005.

2. Statutory Basis

The Exchange believes that the basis under the Act for the Pilot Program is the requirement under section 6(b)(5) [8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed Pilot Program will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed Pilot Program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(6) thereunder.[10]

The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] and designate the proposed rule change to become operative immediately so that the Exchange can implement its Pilot Program relating to minimum numerical initial listing standards to facilitate listings by limited categories of companies that meet the Exchange's current listing standards other than the round lot holder threshold. The Commission notes that the Exchange states that the proposed round lot holder threshold for affiliated companies and companies emerging from bankruptcy is substantially similar to the listing threshold utilized by The Nasdaq Stock Market [12] and the American Stock Exchange LLC.[13] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal to be effective and operative upon filing with the Commission.[14]

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.[15]

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–NYSE–2005–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–82. This file number should be included on the

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. NYSE has requested that the Commission waive the five-day pre-filing notice requirement. The Commission waives the five-day pre-filing notice requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* NASD Rule 4420.

[13] *See* Section 102(a) of the Amex Company Guide.

[14] 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. *See* 15 U.S.C. 78c(f).

[15] The effective date of the original proposed rule is November 23, 2005. The effective date of Amendment No. 1 is December 1, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 1, 2005, the date on which NYSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–82 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7181 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52891; File No. SR–NYSE–2005–83]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Exchange's Certificate of Incorporation, Constitution and Rules to Allow Limited Liability Companies to Become Members and Related Changes to the Exchange's 2005 Price List

December 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 November 28, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 1, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On December 5, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Exchange has designated this proposal as "non-controversial" pursuant to section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(6) thereunder,[6] which renders the proposed rule change 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 Exchange proposes (i) to amend the Exchange's Constitution to allow limited liability companies ("LLCs") to become members of the Exchange, (ii) a related amendment to the Exchange's Certificate of Incorporation, (iii) an amendment to Exchange Rule 301 to implement the admission to membership of LLCs under certain limited circumstances in order to facilitate estate planning by individual members, and (iv) an amendment to the Exchange's 2005 Price List to reflect an application fee to be charged to new LLC members and to waive the Exchange's transfer fee payable in connection with the transfer of a leased seat, if the new lease is entered into solely as a result of a transfer to an LLC pursuant to proposed Exchange Rule 301(e). Under the proposed rule change, transfers of LLC membership interests would be prohibited other than transfers (i) to Family Members,[7] (ii) to grantor retained annuity trusts ("GRATs") established for estate and tax planning purposes, (iii) by distribution of such interest by the trustee of each such a trust to any one or more of its beneficiaries (including a trust for the benefit of any one or more of them), or (iv) by gift or bequest, outright or in trust, by any such beneficiary, the donees and legatees of any such beneficiary or their donees and legatees, in each case subject to certain additional limitations.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

Amendment to Exchange Constitution and Certificate of Incorporation

At the Exchange's annual membership meeting on April 7, 2005, the members voted to amend the Exchange's Constitution to allow LLCs to be members of the Exchange in order to facilitate estate planning by individual members. The Exchange's Constitution currently restricts membership to natural persons. This restriction has had the effect of limiting members from being able to include memberships in estate planning.

The proposed amendment would allow members to place their seats into LLCs, allowing them to advance estate-planning objectives. The proposed amendment is also intended to prevent aggregation of control through LLCs, to maximize accountability, and to facilitate regulation and administration to the greatest extent possible.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated December 1, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange (i) modified the Purpose section to match the proposed rule text; (ii) amended the proposed changes to the Exchange Certificate of Incorporation and included a description of such proposed changes in the Purpose section; and (iii) made technical changes.

[4] *See* Partial Amendment dated December 5, 2005 ("Amendment No. 2"). In Amendment No. 2, the Exchange (i) clarified the purpose section to match the proposed rule text; (ii) made changes to the Exchange's 2005 Price List; (iii) deleted a paragraph in Section III of Exhibit 1; and (iv) made technical changes.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(1)(6).

[7] For purposes of proposed Exchange Rule 301(e), the term "Family Member" means, with respect to any person, such person's spouse, domestic partner, children, stepchildren, grandchildren, parents, parents-in-law, grandparents, brothers, sisters, uncles, aunts, cousins, nephews and nieces.

Under the proposed amendment, only individuals who are already NYSE members would be permitted to form an LLC for the purpose of serving as a member of the Exchange. The amendment would not allow a non-member to form an LLC for the purpose of acquiring a membership.

When the LLC is admitted as a NYSE member, it must be wholly owned either by an individual who is a NYSE member or by the executor of his or her estate, and the LLC must own nothing other than a single NYSE membership, related membership revenues and, if applicable, contract rights with approved lessees. The LLC's trading rights cannot be exercised by anyone other than a lessee (who must be a broker-dealer or associated with a broker-dealer) who has been approved by the NYSE.

The death of the individual member who created the LLC would entitle the individual's family to receive a payment from the Gratuity Fund and will trigger an obligation among the other members to contribute to the Gratuity Fund. Only when the LLC's membership is again owned by an individual, and that individual passes away, would there be a further obligation for the Gratuity Fund to make any payments in respect of that membership. However, so long as the LLC owns the membership, the LLC would be required to contribute to the Gratuity Fund on the same terms as any other NYSE member, except that a limited transfer member (as defined below) would not have to make any contribution to the Gratuity Fund upon the death of the limited transferor (as defined below) from whom the limited transfer member received its membership.

LLCs admitted as NYSE members would be subject to such additional limitations as the Exchange's Board of Directors may impose by rule.

At the Exchange's 2005 annual members' meeting, the membership also voted to make conforming amendments to the Exchange's Certificate of Incorporation. The proposed amendments to the Exchange's Certificate of Incorporation would permit ownership of Exchange memberships by persons other than natural persons, provided such persons are permitted to own memberships under the Exchange's Constitution and rules. The proposed amendments to the Exchange's Certificate of Incorporation are being made to enable LLCs to be members of the Exchange and would also permit the Exchange in the future to amend its Constitution and Rules to create other classes of membership without any further amendment to its Certificate of Incorporation. The proposed amendments do not eliminate or limit in any way the possible existence of electronic access members or annual members having physical access to the floor.

Implementing Rules

Many Exchange members have asked the Exchange's Board of Directors and management to amend the Exchange's Rules in light of the Constitutional authority the members granted the Exchange's Board at the 2005 annual members' meeting to permit the transfer of seats to LLCs. The desire to transfer seats to LLCs for estate and tax planning purposes has been greatly enhanced by the Exchange's execution of a merger agreement with Archipelago Holdings, Inc., upon consummation of which membership interests in the Exchange will be exchanged for shares of a new publicly traded holding company, NYSE Group, Inc. Anticipating that the value of memberships could increase substantially if and as various merger uncertainties are resolved favorably—including the votes on December 6, 2005 of the Exchange members and the Archipelago shareholders, and approval of the transaction by the Division of Market Regulation—members are anxious for the Exchange to make the necessary rule changes as quickly as possible, to allow the transfers to be made before the full appreciation is reflected in the market price of membership interests.

Proposed Exchange Rule 301(e) would implement the amendment to the Constitution with respect to a narrow category of LLCs. Under the proposed rule change, transfers of LLC membership interests will be prohibited other than transfers (i) to Family Members,[8] (ii) to GRATs established for estate and tax planning purposes, (iii) by distribution of such interest by the trustee of each such a trust to any one or more of its beneficiaries (including a trust for the benefit of any one or more of them), or (iv) by gift or bequest, outright or in trust, by any such beneficiary, the donees and legatees of any such beneficiary or their donees and legatees, in each case subject to certain additional limitations. The proposed rule is designed to provide members with increased estate and tax planning options. The Exchange believes that it achieves a reasonable balance between the Exchange's interest in providing members with the flexibility to plan their estates and the Exchange's interest in regulating and protecting its membership. The proposed rule would impose certain additional restrictions and limitations on the member LLCs and would give the Exchange authority with respect to transfer of ownership interests in the member LLCs. The provisions of the proposed rule include the following:

(a) A requirement that the Exchange approve any member LLC and its governing documents, as well as the dissolution of any member LLC and any amendments to LLC governing documents;

(b) A prohibition against any transfer of Exchange membership by any member LLC (other than an indirect transfer by reason of the transfer of interests in the LLC permitted under (e) below) except with the prior written approval of the Exchange;

(c) A prohibition against any member LLC holding any asset other than a single Exchange membership, related revenues and, if applicable, contract rights with an approved lessee;

(d) A prohibition against transfer of interests in any member LLC which transfer creates or changes "control interests" in the LLC except with Exchange approval;

(e) Prohibition against any transfer of any equity, voting or ownership interest in the company other than a transfer (A) by bequest or lifetime gift by the Limited Transferor [9] to any one or more of the Limited Transferor's Family Members (provided that no such Family Member transferee shall have a veto right with respect to the removal or replacement of the manager by the owner of the majority in interest of the company or any matters pertaining to any Reorganization [10]), (B) by lifetime gift by the Limited Transferor to one or more Qualified Trusts,[11] each of which has not more than one Trustee and is governed by a trust instrument that has been certified to the Exchange by authorized legal counsel of the Limited Transferor to contain the provisions that

[8] *See supra* note 7.

[9] For purposes of proposed Exchange Rule 301(e), the term "Limited Transferor" shall mean the individual who was the Exchange member who initially contributed his or her membership to the company, thereby causing it to become a limited transfer member of the Exchange within the meaning of its Constitution.

[10] For purposes of proposed Exchange Rule 301(e), the term "Reorganization" shall mean any merger of the Exchange (or any successor entity) with, or any sale of all or substantially all of the assets of the Exchange (or any successor entity) to, another entity, such that any entity other than the Exchange shall either directly or indirectly hold a majority of the equity of the Exchange or all or substantially all of the assets of the Exchange. For the avoidance of doubt, a Reorganization shall include the Exchange's merger with Archipelago Holdings, Inc.

[11] The term "Qualified Trust" shall mean a trust solely for the benefit of the Limited Transferor and/or the Limited Transferor's Family Members.

would cause the trust held under the instrument, if the instrument were duly executed, to be at the time of initial funding a grantor retained annuity trust, or GRAT, in which the Limited Transferor, commonly known as the grantor, retains a qualified interest as defined in section 2702(b) of the Internal Revenue Code of 1986, as amended, (C) by distribution of such interest by the Trustee of each such trust to any one or more of its beneficiaries (including a trust for the benefit of any one or more of them), or (D) by gift or bequest, outright or in trust, by any such beneficiary, the donees and legatees of any such beneficiary or their donees and legatees;

(f) A prohibition against any transfer of member LLC interests, if such transfer would result in any individual, corporation, partnership, company, or trust owning, directly or indirectly, a controlling interest (as "control" is described under Exchange Rule 2, taking into account equity, voting or ownership interests owned by fiduciaries only to the extent they are acting as trustee of a trust created by a Family Member or the estate fiduciary of an individual who was a family member) if (i) the transferee is a member of the Exchange or (ii) following such transfer, the transferee would own, directly or indirectly, controlling interests in more than three LLCs that are limited transfer members of the Exchange;

(g) A prohibition against any member LLC having more than one manager or permitting any person other than the manager to take actions on behalf of the LLC;

(h) Qualifications for member LLC managers;

(i) No liability of the NYSE in connection with member LLCs and a requirement that member LLCs (and persons holding interests in member LLCs) indemnify the NYSE with respect to claims; and

(j) An application to become a limited transfer member shall be subject to the posting and payment requirements provided in Exchange Rule 301(d) and .26 and .27 of the Supplementary Materials to Exchange Rule 301, except that no more than five days need elapse between the posting of a notice of a proposed transfer to a proposed limited transfer member under proposed Exchange Rule 301(e) and the consideration thereof rather than the ten days provided in Exchange Rule 301(d) and .26 of the Supplementary Materials to Exchange Rule 301.

The restrictions and limitations included in the proposed rule are intended to give the Exchange broad controls with respect to members that are not individuals while accommodating members' planning objectives.

LLC Application Fees

Currently, the Exchange charges an application fee in the amount of $2,500 to membership applicants who are not associated with members or member organizations.[12] It is proposed that the Exchange's Board of Directors establish an application fee in the amount of $5,000 in view of the additional costs to the Exchange in connection with memberships held by LLCs. The proposed LLC application fee would be in lieu of the $2,500 application fee referred to in the first sentence of this paragraph. The proposed LLC application fee, like the $2,500 application fee payable in other cases, is in addition to the initiation fee payable by new members.[13] Fees payable in connection with transfers to an LLC are separate from, and in addition to, fees payable in connection with the acquisition of a membership by the person who transfers his or her membership to the LLC, and fees payable in connection with any lease of membership.

The Exchange will waive its transfer fee of up to $5,000 payable in connection with the transfer of a leased seat, if the new lease is entered into solely as a result of a transfer to an LLC pursuant to proposed Exchange Rule 301(e).

2. Statutory Basis

The proposed changes are consistent with sections 6(b)(4)[14] and 6(b)(5)[15] of the Act, in that they provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, and they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[12] *See* Exchange 2005 Price List page 9, "Registration and Regulatory Fees," for the $2,500 fee charged to non-public organizations and individuals.

[13] The Exchange 2005 Price List and .27 of the Supplementary Material to Exchange Rule 301 set forth a transfer fee for purchased and leased seats of 5% of the purchase price or the last contracted sale, subject to a minimum of $1,000 and a maximum of $5,000.

[14] 15 U.S.C. 78f(b)(4).

[15] 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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change. The proposed rule change is being made in response to requests received from a large number of Exchange members. The staff of the Exchange has worked with interested members and their legal advisors to draft a proposed rule that will accommodate members in pursuing their estate and tax planning objectives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] 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 Exchange has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[19] The Commission notes that the proposed rule would impose certain restrictions

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). The Exchange provided the Commission with written notice of the Exchange's intent to file the proposed rule change at least five business days prior to the filing date.

[18] 17 CFR 240.19b–4(f)(6).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and limitations on the LLCs and would give the Exchange authority with respect to transfer of ownership interests in the LLCs. For instance, the trading rights associated with the membership transferred to the LLC cannot be exercised by anyone other than a lessee to whom the LLC has leased its membership (such lessee must be approved by the Exchange, pursuant to the Exchange's current requirements for lessees).[20] The Commission further notes that other exchanges permit entities as well as individuals to own memberships. The Commission believes that waiving the 30-day operative delay achieves a reasonable balance between the Exchange's interest in providing members with the flexibility to establish LLCs as soon as possible for estate and tax planning purposes and preserving the Exchange's interest in regulating and protecting its membership.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[21]

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–NYSE–2005–83 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–NYSE–2005–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–83 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–7196 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52882; File No. SR–PCX–2005–130]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Transaction Credits for Round Lots of Certain Listed Securities

December 2, 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 November 29, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Exchange 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

The Exchange proposes to amend the PCXE Schedule of Fees and Charges ("Schedule") to reduce the transaction credit payable to Market Makers for the execution of round lot orders of NYSE listed securities. The text of the proposed rule change is below. Additions are *italicized*; deletions are [bracketed].

Schedule of Fees and Charges for Exchange Services

Archipelago Exchange: Market Maker Fees and Charges

* * * * *

MARKET MAKER TRANSACTION CREDITS

Round Lots:	
NYSE Listed Securities [(other than ETFs and ADRs)]	$0.00*1*[25] per share (credit) (applicable to Q orders executed against other participants' orders).
Listed Securities (other than NYSE Listed) and Nasdaq Securities.	$0.002 per share (credit) (applicable to Q orders executed against other participants' orders).

[20] *See* proposed Article II, Section 15(b) of the Exchange's Constitution.

[21] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 5, 2005, the date the Exchange filed Amendment No. 2 to the proposed rule change. *See* 15 U.S.C. 78s(c)(3)(C).

[22] 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 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 the Fee Schedule, effective December 1, 2005, to reduce the transaction credit payable to Market Makers [4] for Q Orders [5] executed against other Exchange participants' orders for round lots of NYSE listed securities. Currently, the credit to Market Makers for transactions of this type is $0.0025 per share; however, as a strategy to better manage costs to the Exchange due to an increase in Market Maker participants and while maintaining incentives for providing liquidity in NYSE listed securities, the Exchange proposes to reduce these transaction credits to $0.001 per share for NYSE listed securities and maintain the existing $0.002 per share credit for securities listed on an exchange other than the NYSE and for Nasdaq listed securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its ETP Holders, issuers, 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.

[4] As defined by PCXE Rule 1.1(u).

[5] As defined by PCXE Rule 7.31(k)

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

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

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–PCX–2005–130 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, 20549–0609.

All submissions should refer to File Number SR–PCX–2005–130. 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 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 Number SR–PCX–2005–130 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–7190 Filed 12–9–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(1)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before February 10, 2006.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joseph Shattan, Director, SBA Center for Faith-Based and Community Initiatives, Small Business Administration, 409 3rd Street, SW., Suite 7000, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph Shattan, Director, SBA Center for Faith-Based and Community Initiatives 202–205–7316, *joseph.shattan@sba.gov*, Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: "SBA Center Faith-Based Community Initiatives Outreach Survey."

Description of Respondents: Attendees at Faith-Based Community Initiatives and Community Initiatives.

Form No.: N/A.

Annual Responses: 20,000.

Annual Burden: 1,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E5–7203 Filed 12–9–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10272 and # 10273]

Kentucky Disaster # KY–00005

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Kentucky (FEMA–1617–DR), dated December 1, 2005.

Incident: Severe Storms and Tornadoes.

Incident Period: November 15, 2005.

DATES: *Effective Date:* December 1, 2005.

Physical Loan Application Deadline Date: January 31, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: September 1, 2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on December 1, 2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Hopkins, Marshall.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Caldwell, Calloway, Christian, Graves, Livingston, Lyon, McCracken, McLan, Muhlenberg, Trigg, Webster.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.687
Businesses with Credit Available Elsewhere	6.557
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10272C and for economic injury is 102730.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E5–7204 Filed 12–9–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10274]

North Dakota Disaster # ND–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1616–DR), dated November 21, 2005.

Incident: Severe Winter Storm and Record and Near-Record Snow.

Incident Period: October 4, 2005 through October 6, 2005.

DATES: *Effective Date:* November 21, 2005.

Physical Loan Application Deadline Date: January 23, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on November 21, 2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Benson, Billings, Bottineau, Bowman, Burke, Dunn, Golden Valley, McHenry, McKenzie, McLean, Mercer, Oliver, Pierce, Renville, Rolette, Sheridan, Stark, Towner, Ward.

And the Fort Berthold Indian Reservation.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10274.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E5–7205 Filed 12–9–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 3—Washington Metropolitan Area District Office; Advisory Council; Public Meeting

The U.S. Small Business Administration (SBA) Washington Metropolitan Area District Office will host a public meeting on Tuesday, January 31, 2006 from 9 a.m. until 11:30 a.m. at the Washington Metropolitan Area District Office, located at 740 15th Street, NW., 3rd Floor, Washington, DC 20005. Seating is limited and is available on a first come, first served basis. The focus of the meeting includes a review/update of the status of the district's FY 2006 goals, update on new initiatives and other matters that may be presented by members and staff of the U.S. Small Business Administration Washington Metropolitan Area District Office or others present.

Anyone wishing to make an oral presentation to the Board must contact Joseph P. Loddo, District Director and Designated Federal Official for the SBA Washington Metropolitan Area District Advisory Council, in writing by letter or

fax no later than Monday, January 16, 2006 in order to be put on the agenda. Requests for oral comments must be in writing to: Joseph P. Loddo, District Director, U.S. Small Business Administration, Washington Metropolitan Area District Office, 740 15th Street, NW., 3rd Floor, Washington, DC 20005. Telephone (202) 272–0345 or FAX (202) 272–0270.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E5–7206 Filed 12–9–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5243]

Culturally Significant Object Imported for Exhibition; Determinations: "Portraits of a People: Picturing African Americans in the Nineteenth Century'

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition Portraits of a People: Picturing African Americans in the Nineteenth Century," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Addison Gallery of American Art, Andover, MA from on or about January 14, 2006 to on or about March 14, 2006, Delaware Art Museum, Wilmington, DE from on or about April 21, 2006 to on or about July 16, 2006, Long Beach Museum of Art, Long Beach, CA from on or about August 25, 2006 to on or about November 26, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453–8048). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 5, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–23918 Filed 12–9–05; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Paperwork Reduction Act Notice of Collection of Applications for Dispute Settlement Rosters

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments on the collection of applications.

SUMMARY: Free trade agreements entered into by the United States require the establishment of lists or rosters of individuals that would be available to serve as panelists in dispute settlement proceedings. From time to time, the Office of the United States Trade Representative (USTR) will collect applications from people who wish to serve on those panels. USTR is soliciting comments from the public on this proposed collection of information prior to submitting a request for approval to the Office of Management and Budget pursuant to the Paperwork Reduction Act.

DATES: Comments regarding this collection of information should be received no later than February 15, 2007.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0605@ustr.eop.gov*, Attn: "FTA Applications Comments" in the subject line, or (ii) by fax to Sandy McKinzy at 202–395–3640.

FOR FURTHER INFORMATION CONTACT: David Apol, Office of the United States Trade Representative, (202) 395–9633.

SUPPLEMENTARY INFORMATION:

Dispute Settlement Mechanisms of U.S. Free Trade Agreements

U.S. free trade agreements set out detailed procedures for the resolution of disputes over compliance with the obligations set out in each agreement. Generally, dispute settlement involves three stages: (1) Lower level consultations between the disputing Parties to try to arrive at a mutually satisfactory resolution of the matter; (2) cabinet-level consultations; and, (3) resort to a neutral panel to make a determination as to whether a Party is in compliance with its obligations under the agreement. This panel is composed of individuals chosen by the Parties. The method by which the panel is selected varies between agreements. Some agreements require the establishment of a roster, from which panelists shall normally be selected. See *e.g.* Chile FTA, Article 22.7. Other agreements allow the Parties to select anyone as a panelist, after consultations, but provide for a contingent list from which panelists can be selected by lot, if the Parties do not otherwise select a panelist. See *e.g.* Singapore FTA, Article 20.4; Australia FTA, Article 21.7; Morocco FTA, Article 20.7.

Eligible individuals who wish to be considered for the various rosters and lists will be invited to submit applications. Persons submitting applications may either send one copy by fax or transmit a copy electronically. Applications must be typewritten, and should be headed "Application for Consideration as an FTA Panelist." Applications will be asked to include the following information:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Agreement or agreements for which the applicant wishes to be considered.
5. Current employment, including title, description of responsibility, and name and address of employer.
6. Relevant education and professional training.
7. Relevant language fluency, written and spoken.
8. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
9. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
10. A list and copies of publications, testimony, and speeches, if any, concerning the relevant area of expertise. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
11. Summary of any current and past employment by, or consulting or other work for, the Government of the United States or for the government of the other Party to the Agreement for which you be to be considered (e.g. NAFTA, Singapore, Chile, Australia, or Morocco).

12. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.

13. A short statement of qualifications and availability for service on FTA dispute settlement panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.

14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

15. Information regarding any specific skill or experience which may be relevant to a specific panel for which the applicant is applying.

Paperwork Burden

It is estimated that approximately 150 individuals a year will submit applications for various panels and that it will take each applicant approximately three hours to compile their applications for a total paperwork burden of 450 hours a year. The recordkeeping cost of maintaining the information received will be minimal.

Request for Comments

USTR request comments on this proposed collection of information including comments on the following questions: (1) Is the proposed collection of information necessary for the proper performance of the functions of USTR? (2) Is the estimated burden of the proposed collection of information accurate? (3) Can the utility and clarity of the information being collected be enhanced? and (4) Can the burden on the providers of the information be minimized.

David J. Apol,

Associate General Counsel, Office of the United States Trade Representative.

[FR Doc. E5–7237 Filed 12–9–05; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Determination of procurement thresholds under the World Trade Organization Government Procurement Agreement, the United States-Australia Free Trade Agreement, the United States-Chile Free Trade Agreement, the North American Free Trade Agreement, and the United States-Singapore Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: Dawn Shackleford, Director for International Procurement, Office of the United States Trade Representative, (202) 395–9461 or *Dawn_Shackleford@ustr.eop.gov.*

SUMMARY: Executive Order 12260 requires the United States Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), which implements U.S. trade agreement obligations, including those under the World Trade Organization (WTO) Government Procurement Agreement, Chapter 15 of the United States-Australia Free Trade Agreement, Chapter 9 of the United States-Chile Free Trade Agreement, Chapter 10 of the North American Free Trade Agreement (NAFTA), and Chapter 13 of the United States-Singapore Free Trade Agreement. These obligations apply to covered procurements valued at or above specified U.S. dollar thresholds.

Now, therefore, I, Rob Portman, United States Trade Representative, in conformity with the provisions of Executive Order 12260, and in order to carry out U.S. trade agreement obligations under the World Trade Organization (WTO) Government Procurement Agreement, Chapter 15 of the United States-Australia Free Trade Agreement, Chapter 9 of the United States-Chile Free Trade Agreement, Chapter 10 of NAFTA, and Chapter 13 of the United States-Singapore Free Trade Agreement, do hereby determine, effective on January 1, 2006:

For the calendar years 2006–2007, the thresholds are as follows:

I. WTO Government Procurement Agreement

A. *Central Government Entities listed in U.S. Annex 1:*
- (1) Procurement of goods and services—$193,000; and
- (2) Procurement of construction services—$7,407,000.

B. *Sub-Central Government Entities listed in U.S. Annex 2:*
- (1) Procurement of goods and services—$526,000; and
- (2) Procurement of construction services—$7,407,000.

C. *Other Entities listed in U.S. Annex 3:*
- (1) Procurement of goods and services—$593,000; and
- (2) Procurement of construction services—$7,407,000.

II. U.S.-Australia Free Trade Agreement, Chapter 15

A. *Central Government Entities listed in the U.S. Schedule to Annex 15–A, Section* 1:
- (1) Procurement of goods and services—$64,786; and
- (2) Procurement of construction services—$7,407,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 15–A, Section 2:*
- (1) Procurement of goods and services—$526,000; and
- (2) Procurement of construction services—$7,407,000.

C. *Other Entities listed in the U.S. Schedule to Annex 15–A, Section 3:*
- (1) Procurement of goods and services for List A Entities—$323,929;
- (2) Procurement of goods and services for List B Entities— $593,000;
- (3) Procurement of construction services—$7,407,000.

III. U.S.-Chile Free Trade Agreement, Chapter 9

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*
- (1) Procurement of goods and services—$64,786; and
- (2) Procurement of construction services—$7,407,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*
- (1) Procurement of goods and services—$526,000; and
- (2) Procurement of construction services—$7,407,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*
- (1) Procurement of goods and services for List A Entities— $323,929;
- (2) Procurement of goods and services for List B Entities—$593,000;
- (3) Procurement of construction services—$7,407,000.

IV. North American Free Trade Agreement (NAFTA), Chapter 10

A. *Federal Government Entities listed in the U.S. Schedule to Annex 1001.1a–1:*
- (1) Procurement of goods and services—$64,786; and
- (2) Procurement of construction services—$8,422,165.

B. *Government Enterprises listed in the U.S. Schedule to Annex 1001.1a–2:*
- (1) Procurement of goods and services—$323,929; and

(2) Procurement of construction services—$10,366,227.

V. U.S.-Singapore Free Trade Agreement, Chapter 13

A. Central Government Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section A:
(1) Procurement of goods and services—$64,786; and
(2) Procurement of construction services—$7,407,000.

B. Sub-Central Government Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section B:
(1) Procurement of goods and services—$526,000; and
(2) Procurement of construction services—$7,407,000.

C. Other Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section C:
(1) Procurement of goods and services—$593,000;
(2) Procurement of construction services—$7,407,000.

Rob Portman,

United States Trade Representative.

[FR Doc. E5–7236 Filed 12–9–05; 8:45 am]

BILLING CODE 3190–W6–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Cincinnati/Northern Kentucky International Airport, Hebron, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: Under the provisions of title 49, U.S.C. Section 47153(c), the Federal Aviation Administration is requesting public comment on the Kenton County Airport Board's request to trade a portion (1.5 acres) of airport property to V.H. Florence, LLC for a portion (1.5 acres) of V.H. Florence, LLC property effectively changing the airport portion from aeronautical use to non-aeronautical use and changing the V.H. Florence, LLC from non-aeronautical use to an aeronautical use. The property is to be traded to V.H. Florence, LLC, Florence, Kentucky for a "Walmart" development project.

The Kenton County Airport Board's 1.5 acres is located on the southern boundary of Cincinnati/Northern Kentucky International Airport; is a portion of a 238.774 acre parcel; and has no direct access except through adjoining airport property or adjacent V.H. Florence, LLC property, Boone County, Kentucky. The V.H. Florence, LLC's 1.5 acres is located on the southern boundary of Cincinnati/Northern Kentucky International Airport; and has no direct access except through adjoining V.H. Florence, LLC property or adjacent airport property, Boone County, Kentucky.

DATES: Comments must be received on or before January 11, 2006.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports district Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Barbara Schempf, Governmental Affairs/Noise Abatement Manager, Kenton County Airport Board at the following address: 2939 Terminal Drive, 2nd Floor Terminal 1, Hebron, Kentucky 41048.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Airports Program Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555, (901) 322–8184. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Kenton County Airport Board to trade 1.5 acres of aeronautical property at Cincinnati/Northern Kentucky International Airport, Hebron, Kentucky. The property will be traded to V.H. Florence, LLC for a "Walmart" development project. The appraised value of the Kenton County Airport Board's 1.5 acres is $37,500. The appraised value of V.H. Florence, LLC's 1.5 acres is $37,500. The net difference in appraised values is zero. A detailed legal description of the property proposed for release can be requested or seen at either of the contacts given above. However, the general description of both 1.5 acre parcels are located on the southern boundary of Cincinnati/Northern Kentucky International Airport; in close proximity to Turfway and Houston Roads; both parcels have no direct access and are both located adjacent to airport and V.H. Florence, LLC Properties, Boone County, Kentucky.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Kenton County Airport Board's office on Cincinnati/Northern Kentucky International Airport, Hebron, Kentucky.

Issued in Memphis, Tennessee, on December 2, 2005.

Phillip J. Braden,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 05–23891 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–63]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 2, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2002–12739.

Petitioner: Evergreen International Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought/Disposition: To allow up to three dependents of Evergreen International Airlines, Inc., employees to be added to the list of persons specified in part 121.583(a)(8) that Evergreen International Airlines, Inc., is authorized to transport without complying with the passenger-carrying aircraft requirements.

Grant, October 5, 2005, Exemption No. 8647.

Docket No.: FAA–2005–22136.
Petitioner: Federal Express Corporation.
Section of 14 CFR Affected: 14 CFR 121.344.
Description of Relief Sought/ Disposition: To allow Federal Express Corporation to operate 11 ATR Model 42 and 7 ATR Model 72 airplanes with a flight data recorder that receives its groundspeed output from the aircraft distance measuring equipment rather than the global positioning system.
Grant, October 14, 2005, Exemption No. 8648.

Docket No.: FAA–2004–18967.
Petitioner: Gulfstream Aerospace Corporation.
Section of 14 CFR Affected: 14 CFR 21.463(b).
Description of Relief Sought/ Disposition: To allow Gulfstream Aerospace Corporation's Long Beach, Dallas, Appleton and Savannah Designated Alteration Stations to store Supplemental Type Certificate (STC) information, data, and reports instead of submitting those items to the Federal Aviation Administration within 30 days of issuing an STC.
Grant, October 14, 2005, Exemption No. 8649.

Docket No.: FAA–2005–22570.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 91.9(b)(1) and (2), and 91.203(a) and (b).
Description of Relief Sought/ Disposition: To allow The Boeing Company to operate unmanned aerial vehicles that do not carry and display the aircraft airworthiness, certification, and registration documents required in part 91.
Grant, October 20, 2005, Exemption No. 8651.

Docket No.: FAA–2003–15643.
Petitioner: Mr. John J. Geitz.
Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To allow Mr. John J. Geitz to conduct certain flight training and to provide simulated instrument flight instruction in certain Beech airplanes that are equipped with a throw-over control wheel.
Grant, October 28, 2005, Exemption No. 8652.

Docket No.: FAA–2005–22457.
Petitioner: Southwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.619.
Description of Relief Sought/ Disposition: To allow Southwest Airlines, Inc., its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which, for at least 1-hour before and 1-hour after the estimated time of arrival, the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be reduced from at least 3 statute miles to 1 statute mile.
Grant, October 28, 2005, Exemption No. 8654.

Docket No.: FAA–2005–21879.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.619.
Description of Relief Sought/ Disposition: To allow Northwest Airlines, Inc., its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which, for at least 1-hour before and 1-hour after the estimated time of arrival, the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be reduced from at least 3 statute miles to 1 statute mile.
Grant, October 28, 2005, Exemption No. 8655.

Docket No.: FAA–2005–22575.
Petitioner: Midwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.619.
Description of Relief Sought/ Disposition: To allow Midwest Airlines, Inc., its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which, for at least 1-hour before and 1-hour after the estimated time of arrival, the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be reduced from at least 3 statute miles to 1 statute mile.
Grant, October 28, 2005, Exemption No. 8656.

Docket No.: FAA–2005–22158.
Petitioner: Continental Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.619.
Description of Relief Sought/ Disposition:
To allow Continental Airlines, Inc., its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which, for at least 1-hour before and 1-hour after the estimated time of arrival, the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be reduced from at least 3 statute miles to 1 statute mile.
Grant, October 28, 2005, Exemption No. 8657.

Docket No.: FAA–2005–22336.
Petitioner: United Parcel Service Company.
Section of 14 CFR Affected: 14 CFR 121.619.
Description of Relief Sought/ Disposition: To allow United Parcel Service Company, its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which, for at least 1-hour before and 1-hour after the estimated time of arrival, the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be reduced from at least 3 statute miles to 1 statute mile.
Grant, October 28, 2005, Exemption No. 8658.

Docket No.: FAA–2002–11933.
Petitioner: ExpressJet Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To allow ExpressJet Airlines, Inc., its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which, for at least 1-hour before and 1-hour after the estimated time of arrival, the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be reduced from at least 3 statute miles to 1 statute mile.
Grant, October 7, 2005, Exemption No. 6798D.

Docket No.: FAA–2005–22172.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 14 CFR 21.231(a)(1).
Description of Relief Sought/ Disposition: To allow Cessna Aircraft Company to apply for delegation option authorization for type, production, and airworthiness certification of derivative models of all Cessna transport category airplanes.
Grant, October 13, 2005, Exemption No. 3764.

Docket No.: FAA–2003–16809.
Petitioner: Kalitta Charters, LLC.
Section of 14 CFR Affected: 14 CFR 61.3(a) and (c)(1).
Description of Relief Sought/ Disposition: To allow Kalitta Charters, LLC pilots to operate aircraft, on a temporary basis, without having their

pilot certificates in their physical possession or readily accessible in the aircraft.

Grant, October 20, 2005, Exemption No. 8252B.

Docket No.: FAA–2001–11089.

Petitioner: The Collings Foundation.

Section of 14 CFR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a).

Description of Relief Sought/ Disposition: To allow The Collings Foundation to operate its Boeing B–17, Consolidated B–24, North American B–25, and Grumman TBM for the purpose of carrying passengers for compensation or hire on local flights for educational purposes.

Grant, October 19, 2005, Exemption No. 6540G.

Docket No.: FAA–2001–10876.

Petitioner: Experimental Aircraft Association, Inc.

Section of 14 CFR Affected: 14 CFR 91.319(a)(2), 119.5(g), and 119.21(a).

Description of Relief Sought/ Disposition: To allow Experimental Aircraft Association, Inc., to operate its Spirit of Saint Louis replica aircraft for the purpose of carrying passengers for compensation or hire on local flights for educational purposes.

Grant, October 19, 2005, Exemption No. 6541I.

[FR Doc. 05–23892 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 35]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Patricia Butera or Lydia Leeds, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of April 12, 2005, (70 FR 19145). The 27th full Committee meeting was held October 11, 2005.

Since its first meeting in April of 1996, the RSAC has accepted twenty tasks. Status for each of the tasks is provided below:

Open Tasks

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen, (202) 493–6302.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. On April 14, 2004, the RSAC reached consensus on the Notice of Proposed Rulemaking (NPRM). The NPRM is a new standard to increase the crashworthiness of conventional wide- and narrow-nose locomotives and codifies requirements for monocoque locomotives. On November 2, 2004, FRA published an NPRM in the **Federal Register** (69 FR 63990) proposing to establish comprehensive, minimum standards for locomotive crashworthiness. In that NPRM, FRA established a January 3, 2005, deadline for submission of written comments. FRA received a request to extend the comment period to give interested parties additional time to review, analyze, and submit comments on the NPRM. After considering the request, FRA extended the comment period until February 3, 2005. The Working Group met to review the public comments on June 27–28, 2005, and reached consensus on July 1, 2005. The Working Group's recommendations were adopted by the full Committee, by mail ballot, on August 5, 2005. The final rule is in review and clearance. Contact: Charles Bielitz, (202) 493–6314 or John Punwani (202) 493–6369.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation) (Completed)

(Noise exposure) On June 27, 2003, the full RSAC gave consensus by ballot on the NPRM. The NPRM was published in the **Federal Register** on June 23, 2004. The comment period ended September 21, 2004. Task Force and Working Group meetings were held March 1, and March 2 and 3, 2005, respectively, to review the public comments and recommend a final rule. The Working Group reached agreement on all issues, and its report was presented to the full Committee on May 18, 2005. FRA is preparing the final rule, which will then undergo review and clearance within the Executive Branch.

(Cab Temperature) (Completed)

Note: Additional related topics such as vibration may be considered by the Working Group in the future. Contact: Jeffrey Horn, (202) 493–6283.

Task 97–4 and *Task 97–5*—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three Tasks were accepted on September 30, 1997, and assigned to a single Working Group.

(Report to the Administrator) A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The FRA enclosed the report with a letter to Congress signed May 17, 2000.

(Regulatory development) The Standards Task Force, formed to develop PTC standards, assisted in developing draft recommendations for performance-based standards for processor-based signal and train control systems. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas, to formulate recommendations for resolution of issues raised in the public comments. Agreement was reached on most issues raised in the comments. A meeting was held May 14–15, 2002, in Colorado Springs, Colorado, at which

the Working Group approved creation of teams to further explore the "base case" issue. Briefing of the full RSAC on the "base case" issue was completed on May 29, 2002, and consultations continued within the working group. The full Working Group met October 22–23, 2002, and again March 4–6, 2003. Resolution of the remaining issues was considered by the Working Group at the July 8–9, 2003, meeting. The Working Group achieved consensus on recommendations for resolution of a portion of the issues in the proceeding. The full Committee considered the Working Group recommendations by mail ballots scheduled for return on August 14, 2003; however, a majority of the members voting did not concur. The final rule was published in the **Federal Register** on March 7, 2005, (70 FR 11051). The RSAC PTC Working Group met on July 14–15, 2005, to discuss implementation guidance and receive a task force report on roadway worker terminals. Contact: Grady Cothen, (202) 493–6302.

Task 03–01—Passenger Safety. This Task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting held November 6–7, 2003, five task groups were established: Crashworthiness/glazing; emergency preparedness; mechanical-general issues; mechanical-safety appliances; and track/vehicle interaction. The task groups met and reported on activities for Working Group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. Initial recommendations on mechanical issues (revisions to 49 CFR part 238) were approved by the full Committee on January 26, 2005. At the Working Group meeting of March 9–10. 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency egress and rescue access. These recommendations were presented to and approved by the full Committee on May 18, 2005. An NPRM is now under development. The Working Group met on September 7–8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. Contact: Charles Bielitz, (202) 493–6314.

Task 05–01—Review of Roadway Worker Protection issues. This Task was accepted on January 26, 2005, to review 49 CFR 214, subpart C, Roadway Worker Protection, and related sections of Subpart A; recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group has been established and will report to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group was held on April 12–14, 2005. The Working Group will report planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion. The Working Group met on June 22–24, 2005, August 8–11, 2005, September 20–22, 2005, and November 8–9, 2005. The next Working Group meeting is scheduled for January 10–11, 2006. Contact: Christopher Schulte, (202) 493–6251.

Task 05–02—Reduce Human Factor-Caused Train Accident/Incidents. This Task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. A Working Group has been established. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The Working Group met on July 12–13, 2005, August 31—September 1, 2005, September 28–29, 2005, October 25–26, 2005, November 16–17, 2005, and December 6–7, 2005. The Working Group is expected to submit initial recommendations in February of 2006.

Contact: Douglas Taylor, (202) 493–6255.

Completed Tasks

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, *Locomotive Crashworthiness & Working Conditions.*

Task 97–3—(Completed) Developing event recorder data survivability standards.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Completed—task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports* (Reporting Guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on December 6, 2005.

Michael Logue,

Deputy Associate Administrator, for Safety Compliance and Program Implementation.

[FR Doc. E5–7200 Filed 12–9–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 5, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information

collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 11, 2006 to be assured of consideration.

Departmental Office (DO)

OMB Number: 1505–0080.

Type of Review: Extension.

Title: Post-Contract Award Information.

Description: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to determine contractors' compliance with the contracts, in order to protest the Government's interest.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Total Burden Hours: 47,796 hours.

OMB Number: 1505–0081.

Type of Review: Extension.

Title: Solicitation of Proposal Information for Award of Public Contracts.

Description: Information requested of offerors is specific to each procurement solicitation and is requested for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Total Burden Hours: 410,988 hours.

OMB Number: 1505–0107.

Type of Review: Extension.

Title: Regulation Agency Protests.

Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Total Burden Hours: 46 hours.

Clearance Officer: Jean Carter, (202) 622–6760, Department of Treasury, Office of the Procurement Executive, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E5–7198 Filed 12–9–05; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register
Vol. 70, No. 237
Monday, December 12, 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.

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

Correction

In notice document 05–23127 beginning on page 70795 in the issue of Wednesday, November 23, 2005, make the following correction:

On page 70795, in the third column, under the signature block, insert the system identifying number "**S500.55**", above **SYSTEM NAME.**

[FR Doc. C5–23127 Filed 12–9–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
December 12, 2005

Part II

Environmental Protection Agency

40 CFR Part 112
Oil Pollution Prevention; Non-Transportation Related Onshore Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2005–0003; FRL–8007–1]

RIN 2050–AG28

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to extend the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure Plans (SPCC Plans), and implement those Plans. This action would allow the Agency time to promulgate revisions to the July 17, 2002 final SPCC rule before owners and operators are required to meet requirements of that rule related to preparing or amending, and implementing SPCC Plans. The proposed revisions to the 2002 final SPCC rule are published elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before January 11, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2005–0003, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. EPA–HQ–OPA–2005–0003, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OPA–2005–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of the comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index*. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1303 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 to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this proposed rule, contact either Vanessa Rodriguez at (202) 564–7913 (*rodriguez.vanessa@epa.gov*) or Mark W. Howard at (202) 564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION:

I. Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

II. Background

On July 17, 2002, the Agency published a final rule that amended the SPCC regulations (see 67 FR 47042). The rule became effective on August 16, 2002. The final rule included compliance dates in § 112.3 for preparing, amending, and implementing SPCC Plans. The original compliance dates were amended on January 9, 2003 (*see* 68 FR 1348), again on April 17, 2003 (*see* 68 FR 18890) and a third time on August 11, 2004 (*see* 69 FR 48794).

Under the current provisions in § 112.3(a) and (b), a facility that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan by February 17, 2006, and fully implement its SPCC Plan by August 18, 2006; a facility that came into operation after August 16, 2002 but before August 18, 2006, must prepare and fully implement an SPCC Plan on or before August 18, 2006. Thus, for facilities in operation on or before August 16, 2002, the regulations provide a six-month period between the compliance date for Plan amendment and the compliance date for Plan implementation. In addition, § 112.3(c) requires onshore and offshore mobile facilities to prepare or amend and implement SPCC Plans on or before August 18, 2006.

III. Proposal To Extend the Compliance Dates

This proposed rule would extend the dates in § 112.3(a) and (b) by which a facility must prepare or amend and implement its SPCC Plan. As a result of this proposed rule, a facility that was in operation on or before August 16, 2002 would have to make any necessary amendments to its SPCC Plan, and implement that Plan, on or before October 31, 2007. In addition, a facility that came into operation after August 16, 2002 would have to prepare and implement an SPCC Plan on or before October 31, 2007.

This proposed rule would similarly extend the compliance dates in § 112.3(c) for mobile facilities. Under this proposal, a mobile facility must prepare or amend and implement an SPCC Plan on or before October 31, 2007.

The Agency believes the extension of the compliance dates proposed in this notice are warranted for several reasons. The Agency is proposing revisions to the 2002 SPCC rule elsewhere in today's **Federal Register**. Those revisions would provide significant regulatory relief to some facilities and to some types of oil-filled equipment. The Agency believes that the regulatory relief proposed in that **Federal Register** notice is important to ensure that the SPCC regulation remains protective of human health and the environment but, at the same time,

is not overly burdensome to the regulated community. Since the Agency will not have time to promulgate the proposed regulatory relief before the current compliance dates for SPCC Plan preparation, amendment, and implementation, the Agency believes it is appropriate to extend those dates. This approach would allow facilities opportunity to make changes to their facilities and to their SPCC Plans necessary to comply with revised, less burdensome requirements, rather than with the existing requirements.

Further, the Agency believes that this proposed extension of the compliance dates would provide facilities time necessary to fully understand the regulatory relief offered by revisions to the 2002 SPCC rule. This would allow facilities to take full advantage of any regulatory revisions the Agency might promulgate. Regarding modifications of the SPCC regulations, to the extent practicable, EPA will establish deadlines for compliance implementation that commence one year after promulgating the regulatory revisions.

In addition, the Agency has issued the "SPCC Guidance for Regional Inspectors," which is intended to assist regional inspectors in reviewing a facility's implementation of the SPCC rule. The document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance also is available to both the owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public on the Agency's Web site at *http://www.epa.gov/oilspill*. The Agency believes that this proposed extension would provide the regulated community opportunity to understand the material presented in that guidance before preparing or amending their SPCC Plans.

Finally, the Agency is concerned that the effects of the recent hurricanes on many industry sectors might adversely impact their ability to meet the upcoming compliance dates if no extension is provided.

It is important to note that we considered whether to maintain the six month interim period between the compliance dates for Plan amendment and implementation or to combine the two dates in order to allow an additional six months for Plan amendment. Since facilities are not required to submit SPCC Plans to the Agency at the time of Plan amendment, the Agency is proposing to combine the compliance dates for Plan amendment and implementation so that they both coincide on October 31, 2007 in order to allow facilities an additional six months to amend SPCC Plans in accordance with the requirements under §§ 112.3(a) through (c).

The Agency is seeking comment on this proposal to have one date by which SPCC Plans must be amended and implemented in accordance with the 2002 amendments to the SPCC Rule, and on the extension of these dates to October 31, 2007 for all facilities. Any alternative approaches presented must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

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

Under the terms of Executive Order 12866, this action has been judged as not a "significant regulatory action" because it would extend the compliance dates in § 112.3, but would have no other substantive effect. However, because of its interconnection with the related SPCC rule proposed elsewhere in this **Federal Register** notice (see discussion above in section III), which is a significant action under the terms of Executive Order 12866, this action was nonetheless submitted to OMB for review.

B. Paperwork Reduction Act

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.*).

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 organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this proposed rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect

on all of the small entities subject to the rule.

This proposed rule would relieve the regulatory burden for small entities by extending the compliance dates in § 112.3.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-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 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.

EPA has determined that this 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 one year. This proposed rule would reduce burden and costs for all facilities.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As was explained above, the effect of the proposed rule would be to reduce burden and costs for all facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

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

This proposed rule does not have federalism implications. It would 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. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the Federal SPCC regulation and recognizes that some States have more stringent requirements (56 FR 54612, (October 22, 1991). This proposed rule would not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

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

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's proposed rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, the Agency has not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risk

Executive Order 13045, "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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This 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.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations

when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, NTTAA does not apply.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 2, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, by October 31, 2007, and implement the Plan no later than October 31, 2007. If your onshore or offshore facility becomes operational after August 16, 2002, through October 31, 2007, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before October 31, 2007.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after October 31, 2007, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before October 31, 2007. If your onshore or offshore mobile facility becomes operational after October 31, 2007, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

* * * * *

[FR Doc. 05–23916 Filed 12–9–05; 8:45 am]

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Federal Register

Monday,
December 12, 2005

Part III

Environmental Protection Agency

40 CFR Part 112
Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plan Requirements—Amendments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2005–0001; FRL–8007–2]

RIN 2050–AG23

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plan Requirements—Amendments

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is today proposing to amend the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements to reduce the regulatory burden for certain facilities by: Providing an option that would allow owners/operators of facilities that store less than 10,000 gallons of oil and meet other qualifying criteria to self-certify their SPCC Plans, in lieu of review and certification by a Professional Engineer; providing an alternative to the secondary containment requirement, without requiring a determination of impracticability, for facilities that have certain types of oil-filled equipment; defining and providing an exemption for motive power containers; and exempting airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers. In addition, the Agency also proposes to remove and reserve certain SPCC requirements for animal fats and vegetable oils and proposes a separate extension of the compliance dates for farms. In proposing these changes, EPA is significantly reducing the burden imposed on the regulated community in complying with the SPCC requirements, while maintaining protection of human health and the environment. Further, the Agency requests comments on the potential scope of future rulemaking. In a separate document in today's **Federal Register**, the Agency is proposing to extend the compliance dates for all facilities.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2005–0001 by one of the following methods:

- Federal Rulemaking Portal: *www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Mail: The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. EPA–HQ–OPA–2005–0001, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OPA–2005–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of the 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. Comments and suggestions regarding the scope of any future rulemaking should be clearly differentiated from comments specific to today's proposal (*e.g.*, label *Suggestions for Future Rulemaking* and *Comments on Current Proposal*).

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by a statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1303 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 to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this proposed rule, contact either Vanessa E. Rodriguez at 202–564–7913 (*rodriguez.vanessa@epa.gov*), or Mark W. Howard at 202–564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: This proposed rule would amend the requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans in 40 CFR part 112. First, the proposal would provide an alternative option for the owner/operator of a facility that meets specific qualifying criteria (hereafter referred to as a "qualified facility") to self-certify that the facility's SPCC Plan complies with 40 CFR part 112, in lieu of the requirement for a Professional Engineer's (PE) review and certification. Second, the proposal would provide an alternative option for the owner/operator of a facility with oil-filled operational equipment that meets specific qualifying criterion (hereafter referred to as "qualified oil-filled operational equipment") to establish and document an inspection or monitoring program, prepare a contingency plan, and provide a written commitment of manpower, equipment and materials in lieu of secondary containment for qualified oil-filled operational equipment without being required to make an individual impracticability determination. Third, the proposal would define and provide an exemption for motive power containers. Fourth, the proposal would exempt airport mobile refuelers from specifically sized secondary containment requirements for bulk storage containers. Fifth, the proposal removes and reserves certain SPCC requirements for animal fats and vegetable oils. Finally, the proposal provides a separate extension of the compliance dates for farms and, in a separate notice in today's **Federal Register**, the Agency is proposing to extend the compliance dates for all facilities. The contents of this preamble are:

I. General Information

To reduce regulatory burden for qualified facilities and to address several concerns involving oil-filled operational equipment, motive power containers, airport mobile refuelers, and provisions specific to animal fats and vegetable oils, EPA proposes to amend the SPCC Plan requirements in 40 CFR part 112. The Agency also proposes a separate extension of the compliance dates for farms. Specifically:

- EPA proposes an alternative option for the owner/operator of a qualified facility to self-certify his/her SPCC Plan, prepared in accordance with 40 CFR part 112, in lieu of review and certification by a Professional Engineer (PE). A qualified facility is a facility subject to the SPCC requirements that (1) has a maximum total facility oil storage capacity of 10,000 gallons or less; and (2) had no reportable oil discharge as described in § 112.1(b) during the ten years prior to self-certification or, since becoming subject to the SPCC requirements if the facility has been in operation for less than ten years. Under this proposed approach, facility owners/operators of qualified facilities choosing to self-certify their SPCC Plans may not deviate from any requirement of the SPCC rule under § 112.7(a)(2) (with two exceptions) and may not make impracticability determinations in their SPCC Plans as described under § 112.7(d). The two exceptions are that facility owners/operators of qualified facilities choosing to self-certify their SPCC Plans would have flexibility with respect to the security requirements and container integrity testing.
- EPA proposes a definition for oil-filled operational equipment and proposes that owners and operators of facilities where qualified oil-filled operational equipment is located have the alternative of preparing an oil spill contingency plan and a written commitment of manpower, equipment and materials, without having to determine that secondary containment is impracticable on an individual equipment basis (make an individual impracticability determination as required in § 112.7(d)); and establish and document an inspection or monitoring program for this equipment to detect equipment failure and/or a discharge in lieu of providing secondary containment for qualified oil-filled operational equipment. Today's proposal would eliminate the current requirement for an individual impracticability determination for oil-filled operational equipment at a facility that has had no discharges as described in § 112.1(b) from any oil-filled operational equipment during the ten years prior to the Plan certification date or, since becoming subject to the SPCC requirements if the facility has been in operation for less than ten years.
- EPA proposes to exempt from the SPCC rule certain motive power containers. Motive power containers are onboard bulk storage containers used solely to power the movement of a motor vehicle (*i.e.*, fuel tanks), or ancillary onboard oil-filled operational equipment (*i.e.*, hydraulics and lubrication systems) used solely to facilitate its operation. This exemption would not apply to transfers of fuel or other oil into motive power containers at an otherwise regulated facility. This exemption would not apply to a bulk storage container mounted on a vehicle for any purpose other than powering the vehicle itself, for example, a tanker truck or mobile refueler. Additionally, this exemption would not apply to oil drilling or workover equipment, including rigs.
- EPA proposes to exempt airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers under § 112.8(c)(2) and (11) of the SPCC rule. Airport mobile refuelers are vehicles found at airports that have onboard bulk storage containers designed for, or used to, store and transport fuel for transfer into or from an aircraft or ground service equipment. The remaining provisions of § 112.8(c) and the general secondary containment requirements of § 112.7(c) would still apply to the onboard bulk storage containers on airport mobile refuelers and the transfers associated with this equipment.
- The Agency proposes to amend the requirements for animal fats and vegetable oils in Subpart C of Part 112 by removing § 112.13 (requirements for onshore oil production facilities), § 112.14 (requirements for onshore oil drilling and workover facilities), and § 112.15 (requirements for offshore oil drilling, production, or workover facilities) because these sections do not apply to facilities that handle, store, or transport animal fats and vegetable oils.
- EPA proposes to extend the compliance dates for farms, while the Agency considers whether the unique nature of this sector warrants differentiated requirements under the SPCC rule.
- Under the current regulations in § 112.3(a), (b) and (c), a facility that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan by February 17, 2006, and fully implement

its SPCC Plan by August 18, 2006. A facility that came into operation after August 16, 2002 but before August 18, 2006, must prepare and fully implement an SPCC Plan on or before August 18, 2006. The owner or operator of an onshore or offshore mobile facility must maintain their Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before August 18, 2006. In a separate notice in today's **Federal Register**, the Agency is proposing to extend the compliance dates for all facilities to October 31, 2007. Reviewers should refer to that notice for a complete discussion of the proposed extension. Regarding modifications of the SPCC regulations, to the extent practicable, EPA will establish deadlines for compliance implementation that commence one year after promulgating the regulatory revisions.

II. Entities Potentially Affected by This Proposed Rule

Industry category	NAICS code
Crop and Animal Production	111–112
Crude Petroleum and Natural Gas Extraction	211
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing (including animal fats and vegetable oil manufacturing)	31–33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Gasoline Service Stations	447
Fuel Oil Dealers	4543
Waste Management and Remediation	562
Other Commercial Facilities (including Retail Stores, Apartment Buildings, Wholesalers and Janitorial Services)	44–45, 51–55, 56172
Transportation (including Pipelines and Airports), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393
Elementary and Secondary Schools, Colleges	611
Federal, State, Local Government and Military Installations	92
Hospitals/Nursing and Residential Care Facilities	621–623

The list of potentially affected entities in the above table may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to the EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which has been replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DOT) and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation- and non-transportation-related facilities. An MOU among EPA, the U.S. Department of Interior (DOI), and DOT, effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities from DOI to EPA.

IV. Background

On July 17, 2002, EPA published a final rule amending the Oil Pollution Prevention regulation (40 CFR part 112) promulgated under the authority of section 311(j) of the CWA. This revised rule included requirements for SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications (67 FR 47042). The revised rule became effective on August 16, 2002. After publication of this rule, several members of the regulated community filed legal challenges to certain aspects of the rule. Most of the issues raised in the litigation have been settled, following which EPA published clarifications in the **Federal Register** to several aspects of the revised rule (69 FR 29728, May 25, 2004).[1]

EPA has extended the dates for revising and implementing revised SPCC Plans in 40 CFR 112.3(a) and (b) several times, and has extended the compliance date for 40 CFR 112.3(c) (see 69 FR 48794 (August 11, 2004) for further discussion on the extensions). This action was taken by EPA in order to provide the regulated community with sufficient time to comply with the 2002 revised rule and to allow the regulated community time to understand the 2004 clarifications and be able to incorporate them in their updated SPCC Plans. The current deadline for the preparation and certification of revised SPCC Plans for facilities maintaining their current SPCC Plan is February 17, 2006. Plans must be implemented by August 18, 2006. Facilities that became subject to the SPCC rule after August 16, 2002 are currently required to develop and implement their Plans by August 18, 2006.

On September 20, 2004, EPA published two Notices of Data Availability (NODAs). The first NODA made available and solicited comments on submissions to EPA suggesting more focused requirements for facilities subject to the SPCC rule that handle oil below a certain threshold amount, referred to as "certain facilities" (69 FR 56182). Streamlined approaches for facilities with oil capacities below a certain threshold were discussed in the NODA documents. The second NODA made available and solicited comments

[1] *American Petroleum Institute* v. *Leavitt*, No. 1:102CV02247 PLF and consolidated cases (D.D.C. filed Nov. 14, 2002). The remaining issue to be decided concerns the definition of "navigable waters" in § 112.1.

on whether alternate regulatory requirements would be appropriate for facilities with oil-filled and process equipment (69 FR 56184). EPA has reviewed the public comments and data submitted in response to the NODAs in developing today's proposal.

In addition, the Agency considered regulatory relief for airport mobile refuelers in response to concerns raised by the aviation sector. Airport mobile refuelers are vehicles that are used on an airport facility to refuel aircraft and ground service equipment (such as belt loaders, tractors, luggage transport vehicles, deicing equipment, and lifts) used at airports. The onboard bulk storage containers on airport mobile refuelers that are used to transport and transfer fuel into or from aircraft and ground service equipment are considered mobile or portable bulk storage containers under the SPCC rule because they are used to store oil prior to further distribution and use. As such, they are subject to all applicable SPCC rule provisions, including the sized secondary containment provisions of § 112.8(c)(2) and (11). These provisions require the secondary containment, such as a dike or catchment basin, to be sufficient to contain the capacity of the largest single compartment or container and include sufficient freeboard to contain precipitation.

Regulated community members in the aviation sector have expressed concern that requiring such sized secondary containment for airport mobile refuelers is not practicable for safety and security reasons. (Included in the Docket for today's proposal are the letters that have been submitted to EPA regarding this matter.) Specifically, it has been argued that to require these refuelers to park in specially designed secondary containment areas located within an airport's aircraft operations area could create a safety and security hazard because it would require grouping of the vehicles or place impediments in the operations area. Additionally, requiring mobile refuelers to return to containment areas located within the airport's tank farm between refueling operations may increase the risk of accidents (and therefore accidental oil discharge), as the vehicles would travel with increased frequency through the busy aircraft operations area. EPA acknowledges these concerns and seeks to provide relief for airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers, while protecting the environment from refueler spills, particularly those associated with transfers. Consequently, these refuelers remain subject to the other bulk storage container requirements under § 112.8(c) and the general secondary containment requirements under § 112.7(c) which also applies to the transfers of oil associated with airport mobile refuelers.

In contrast to a mobile or portable bulk storage container such as a mobile refueler, a "motive power container" is an integral part of a motor vehicle (including aircraft), providing fuel for propulsion or providing some other operational function, such as lubrication of moving parts or for operation of onboard hydraulic equipment. Motive power containers on vehicles used solely at non-transportation related facilities fall under EPA jurisdiction and are subject to the SPCC regulation. Examples of motive power vehicles include, but are not limited to: buses; recreational vehicles; some sport utility vehicles; construction vehicles; aircraft; farm equipment; and earthmoving equipment (e.g., such as at a drilling or workover facility). Examples of facilities or locations that may be covered by the SPCC requirements solely because of the presence of motive power containers include, but are not limited to, heavy equipment dealers, commercial truck dealers, and parking lots.

While the concept of "motive power" is not directly addressed in the SPCC regulation, such vehicle fuel containers may fall under the definition of "bulk storage container" in § 112.2, while the onboard lubrication system may be considered oil-filled operational equipment. Therefore, motive power containers which store oil used for the propulsion of a vehicle are subject to all the requirements under § 112.8(c) if they have a capacity of 55 gallons or more. These requirements include specifically sized secondary containment for bulk storage containers, integrity testing (visual plus non-destructive testing), and a requirement to engineer containers to avoid discharges (such as an overfill alarm). Additionally, any oil-filled operational equipment with a capacity of 55 gallons or more mounted on a vehicle are subject to the general secondary containment requirements listed in § 112.7(c).

EPA recognizes that, in most cases, the requirements of § 112.8(c), including specifically sized secondary containment and the general secondary containment requirements under § 112.7(c), are not practicable for motive power containers. It has never been EPA's intent to regulate motive power containers. Therefore, EPA is proposing to exempt such motive power containers from the SPCC regulation.

In the July 17, 2002 final SPCC rule, the Agency promulgated general requirements for SPCC Plans for all facilities and all types of oil in § 112.7. In response to the Edible Oil Regulatory Reform Act (EORRA), EPA promulgated separate subparts in part 112 for facilities storing or using various classes of oil, but the requirements in each subpart are the same. EORRA required most Federal agencies to differentiate between and establish separate classes for various types of oil, specifically, between animal fats and oils and greases, and fish and marine mammal oils and oils of vegetable origin, including oils from seeds, nuts, and kernels; and other oils and greases, including petroleum. The result of this approach was that the new Subpart C included requirements for animal fat and vegetable oil (AFVO) facilities—onshore facilities (excluding production facilities) (§ 112.12), onshore oil production facilities, (§ 112.14) onshore oil drilling and workover facilities (§ 112.13), and requirements for offshore oil drilling, production, or workover facilities (§ 112.15). While the Agency recognized that some of these requirements are not applicable to facilities that handle, store or transport AFVO, these sections were promulgated because the Agency had not proposed differentiated SPCC requirements for public notice and comment. As a result, the current requirements for petroleum oils were also applied to animal fats and vegetable oils. EPA is today proposing to remove those sections from the SPCC requirements that are not applicable or appropriate to animal fats and vegetable oils.

Additionally, EPA has issued the SPCC Guidance for Regional Inspectors. The guidance document is intended to assist regional inspectors in reviewing a facility's implementation of the SPCC rule. The document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is also available to both the owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public on the Agency's website at *www.epa.gov/oilspill*. This guidance is a living document and will be revised, as necessary, to reflect any relevant future regulatory amendments in a timely manner. Accordingly, EPA welcomes comments from the regulated community and the public on the guidance document within 60 days of this NPRM, as described on the website.

The guidance document is a separate effort from this rulemaking. EPA does not plan to address comments on the guidance document when taking final action on this rule. Comments on the guidance document should not be submitted to the docket for this rulemaking. Refer to the website *www.epa.gov/oilspill* for the text of the guidance document and for instructions for providing suggestions on the guidance document. The EPA urges readers to review the guidance document for assistance in understanding the SPCC rule and today's proposal. Pursuant to today's proposal, EPA anticipates issuing an updated guidance document in 2006 to reflect finalization of this rulemaking such that inspectors and the regulated community have accurate and timely information on SPCC requirements.

Although the scope of today's proposal was originally intended to address only certain targeted areas of the SPCC requirements, the Agency is including several additional proposed modifications to address a number of issues and concerns raised by the regulated community. As highlighted in the EPA Regulatory Agenda and the 2005 OMB report on "Regulatory Reform of the U.S. Manufacturing Sector," there are other issues under consideration for possible future rulemaking action. The modifications proposed today do not preclude a future rulemaking on other issues not addressed in today's proposal. Rather, EPA is working to identify additional areas where regulatory reform may be appropriate. For these additional areas, the Agency expects to issue a proposed rule in 2007. Additionally, EPA in conjunction with DOE will be conducting an energy impact analysis of the SPCC requirements, and will consider the results of this analysis to inform the Agency's deliberations over any future rulemaking. EPA is interested in whether there are other aspects of the SPCC regulatory requirements, beyond those that are addressed in today's proposal, that should be the focus of future rulemaking. The Agency also requests that commenters who provide suggestions regarding future rulemaking clearly differentiate them from comments submitted on today's proposal (e.g., label Suggestions for Future Rulemaking and Comments on Current Proposal). The Agency will not address these suggestions when taking final action on this proposed rule, but will take them into consideration in future rulemaking decisions.

V. Today's Action

A. Qualified Facilities

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to provide an option to allow the owner or operator of a facility that meets the qualifying criteria (hereafter referred to as a "qualified facility") to self-certify the facility's SPCC Plan in lieu of certification by a licensed professional engineer (PE). EPA proposes to amend § 112.3 to describe the SPCC eligibility criteria that a regulated facility must meet in order to be considered a qualified facility. A qualified facility would be a facility subject to the SPCC rule that (1) has an aggregate facility oil storage capacity of 10,000 gallons or less; and (2) had no discharges as described in § 112.1(b) during the ten years prior to self-certification or since becoming subject to the SPCC requirements if less than ten years. Facilities that have been subject to SPCC for less than ten years, including new facilities, would need to demonstrate no discharges as described in § 112.1(b) only for the period of time they have been subject to the SPCC rule. Self-certified Plans would not be allowed to include "environmentally equivalent" alternatives to required Plan elements as provided in § 112.7(a)(2) or to claim impracticability with respect to any secondary containment requirements as provided in § 112.7(d). The two exceptions for which the owner and operator would still be allowed to use environmentally equivalent measures are with respect to security and integrity testing. Facilities with complicated operations and lower capacities may find that the current rule offers a more cost-effective method of achieving compliance than the proposed option. Therefore, a qualified facility could choose to follow the current SPCC requirements (including the PE certification) to take advantage of the flexibility offered by PE-certified impracticality determinations and environmentally equivalent measures.

1. Eligibility Criteria

a. Total Facility Oil Storage Capacity Threshold

EPA proposes to limit qualified facilities to a total maximum storage capacity of 10,000 gallons of oil. EPA considered many different factors before selecting this storage capacity. First, EPA has established 10,000 gallons as a threshold in several other rules relating to oil discharges. This threshold quantity is used in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan or NCP) to classify oil discharges based on the location and size of the discharge (see 40 CFR 300.5). The NCP refers to discharges greater than 10,000 gallons to inland waters as "major," while other thresholds are used to classify "minor" and "medium" discharges. The classes are provided as guidance to the On-Scene Coordinator (OSC), and serve as criteria for the actions delineated in the NCP. It is important to note, however, that the NCP quantitative thresholds are only provided to help the OSC determine response action, and do not imply associated degrees of hazard to the public health or welfare, or environmental damage. The NCP size classes nevertheless define an oil discharge to inland waters exceeding 10,000 gallons as a major discharge.

A discharge of 10,000 gallons or more is also one of the factors used in identifying facilities that must prepare and submit a Facility Response Plan (FRP) under § 112.20(f)(1). The FRP rule applies to facilities that could reasonably be expected to cause substantial harm to the environment due to a discharge to waters of the U.S. and adjoining shorelines.

Second, state regulations also provide support for the use of a 10,000-gallon threshold. A number of states differentiate regulatory requirements based on a facility's total storage capacity, with some states specifying a 10,000-gallon threshold. For example, Maryland requires that all commercial facilities storing more than 10,000 gallons of oil obtain an oil operations permit; Minnesota requires facilities storing between 10,000 and 1,000,000 gallons of oil to prepare a prevention and response plan; and Oregon places special requirements on marine facilities storing more than 10,000 gallons of oil. The 10,000-gallon threshold is also frequently used in setting requirements for certain storage tanks. For example, New York requires a "secondary containment system" around all aboveground storage tanks (ASTs) with a storage capacity greater than or equal to 10,000 gallons, and Wisconsin caps the size of ASTs that can be used for fueling vehicles at 10,000 gallons.

Finally, 10,000 gallons is a common storage tank size, and EPA believes that setting a maximum capacity at 10,000 gallons would address the concerns that smaller facilities have raised. In fact, the Small Business Administration Office of Advocacy suggested that a 10,000-gallon threshold is a reasonable volume to address the concerns of facilities with relatively smaller volumes of oil. The Agency seeks comments on whether this

threshold appropriately addresses the concerns of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. If commenters suggest alternative volume thresholds, it will be important for the comments to also include a justification for such alternative volume thresholds in order for the Agency to adequately consider the comments submitted. This data would be useful in final rule deliberations.

While EPA recognizes that a discharge of less than 10,000 gallons can be harmful, regardless of how the NCP defines "major discharge," EPA believes that it is reasonable to allow facilities with a capacity of no more than 10,000 gallons to prepare and implement a Plan that complies with the SPCC rule requirements and provides adequate protection against discharges without the involvement of a PE. These facilities generally have less complex operations and petroleum system configurations, and smaller oil storage capacities than other types of facilities subject to the SPCC requirements. Thus, the Agency believes that a responsible owner or operator at these facilities should be able to comply with the SPCC rule provisions without review and certification of the SPCC Plan by a PE, and that simplifying the rule will result in greater environmental protection by improving compliance.

b. Reportable Discharge History

EPA proposes that a qualified facility subject to the SPCC requirements must have no reportable oil discharges as described in § 112.1(b) during the ten years prior to self-certification or since becoming subject to the SPCC requirements, whichever is less. Facilities that have been subject to SPCC for less than ten years, including new facilities, would need to demonstrate no discharges as described in § 112.1(b) only for the period they have been subject to SPCC. This criterion is based on a proposal regarding oil-filled electrical equipment submitted by the Utility Solid Waste Activities Group (USWAG), as described in the documents supplementing the September 20, 2004 NODA at 69 FR 56184. In its proposal, USWAG recognized that facilities that pose a risk, in terms of oil discharges in quantities that are harmful (reportable under 40 CFR part 110), should not be granted relief. USWAG specifically proposed a ten-year spill history as a potential criterion to be eligible for relief. In general, NODA commenters expressed strong support for the USWAG proposal. As in the case of oil-filled operational equipment, the Agency believes that a clean spill history is a suitable criterion for demonstrating eligibility for Plan self-certification, while still effectively maintaining good prevention practices.

Part 110 defines a discharge of oil in such quantities that may be harmful to the public health, welfare, or the environment of the United States as a discharge of oil that violates applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or on adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines (40 CFR 110.3). The Agency refers to such discharges in § 112.1(b) of the rule. Any person in charge of a facility must report any such discharge of oil from the facility to the National Response Center (NRC) at 1–800–424–8802 immediately. While EPA recognizes that past release history does not necessarily translate into a predictor of future performance, the Agency believes that discharge history is a reasonable indicator of a facility owner or operator's ability to develop an SPCC Plan for the facility without the involvement of a PE. Hence, EPA proposes to use a facility's discharge history as a qualification criterion indicating the facility's ability to effectively develop and implement its SPCC Plan. By establishing a good oil spill prevention history, a facility qualifies for the self-certification option offered in this proposal.

The Agency requests comments on the appropriateness of a reportable discharge history criterion for determining the qualification of a facility for the self-certification option, whether it is necessary, and whether there are other indicators of a facility's effective implementation of the oil pollution prevention requirements under part 112 that should be considered. In addition, the Agency also specifically requests comments on the proposed ten-year period for which facilities would be required to have had no reportable discharges in order to meet this qualification. The Agency requests that any alternative criterion or time period suggested include an appropriate rationale and supporting data to assist the Agency in considering them for final action. The Agency is also aware that events such as natural disasters, acts of war or terrorism, sabotage, or other calamities, beyond the control or planning ability of the facility owner or operator, may cause a reportable oil discharge. The Agency therefore requests comments on how to account for such occurrences in the discharge history criterion.

2. Proposed Requirements for Qualified Facilities

a. Self-Certification and Plan Amendments

Some in the regulated community, particularly facilities with relatively smaller volumes of oil, identified the cost of the PE certification of SPCC Plans as one of its major concerns. This view was echoed in the comments submitted in response to the NODAs. The Agency has reviewed the requirements in light of the information provided and today proposes to allow for self-certification of SPCC Plans by owners and operators of qualified facilities. With this proposal, the Agency is responding to those concerns. The elements of the proposed self-certification requirement are very similar in scope to those of the PE certification: owners and operators that choose to self-certify their Plans must certify that they are familiar with the requirements of the SPCC rule; they have visited and examined the facility; the Plan has been prepared in accordance with accepted and sound industry practices and standards; procedures for required inspections and testing have been established; the Plan is being fully implemented; the facility meets the qualification criteria set forth under § 112.3(g)(1); the Plan does not include any environmental equivalence measures as described in § 112.7(a)(2); the Plan contains no determinations of impracticability under § 112.7(d); and the Plan and the individual(s) responsible for implementing the Plan have the full approval of management and the facility has committed the necessary resources to fully implement the Plan. The self-certification provision would be optional. Under today's proposal, an owner or operator of a qualified facility could choose to comply with the current requirements under part 112 if that is more suitable to his/her particular situation.

Qualified facilities that choose to self-certify would not automatically lose eligibility for a self-certified Plan and be required to obtain PE certification in the event of a discharge as described in § 112.1(b). EPA has the authority to require SPCC Plan amendments under § 112.4. Section 112.4(a) requires a facility that has discharged more than 1,000 gallons of oil in a single discharge as described in 40 CFR part 110, or that has discharged more than 42 gallons of oil in each of two discharges as described in 40 CFR part 110 in any 12-month period, to submit information to

the EPA Regional Administrator (RA) within 60 days of the date of the discharge. As per § 112.4(d), the RA may require the facility to amend its SPCC Plan in order to prevent and contain discharges, and the RA could require a facility to obtain PE-certification of its SPCC Plan. In addition, a discharge of oil "in such quantities as may be harmful", as defined in 40 CFR 110.3 that does not trigger the reporting requirements of § 112.4(a) must still be reported to the National Response Center. Criminal action can be taken against an owner or operator of a facility if discharges are not reported. EPA also receives copies of the NRC reports and has the authority under § 112.1(f) to require a facility to prepare and implement an SPCC Plan or any applicable part of a Plan. The time frame for this review and amendment process is described in § 112.4. The facility may choose to appeal the RA's decision to require a Plan amendment under § 112.4. The RA also has authority to require preparation and implementation of a Plan or applicable part of a Plan under § 112.1(f).

The Agency requests comment on the appropriateness of using the existing authorities under the SPCC regulations rather than establishing a separate process that would automatically require a facility to obtain PE review and certification of the facility's SPCC Plan in the event of a reportable discharge. The Agency requests that any alternative approaches presented include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

Under § 112.5 of the SPCC rule, an owner or operator must review and amend the SPCC Plan following any change in facility design, construction, operation or maintenance that materially affects its potential for a discharge as described in § 112.1(b). A PE must then certify any and all of these technical amendments to the SPCC Plan, as currently required under § 112.3(d). Under today's proposal, technical amendments to SPCC Plans of qualified facilities would not be required to be certified by a PE. Instead, an owner or operator would be allowed to self-certify technical amendments to the Plan under the proposed § 112.3(g)(2) provision, and facilities with PE-certified Plans which qualify for self-certification would be allowed to choose to self-certify future technical amendments rather than hire a professional engineer to certify the technical amendment. Facilities would be required to document the self-certification of a technical amendment in the SPCC Plan in accordance with § 112.3(g)(2).

b. Environmental Equivalence and Impracticability Determinations

Under § 112.7, facility owners and operators have the flexibility to deviate from specific rule provisions if the Plan states the reason for nonconformance and if equivalent environmental protection is provided by some other means of spill prevention, control or countermeasure. These "environmentally equivalent" measures must be described in the SPCC Plan, including how the equivalent environmental protection will be achieved based on good engineering practice. Allowance for "environmentally equivalent" deviations is provided in § 112.7(a)(2) and are only available for requirements not related to secondary containment, such as fencing and other security measures, preventing catastrophic tank failure due to brittle fracture, integrity testing, and liquid level alarms. As part of the SPCC Plan, any environmentally equivalent measures are also required to be certified by a PE. The PE's SPCC Plan certification requirements include consideration of industry standards for the Plan, which would include equivalent environmental protection measures.

The SPCC rule also provides flexibility for owners/operators who determine that the general secondary containment requirements in § 112.7(c) or any of the applicable additional requirements for secondary containment in subparts B and C are impracticable. Where impracticability is demonstrated, the SPCC rule allows facility owners and operators the flexibility to instead develop a contingency plan and comply with additional requirements as described in § 112.7(d). The SPCC Plan must explain why containment measures are not practicable, provide an oil spill contingency plan that follows the provisions of 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans), and provide a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful as described in 40 CFR part 110. A PE must certify any impracticability determinations, as well as the contingency plan and additional measures implemented in lieu of containment. Because of the expertise that a PE has in evaluating whether particular measures provide equivalent environmental protection and in knowing how to effectively implement such measures, EPA believes that the flexibility in these performance-based provisions is best suited to SPCC Plans that are reviewed and certified by a PE.

Today's proposed amendment would allow qualified facilities to opt out of the PE certification, but would not allow facilities that take advantage of this option to include environmentally equivalent measures in their SPCC Plans pursuant to § 112.7(a)(2). EPA is proposing this limitation on qualified facilities because EPA believes that in general, without the advantage of the expertise and knowledge that a PE brings to the development of an SPCC Plan, deviations based on environmental equivalence may not be adequate. However, as discussed below, EPA believes that allowing certain deviations may be appropriate for at least some owners of qualified facilities, without employing PE expertise. Therefore, EPA is proposing to allow certain deviations with respect to facility security and integrity testing of bulk storage containers.

EPA is also proposing that qualified facilities be precluded from claiming impracticability and using contingency planning in lieu of secondary containment. EPA believes that a PE's knowledge and expertise is needed for appropriate contingency planning and other measures that must be put in place in the absence of secondary containment. Thus, requiring qualified facilities that opt out of PE certification to adhere to the current set of requirements would maintain the same standard of environmental protection provided in the existing rule.

Today's proposal would not preclude a qualified facility from choosing environmentally equivalent measures or from demonstrating impracticability with respect to secondary containment requirements, although the qualified facility would need to comply with the current SPCC requirements (including the PE certification) in order to utilize the flexibility offered by PE-developed impracticability determinations and environmentally equivalent measures. In some circumstances, it may be more cost effective for a PE to prepare an SPCC Plan which utilizes environmentally equivalent measures or contingency planning, than for the owner/operator to comply with the SPCC provisions as outlined in today's proposal. Also, facilities with unconventional operations which qualify for this alternative may find that the current rule requirement for PE certification offers a more cost-effective method of achieving compliance because it provides additional flexibility through performance-based provisions. The Agency requests comments on the

appropriateness of restricting the use of impracticability determinations and environmentally equivalent measures by those qualified facilities that choose the option of self-certification in order to ensure an adequate level of environmental protection. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. SPCC Plan Exceptions

Today's proposal for self-certification of qualified facilities would restrict the use of alternative environmentally equivalent measures for qualified facilities that elect to develop their SPCC Plan without the services of a PE. The Agency's concern is that these facilities would no longer have a trained professional, with knowledge to make site-specific equivalence determinations, reviewing and certifying their Plan. However, EPA recognizes that some of the prescriptive provisions in the current regulatory requirements may prove difficult for some qualified facilities to meet.

While the Agency still believes that generally allowing use of environmentally equivalent measures in self-certified Plans is not appropriate, some degree of flexibility in two areas may be appropriate for qualified facilities. The Agency believes that it can allow qualified facilities to comply with a streamlined set of basic security measures and integrity testing requirements. The flexibility in these proposed exceptions would be analogous to the flexibility provided under § 112.7(a)(2), which allows for deviations from § 112.7(g) (security) and § 112.8(c)(6) (integrity testing) that would not be available for these facilities under today's proposal.

EPA recognizes that there is no one single approach to ensure proper facility security. For example, the security requirements of fencing and lighting may not always be appropriate for sites such as a national, state or local park subject to SPCC, where the site layout may be too extensive to fence, and where perhaps the lighting of a solitary field tank would invite, rather than deter, would-be intruders. Qualified facilities, in lieu of the requirements under § 112.7(g) of this part, would be allowed to prepare a security plan that describes how the facility controls access to the oil handling, processing and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; prevents acts of vandalism; and assists in the discovery of oil discharges. (Note that the security requirements in § 112.7(g) do not apply to production facilities.)

Today's proposal would allow a qualified facility to develop a general security plan that provides equivalent environmental protection to the requirements in § 112.7(g). The Agency recognizes that these security provisions can be approached differently by the variety of facilities that would qualify for self-certification under today's proposal. It should be noted that this is an option and a qualified facility in compliance with the current requirements under § 112.7(g) would not be required to develop a security plan under the proposed § 112.3(g).

The security plan would be required to address how the owner or operator will:

- Secure all bulk storage containers, piping and oil-filled equipment from unauthorized access or acts of vandalism which could result in a discharge of oil;
- Secure appurtenances (valves and/or drains) in the closed position to prevent the flow of the contents of the container which could result in a discharge of oil;
- Secure pump controls in the "off" position when not in use and locate facility pump controls to prevent unauthorized access;
- Secure all loading or unloading transfer connections for facility piping; and
- Address whether security lighting is appropriate to both ensuring the discovery of oil discharges, and deter vandalism.

This security plan would be required to be documented in the qualified facility's SPCC Plan, and would include a discussion of how the security plan will be implemented and the required training/inspections/maintenance for security related equipment and activities. The Agency recognizes the unique nature of many of the facilities that would qualify for Plan self-certification, and as such, some flexibility is appropriate so these facilities can achieve compliance with the security provisions of the current SPCC rule. The application of the SPCC security measures is often determined by the facility's geographical/spatial factors and there is no "one-size-fits-all" answer to this serious compliance requirement. For example, facilities such as farms or national parks may have unique characteristics that make compliance with the current security measures, such as potentially fencing the entire facility footprint, inappropriate.

The Agency is also proposing to provide flexibility in the area of integrity testing for qualified facilities. The Agency continues to believe that owners and operators should rely on the appropriate use of industry standards for the integrity testing requirements. As EPA stated in its May 2004 letter to the Petroleum Marketers Association of America (available at *http://www.epa.gov/oilspill/pdfs/PMAA_letter.pdf*), the Agency recognizes that in certain site-specific circumstances, visual inspection may be appropriate and sufficient for compliance with the integrity testing requirement. The Agency expects that the selection of particular testing methods to comply with the integrity testing requirements in the current rule and today's proposal would be based on industry inspection standards such as the Steel Tank Institute (STI) SP–001, American Petroleum Institute (API) Standard 653 and API Recommended Practice 12–R1. These industry standards address the qualifications of the tank inspector and the scope/frequency of the testing/inspections. Thus, in effect, the Agency is proposing to allow owners and operators of qualified facilities to consult and rely on industry standards or qualified container inspectors/testing personnel to determine the appropriate qualifications for tank inspectors/testing personnel and the type/frequency of integrity testing required for a particular container size and configuration. The Agency is proposing to allow qualified facilities to make this determination in accordance with industry standards without the need to develop a PE-approved environmentally equivalent deviation, as is currently required under § 112.7(a)(2). The Agency believes that allowing this flexibility for qualified facilities would increase compliance and thus environmental protection.

The U.S. Small Business Administration (SBA) Office of Advocacy has suggested an additional alternative approach for allowing flexibility for integrity testing of small shop-built tanks that is based on the current SP001 standard. The current SP001 standard allows periodic visual inspections for shop-fabricated aboveground storage tanks with a total capacity of 5,000 gallons, and for which there is spill control and a continuous release detection method (*i.e.*, Category 1 tanks). SBA Office of Advocacy has suggested that EPA allow periodic visual inspections for shop-fabricated aboveground storage tanks at qualified facilities, in accordance with this SP001 standard, but broaden the applicability

to include shop-fabricated aboveground storage tanks that have an oil capacity of between 5,000 and 10,000 gallons. In all other respects, the SP001 standard would apply. In the SBA's view, due to the presence of spill control and a continuous release detection method (in accordance with the SP001 standard), there appears to be little likelihood for a discharge into navigable waters. The SBA Office of Advocacy also believes this additional option would make the visual inspection option available to all, and not a subset of, qualified facilities and it would benefit those qualified facilities having one tank above 5,000 gallons.

EPA is not proposing the SBA additional approach for several reasons. First the SBA approach would deviate from the industry standards noted above. Second, the Agency is unaware of a technical basis to justify this deviation. EPA must justify divergence from accepted industry standards under the National Technology Transfer and Advancement Act (NTTAA) (see section VII (I) for a description of NTTAA). Third, industry standards are periodically updated and revised to account for changes in technology and to remain consistent with good engineering practice while this approach would need to be revised through rulemaking. Finally, EPA believes that by allowing for a deviation from existing industry standards, compliance would become more complex as facilities try to understand the circumstances under which this additional approach can be employed. The Agency welcomes comment on this additional approach as well as on the proposed approach for integrity testing for qualified facilities. In addition, once the modifications proposed today are promulgated, the Agency is willing to continue to work with industry tank inspection standard setting organizations to update applicable industry standards. Commenters who have information on the scope and criteria associated with the industry visual inspection standards should provide it to the standards setting organizations and their national experts for consideration.

At this time, EPA is aware that a number of industry standards are changing. Nevertheless, the Agency believes that it may be appropriate to allow the flexibility of alternative integrity testing methods for these qualified facilities to be consistent with relevant industry standards. For example, visual inspections may be appropriate for the lower volume shop-built containers in certain configurations that are likely to be present at most of these qualified facilities. In the absence of an environmental equivalency provision that would allow an alternative integrity testing method for qualified facilities, the owner or operator would be required to perform visual inspections plus non-destructive testing on all classes of containers, regardless of size and configuration. Qualified facilities would have to bear the cost and burden of conducting non-destructive testing that may not be necessary under industry standards. The Agency continues to strongly recommend that facilities, qualified for self-certification or otherwise, utilize industry standards that are appropriate to their particular tank configurations in developing and conducting tank inspection and testing programs and when determining inspector/testing personnel qualifications.

The Agency requests comments on whether the proposed requirements for security and integrity testing for qualified facilities provide appropriate flexibility, while maintaining environmental protection. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. Alternative Options Considered

EPA considered other options for this proposal. These options included (1) providing an indefinite extension of deadlines or a suspension of all SPCC requirements; and (2) a multi-tiered structure of requirements based on a facility's total regulated storage based on the SBA proposal described in the Certain Facilities NODA published last year. The Agency also considered requiring qualified facilities to make a one-time notification to EPA they have been in operation or subject to the SPCC requirements for a period less than ten years from the time of Plan certification, and therefore could not show a ten-year clean spill history as a qualifier. All of these options would apply to a defined set of "qualified facilities".

a. Extension/Suspension Options

Two additional options were considered: An indefinite compliance date extension and a suspension of all requirements. Both options would apply to a defined universe of "qualified" SPCC-regulated facilities. An indefinite extension would provide an undetermined future date for compliance with the rule. As in past extensions, all facilities that should have had a Plan as of August 16, 2002 would be required to be in compliance with the pre-2002 SPCC requirements during the interim period, including those that could potentially take advantage of today's qualified facilities proposal. A suspension of requirements for qualified facilities would provide relief for the affected universe until EPA takes further action.

Both of these options would allow EPA more time to decide how to regulate qualified facilities without delaying compliance for the entire universe of SPCC-regulated facilities. In contrast, the proposed option would set forth explicit requirements for qualified facilities that reduce compliance costs within the current compliance date schedule. Because these options would only postpone the rule's requirements for qualified facilities and because the Agency believes that the modifications proposed today address the major concerns raised by facilities that store lower volumes of oil, EPA believes it appropriate to go forward with today's proposal.

b. Multi-Tiered Structure

A multi-tiered structure option was developed in response to comments EPA received following publication of the NODA for facilities that handle oil below a certain threshold amount (69 FR 56182, September 20, 2004) and is based on a previous analysis prepared for the SBA Office of Advocacy (Jack Faucett Associates, 2004) (hereafter "SBA proposal"). This revised regulatory structure would not only relax requirements for PE certification, but also requirements for preparing an SPCC Plan itself, although under this approach, the facility would still be responsible for complying with the substantive requirements of the SPCC rule. It includes a tiered system based on the total storage capacity of a facility, as follows:

- Tier I would include facilities that handle between 1,321 and 5,000 gallons of oil (total storage capacity). These facilities would not need a written SPCC Plan (and therefore no PE certification would be needed), but would have to adhere to all other SPCC requirements.
- Tier II would include facilities handling between 5,001 and 10,000 gallons of oil (total storage capacity). These facilities would be required to have a written SPCC Plan, but the Plan would not need to be certified by a PE, and a PE site visit would not be required. Standardized plans could be adopted by a facility conforming to standard design and operating procedures, without requiring PE certification.
- Tier III would include the remaining SPCC-regulated facilities (total storage capacity greater than

10,000 gallons). These facilities would be required to have a written SPCC Plan certified by a PE, as currently required by the 2002 revised SPCC rule.

SBA also suggested that EPA promulgate an interim final rule that excludes small facilities with storage of less than 10,000 gallons (the first two tiers of their three-tier approach) from SPCC Plan requirements, pending completion of the full notice and comment rulemaking for small facilities to develop the aforementioned tiered requirements. In order to provide environmental protection in the interim period, SBA recommended that EPA require: (1) Regular visual inspections of containers, (2) replacement or retirement of leaking tanks, and (3) compliance with the part 109 contingency plan requirements or their equivalent. In this manner (according to SBA), the EPA could address the reality of the extremely low SPCC compliance rate among small facilities, and would work toward creating a rule that small facilities would be likely to comply with. SBA stated that such a move would enhance, rather than detract from, environmental protection.

This approach would provide different levels of regulatory relief based on total oil storage capacity alone, basing degree of risk on the surrogate measure facility size. Many commenters on the NODA supported this approach, which would reduce compliance costs by eliminating the PE certification requirement for facilities under 10,000 gallons. However, EPA believes that such an approach poses significant implementation problems both for the regulated community and the regulators. In particular, the Agency believes that without the owner/operator developing a Plan or documentation on how the facility will comply or expects to comply with the SPCC requirements, it will be challenging for the facility to both meet the substantive requirements (for example, spill notification, response and preparedness planning, equipment maintenance, inspection and training, secondary containment), as well as provide documentation to the regulators that the facility is in compliance. Additionally, EPA inspectors conducting site visits would have no written Plan or documentation to assess the facility's effectiveness in implementing its spill prevention strategy.

Although EPA received general comments supporting this option on a conceptual level, neither the information presented in the NODA nor the comments addressed the practical application of this alternative. The Agency welcomes comments on this approach, as well as on the proposed approach, the practical application of the proposal and the rationale for its adoption.

c. One-Time Notification

The Agency recognizes that some facilities otherwise qualifying for owner/operator self-certification will have been in existence for fewer than ten years and will consequently be unable to demonstrate ten years without a discharge as described in § 112.1(b). Some of these facilities will have come into existence after August 16, 2002, and will not have been subject to SPCC regulation until August 18, 2006; some will be new facilities beginning operation after that date. EPA agrees with the USWAG comments that a compliant discharge history of ten years or more provides a higher degree of assurance of continuing compliance than a history of ten years or less. This is particularly true when comparing ten-year compliant facilities to otherwise qualified facilities which began operations after August 16, 2002, and whose owners or operators, to date, have not been subject to the requirements of the SPCC program, as well as start-up facilities without any operating history. EPA considered whether owners or operators of newer facilities that do not have ten years of compliance and operation without a discharge should be required to provide a one-time notification to the Agency. This notification would be submitted to the Administrator within 30 days of self-certifying a facility's SPCC Plan and would include the following information: (1) Name of the facility owner/operator; (2) mailing address of the facility owner/operator; (3) type of business conducted at the facility that is subject to the requirements of this part; (4) above-ground capacity of the facility; (5) location of the facility by street address or, if there is no street address, by longitude and latitude; and (6) year the facility began operations. These notices could be provided by either regular or electronic mail. The Agency would have the opportunity to provide some basic SPCC outreach and educational support to these owners and operators who, while otherwise demonstrating the prerequisites for self-certification, are unable to demonstrate ten years without a discharge as described in § 112.1(b). This one-time notification requirement, if adopted, would modify today's proposed qualified facilities option by increasing its burden for some facilities. EPA decided not to pursue this option because it does not differ substantively from the proposed action and the additional burden of a notification requirement was not considered necessary.

The Agency welcomes comments on these or other alternatives that could serve to reduce the burden to smaller oil-handling facilities in particular, while at the same time maintaining appropriate levels of environmental protection by preventing discharges of oil. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

B. Qualified Oil-Filled Operational Equipment

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to provide a definition of oil-filled operational equipment and an optional alternative to the general secondary containment requirements for oil-filled operational equipment that meets the qualifying criterion (hereafter referred to as "qualified oil-filled operational equipment"). The proposal would allow owners and operators of facilities with qualified oil-filled operational equipment to have the alternative of preparing an oil spill contingency plan and a written commitment of manpower, equipment and materials to expeditiously control and remove any oil discharged that may be harmful, without having to make an individual impracticability determination as required in § 112.7(d). The owner or operator would also be required to establish and document an inspection or monitoring program for this qualified oil-filled operational equipment to detect equipment failure and/or a discharge, in lieu of providing secondary containment.

EPA proposes to add § 112.7(k) to define the SPCC eligibility criterion that qualified oil-filled operational equipment must meet in order to be considered qualified oil-filled operational equipment. Eligibility of a facility with oil-filled operational equipment would be determined by considering the reportable discharge history from any oil-filled operational equipment. The qualified oil-filled operational equipment criterion specifically requires that the facility had no discharges as described in § 112.1(b) from any oil-filled operational equipment in the ten years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than ten years.

This proposed action would provide an alternative means of SPCC compliance for this equipment;

therefore, an owner/operator could choose to follow the current SPCC requirements to provide secondary containment for each piece of qualified oil-filled operational equipment in accordance with § 112.7(c) if desired. For example, oil-filled operational equipment at electrical substations is often surrounded by a gravel bed, which serves as a passive fire quench system and support for the facility grounding network and can provide a restriction to movement of any oil that may be released. Gravel beds, if designed to prevent a discharge as described in § 112.1(b) (*i.e.*, drainage systems that do not serve as a conduit to surface waters) may meet the general secondary containment requirements of § 112.7(c). EPA further notes that facilities with oil-filled operational equipment located within buildings with limited drainage, which prevents a discharge as described in § 112.1(b), may already meet the requirements for general secondary containment of § 112.7(c). If so, a contingency plan for this equipment is not necessary. Ultimately, this would be a decision by the owner and/or operator.

1. Proposed Oil-Filled Operational Equipment Definition

In July 2002, EPA clarified that oil-filled equipment (*i.e.*, oil-filled electrical, operating, and manufacturing equipment) are not bulk storage containers and therefore are not subject to the bulk storage container provisions in § 112.8(c), including specifically sized secondary containment for bulk storage containers and integrity testing. However, as EPA stated in the preamble to the July 2002 amendments, oil-filled equipment is subject to general secondary containment requirements described in § 112.7(c), which can be provided by various means including drainage systems, spill diversion ponds, etc. EPA believes these measures provide for safety and also meet the needs of section 311(j)(1)(C) of the CWA.

Though there are times when general secondary containment is practicable for oil-filled operational equipment, the Agency agreed to continue to evaluate whether the general secondary containment requirements found in § 112.7(c) should be modified for small electrical and other types of equipment which use oil for operating purposes. On September 20, 2004, EPA published a NODA which made available and solicited comments on submissions to EPA suggesting that alternate regulatory requirements for facilities with oil-filled and process equipment would be appropriate (69 FR 56184). EPA has reviewed the public comments and data submitted in response to this NODA and presents today's proposal in accordance with our intention to consider alternative containment options for electrical and operational equipment.

Today's proposal defines oil-filled operational equipment as "equipment which includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device. Oil-filled operational equipment is not considered a bulk storage container, and does not include oil-filled manufacturing equipment (flow-through process)." Examples of oil-filled operational equipment include, but are not limited to, hydraulic systems, lubricating systems (*e.g.*, those for pumps, compressors and other rotating equipment, including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil to enable the operation of the devices.

Oil-filled operational equipment differs from bulk storage containers in several ways. Oil-filled operational equipment typically has minimal oil throughput because such equipment does not require frequent transfers of oil. Further, the oil contained in oil-filled operational equipment, such as cooling or lubricating oil, is intrinsic to the operation of the device and facilitates the function of the equipment. A leak of oil from some oil-filled operational equipment can be detected by low-level alarms and remote monitoring of the performance of the equipment. For example, the loss of oil from electrical equipment will result in the equipment ceasing to operate, which will result in a power outage. Utilities have strong economic incentives to prevent power outages, to discover and respond to an outage, and to correct the conditions that produced the outage as quickly as possible. In addition, oil-filled operational equipment is often subject to routine maintenance and inspections to ensure proper operation. Finally, oil-filled operational equipment is designed, constructed, and maintained according to specifications for its particular operation and construction materials are corrosion-resistant.

However, the oil storage capacity of oil-filled operational equipment still counts towards the total oil storage capacity of the facility. The SPCC regulation defines storage capacity of a container as the shell capacity of the container. This definition applies to all oil storage containers including bulk storage containers and all oil-filled equipment. In order to determine the storage capacity of an individual piece of oil-filled operational equipment, the owner/operator would consider the total storage capacity of the piece of equipment (*i.e.*, add together the capacity of multiple compartments or reservoirs of oil storage). The owner or operator must include the storage capacity of oil-filled operational equipment in order to determine applicability of the SPCC regulation to the facility.

As proposed today, oil-filled manufacturing equipment (which involves a flow-through process) would not qualify for this alternative. Under the current rule, oil-filled manufacturing equipment (which is a subset of oil-filled equipment) is not defined as a bulk storage container. Oil-filled manufacturing equipment includes, for example, process vessels, conveyances such as piping associated with a process, and equipment used in the alteration, processing or refining of crude oil and other non-petroleum oils, including animal fats and vegetable oils Oil-filled manufacturing equipment is inherently more complicated than oil-filled operational equipment because it typically involves a flow-through process and is commonly interconnected through piping. For example, oil-filled manufacturing equipment receives a continuous source of oil, in contrast to the static capacity of other, non-flow-through oil-filled equipment.

Today's proposal would not change any requirements for oil-filled manufacturing equipment. Oil-filled manufacturing equipment remains subject to the general SPCC requirements under § 112.7, including a demonstration of impracticability under § 112.7(d) if the SPCC Plan does not provide for secondary containment as required by § 112.7(c). The containers associated with storage of raw products, or the finished oil products are bulk storage containers and are not considered oil-filled manufacturing equipment or oil-filled operational equipment. Additionally, piping systems not associated with the alteration, processing or refining of crude oil and other non-petroleum oils, including animal fats and vegetable oils are not considered oil-filled manufacturing equipment. EPA expects the owner/operator to delineate bulk storage containers from the oil-filled manufacturing equipment in the facility SPCC Plan (*e.g.*, on the facility diagram and in discussion of compliance with inspection requirements of the rule). Additionally, while oil-filled manufacturing equipment is not a bulk

storage container and is therefore not subject to the frequent visual inspection requirement for bulk storage containers under § 112.8(c)(6), EPA believes that it is good engineering practice to have some form of visual inspection or monitoring for oil-filled manufacturing equipment in order to prevent discharges as described in § 112.1(b). Furthermore, it is a challenge to comply with several of the SPCC provisions (for example, requirements for security under § 112.7(g) and for countermeasures for discharge discovery under § 112.7(a)(3)(iv)) without some form of inspection or monitoring program.

2. Eligibility Criteria—Reportable Discharge History

Under today's proposal, the alternative to secondary containment for qualified oil-filled operational equipment would not be available to facilities that have had a reportable discharge from any oil-filled operational equipment in the ten years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than ten years. This criterion is based on a proposal submitted by USWAG, as described in the documents supplementing the September 20, 2004 NODA at 69 FR 56184. In its proposal, USWAG recognized that facilities that pose a risk, in the form of discharges of oil in quantities that are harmful (reportable under 40 CFR part 110), should not be granted regulatory relief. In general, NODA commenters expressed strong support for the USWAG proposal.

40 CFR 110.3 defines a discharge of oil "in such quantities that may be harmful to the public health, welfare, or the environment of the United States as a discharge of oil that violates applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines. The Agency refers to such discharges in § 112.1(b) of the rule. Any person in charge of a facility must report any such discharge of oil from the facility to the National Response Center (NRC) at 1–800–424–8802 immediately. While EPA recognizes that past discharge history does not necessarily predict future performance, the Agency believes that discharge history can be used as a surrogate measure for a facility's ability to appropriately manage its oil. Hence, as with the "qualified facilities" proposal, EPA proposes to use this discharge history criterion to identify a facility's ability to effectively implement its SPCC Plan and prevent discharges in quantities that may be harmful. In establishing a good oil spill prevention history, a facility then qualifies for the oil spill contingency plan option offered in this proposal. Because the Agency is proposing to extend this relief to all oil-filled operational equipment, regardless of the oil storage capacity of the equipment, this criterion is critical in establishing an appropriate balance between environmental protection and burden relief by identifying those facilities which have demonstrated good spill prevention practices in the past.

The Agency requests comments on the appropriateness of a reportable discharge history criterion for determining the qualifications of a facility with oil-filled operational equipment for this alternative, whether it is necessary, and whether there are other measures of a facility's effective implementation of the oil pollution prevention requirements for oil-filled operational equipment under 40 CFR part 112 that should be considered. In addition, the Agency also specifically requests comments on the proposed ten-year period by which facilities can meet the discharge history criterion. Any alternative time periods suggested must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action. The Agency is also aware that events such as natural disasters, acts of war or terrorism, sabotage, or other calamities, beyond the control or planning ability of the facility owner or operator, may cause a reportable oil discharge. The Agency therefore requests comments on how to account for such occurrences in the discharge history criterion.

3. Proposed Requirements for Qualified Oil-Filled Operational Equipment in Lieu of Secondary Containment

a. Contingency Plans and a Written Commitment of Manpower, Equipment and Materials

The regulated community, particularly electrical facilities, identified secondary containment for oil-filled operational equipment as one of its major cost concerns. This sentiment was echoed in the comments submitted in response to the NODAs. With this proposal, the Agency is responding to those concerns by providing targeted relief without compromising on environmental protection. EPA believes that secondary containment may be often impracticable for oil-filled operational equipment due to inherent design and safety considerations, as well as site configuration. The oil associated with oil-filled operational equipment remains inside the equipment and transfers do not occur regularly; for oil-filled electrical equipment (e.g., transformers) transfers may occur infrequently, if at all. Operational equipment is designed, constructed, and maintained according to specifications for its particular operation and construction materials are corrosion-resistant. The complexity of the equipment and the nature of the use of this equipment may not lend itself to traditional bulk storage containment methods and thus flexibility is appropriate in this area and may improve compliance with oil pollution prevention measures. The proposed amendments to § 112.7 would give a facility with qualified oil-filled operational equipment the option of implementing an oil spill contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful in lieu of secondary containment for this equipment, without having to make an impracticability determination for each piece of equipment. It should be noted that the use of a contingency plan does not relieve the owner/operator of liability associated with an oil discharge to navigable waters or adjoining shorelines that violates the provisions of 40 CFR part 110.

In the preamble to the 2002 amendments, EPA discusses how any facility which makes a determination of impracticability and has submitted a Facility Response Plan (FRP) under § 112.20 is exempt from the contingency planning requirement because such a response plan is more comprehensive than a contingency plan following 40 CFR part 109. The Agency believes that this should also apply to a facility with qualified oil-filled operational equipment which would choose to utilize contingency planning in lieu of secondary containment in accordance with today's proposal. If such a facility has already developed an FRP to comply with § 112.20, then it would not need to also develop a contingency plan in accordance with 40 CFR part 109 for the qualified oil-filled operational equipment.

Since, by definition, oil-filled operational equipment is not considered a bulk storage container, the facility owner or operator is not required to comply with the bulk storage requirements under § 112.8(c) or to conduct both periodic integrity testing of the containers and periodic integrity

and leak testing of the valves and piping as described under § 112.7(d). However, EPA believes that inspections or monitoring are important when there is no secondary containment in place. Therefore, EPA is proposing to require facilities with qualified oil-filled operational equipment choosing the proposed alternative to secondary containment to develop and implement an inspection or monitoring program, as further discussed in section B.3.b. of this section of the preamble. Since this proposal for qualified oil-filled operational equipment would provide an optional method of SPCC compliance, a facility with such equipment could choose to follow the current SPCC requirements and provide general secondary containment in accordance with § 112.7(c) for this equipment if desired. Ultimately, this would be a decision of the owner and/or operator.

Facilities with qualified oil-filled operational equipment that choose the proposed alternative to secondary containment and that subsequently experience a discharge would not automatically lose eligibility for today's proposed relief. Owners/operators of facilities which discharge oil in quantities that may be harmful from oil-filled operational equipment should re-evaluate the effectiveness of the SPCC Plan (specifically the contingency plan, written commitment of resources and inspections/monitoring alternative discussed in today's proposal) and determine the need for secondary containment measures in lieu of contingency planning. Additionally, the Regional Administrator (RA) may determine that a facility is no longer eligible to have a contingency plan in lieu of secondary containment without making an impracticability determination, and such facilities may be required to amend their Plans to provide secondary containment for their oil-filled operational equipment. The RA has the authority to require SPCC Plan amendments under § 112.4. Section 112.4(a) requires a facility that has discharged more than 1,000 gallons of oil in a single discharge as described in 40 CFR part 110, or that discharged more than 42 gallons of oil in each of two discharges as described in 40 CFR part 110 in any 12-month period to submit information to the RA within 60 days of the date of the discharge. As per § 112.4(d), the RA has the authority to require the facility to amend its SPCC Plan in order to prevent and contain discharges; e.g., the RA may require a facility to install secondary containment for oil-filled operational equipment. In addition, a discharge of oil under 40 CFR part 110 that does not trigger the reporting requirements of § 112.4(a) must still be reported to the National Response Center. EPA also receives copies of the NRC reports and has the authority under § 112.1(f) to require a facility to prepare and implement an SPCC Plan or any applicable part of a Plan. Thus, the RA may require a Plan, partial Plan, or amendments to the Plan to achieve full compliance with the rule, as deemed appropriate to prevent further discharges in quantities that may be harmful.

b. Inspections or Monitoring Program

Facility owners or operators that wish to take advantage of this proposed alternative would be required to develop an appropriate set of procedures for inspections or a monitoring program for qualified oil-filled operational equipment. For facilities that rely on contingency planning in lieu of secondary containment for qualified oil-filled operational equipment, discharge discovery by inspection or monitoring is of paramount importance for effective and timely implementation of the contingency plan. An inspection or a monitoring program would ensure that facilities are alerted quickly of equipment failures and/or discharges. A written description of the inspection or monitoring program would be required to be included in the SPCC Plan. Under the existing requirement in § 112.7(e), the owner or operator would be required to keep a record of inspections and tests, signed by the appropriate supervisor or inspector, for a period of three years. Records of inspections and tests kept under usual and customary business practices suffice (e.g., records of inspections and tests required by this rule may be maintained in electronic or any other format which is readily accessible to the facility and to EPA personnel).

While oil-filled operational equipment is not a bulk storage container and is therefore not subject to the frequent visual inspection requirement for bulk storage containers under § 112.8(c)(6), EPA believes that it is good engineering practice to have some form of visual inspection or monitoring for oil-filled operational equipment in order to prevent discharges as described in § 112.1(b). Additionally, it is a challenge to comply with several of the SPCC provisions (for example, requirements for security under § 112.7(g) and for countermeasures for discharge discovery under § 112.7(a)(3)(iv)) without some form of inspection or monitoring program.

A facility owner/operator must be able to quickly detect a discharge from qualified oil-filled operational equipment in order for a contingency plan to be effective. Oil-filled operational equipment may be frequently monitored by employees tending to the operation, and in such a case, discharges of oil would be noticed quickly. For many types of operational equipment, particularly oil-filled electrical equipment, releases of oil rapidly decrease the functionality of the equipment—for oil-filled electrical equipment, loss of dielectric fluid leads to equipment failure and an interruption of electric power transmission. The need for equipment reliability assures prompt detection of releases of oil, enhancing the probability of a prompt response action. Therefore, in lieu of secondary containment, today's proposal for qualified oil-filled operational equipment includes the requirement for a facility owner/operator to establish and document an inspection or monitoring program, in addition to the preparation of a contingency plan, and a written commitment of manpower, equipment, and materials to expeditiously control and remove oil discharged.

The Agency requests comments on the appropriateness of this requirement as a qualification for this alternative, and whether there are other measures that a facility could take to ensure that a contingency plan is activated in a timely manner upon equipment failure or discharge. The Agency also requests comments on whether there are other requirements that should be added for facilities with oil-filled operational equipment to be able to establish and document an inspection or monitoring program, use a contingency plan, and provide a written commitment of manpower, equipment and materials in lieu of secondary containment for qualified oil-filled operational equipment. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

Alternative Options Considered

EPA considered alternative approaches to address streamlined requirements for small oil-filled operational equipment. One option was similar to the qualified facilities proposal, in which eligibility of a facility with oil-filled operational equipment would be determined by considering capacity thresholds and reportable discharge history from any

oil-filled operational equipment. Another option would call for a tiered set of requirements for electrical and other oil-filled operational equipment. EPA also considered options similar to those presented for the qualified facilities proposal: (1) providing an indefinite extension of the Plan revision and implementation dates for certain types of oil-filled operational equipment; and (2) suspending all SPCC requirements for certain types of oil-filled operational equipment.

a. Capacity Threshold Qualifier

The Agency considered an alternative approach based on various levels of aggregate oil storage capacity at a facility for determining which facilities would be eligible for reduced burden as qualified oil-filled operational equipment. EPA considered limiting the proposed option by including two alternative storage capacity thresholds from which the owner/operator may determine the equipment or facility's eligibility: (1) The storage capacity of an individual piece of oil-filled operational equipment is 1,320 gallons or less, regardless of the facility's total oil-filled operational equipment aggregate capacity; or (2) the aggregate oil-filled operational equipment storage capacity at the facility is 10,000 gallons or less. EPA also considered an alternative range of thresholds for both an individual piece of oil-filled operational equipment (ranging from 2,640 to 5,000 gallons) and for the facility aggregate capacity of 20,000 gallons in order to provide a greater degree of burden reduction than the alternative thresholds considered by EPA. In determining potential threshold capacities, EPA considered current thresholds in the rule, as well as proposals by industry. This was intended to limit this relief to small pieces of oil-filled operational equipment or to facilities storing smaller aggregate volumes of oil in oil-filled operational equipment. The total facility oil-filled operational equipment storage capacity threshold addresses the co-location of oil-filled operational equipment within a facility.

The Agency decided not to propose a threshold criterion because we believe this equipment is unique and different from bulk storage containers and manufacturing equipment (flow-through process) such that the spill history alone suffices as a qualifying criterion to determine eligibility. The Agency was also concerned with the limited amount of information provided in response to the NODA. The data submitted in response to the NODA was primarily from the electrical industry and the Agency has no information describing the types of oil-filled operational equipment, capacities and distribution for other industries. Additionally, we have limited specific information on the various sizes of oil-filled electrical equipment to assist in establishing a threshold for an individual piece of equipment.

The Agency seeks comments on whether eligibility for qualified oil-filled operational equipment status should be based on a specific level of aggregate oil-filled operational equipment storage capacity at a given facility. The Agency seeks comments on whether a threshold criterion achieves an appropriate balance of facility burden and environmental protection for oil-filled operational equipment. Any available data specific to either the capacity, location, or size distribution of oil-filled operational equipment within a facility or within a specific industry sector would be useful in Agency deliberations for final rulemaking. Comments specific to establishing a threshold criterion for oil-filled operational equipment should include supporting data that: (1) Demonstrates why the suggested volume threshold is preferred; and (2) estimates the number (or percentage) of facilities that would be eligible for qualified oil-filled operational equipment status. Any alternative approach presented should include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

b. Multi-Tiered Structure

The tiered structure option was considered in response to comments EPA received following publication of a Notice of Data Availability for oil-filled equipment (69 FR 56184, September 20, 2004) and is based on a previous proposal put forth by USWAG that focused on electrical equipment. A central element of this option would allow the facility owner or operator to define each discrete unit of this type of oil-filled equipment as a facility. This option would also establish three tiers for regulated onshore oil-filled operational equipment based on the storage capacity of the equipment. Individual pieces of oil-filled operational equipment with an oil storage capacity of 1,320 gallons or less (Tier 1) would have been exempt from all SPCC requirements. For individual pieces of oil-filled operational equipment with a capacity greater than 1,320 but less than 20,000 gallons and which meet additional qualifying criteria (Tier II), facility owners and operators would have the option of preparing a contingency plan in lieu of an SPCC Plan. Such an approach would have exempted a significant portion of the regulated universe with oil-filled operational equipment from the development of an SPCC Plan entirely and instead would only need to develop a contingency plan and a written commitment of manpower, equipment and materials in the event of a discharge. Tier III would require that all other oil-filled operational equipment with capacities greater than 20,000 gallons for an individual piece of equipment be required to comply with the current SPCC rule.

Although the Agency agrees that some regulatory modifications are appropriate for facilities containing oil-filled operational equipment, there is still a reasonable potential for discharge from this equipment and coverage by some type of SPCC Plan is warranted. The Agency believes this is true even for facilities composed entirely of oil-filled operational equipment. EPA also has concerns about the suggestion to allow facility owners and operators to define each piece of oil-filled equipment as a separate facility because of the potential for greater rule complexity, implementation questions and confusion across the wide variety of facilities covered by the SPCC rule. For example, the Agency may have to define and develop criteria that would be used by the facility owner or operator to determine which equipment is a separate facility, which is not, and how the elements of a facility plan would address these differences. Uncertainty and confusion about the definition of a facility could lead to a greater lack of compliance and the potential for greater environmental harm.

c. Extension/Suspension Options

EPA could propose an indefinite extension to the compliance dates, similar to the previous extensions already granted, that would apply to oil-filled operational equipment. This action would allow EPA more time to decide how to regulate oil-filled operational equipment without delaying compliance for the entire universe of SPCC-regulated facilities and equipment. However, the extension would be for a yet-to-be-determined length of time, and for an unspecified set of requirements. Since so many facilities have oil-filled operational equipment, if changes to these requirements are delayed, a significant number of facilities might have to modify their existing Plans more than once to accommodate future rule changes. As with past extensions, EPA would continue to require that oil-filled operational equipment comply with pre-

2002 SPCC requirements during the interim period at facilities that should have had an SPCC Plan as of August 16, 2002, providing no immediate relief.

A suspension of all requirements for oil-filled operational equipment would provide immediate relief until further notice and provided EPA with more time to decide how to regulate this equipment. The Agency is concerned that this option provides no environmental protection during the time that new requirements are developed.

EPA welcomes comments on these or other alternatives that could reduce the burden at facilities with oil-filled operational equipment, while maintaining appropriate levels of environmental protection. The Agency is also interested in comments related to the application of the USWAG proposal to other types of oil-filled operational equipment. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

Qualified Facilities and Qualified Oil-Filled Operational Equipment Overlap

Some facilities would meet the criteria for both qualified facilities and qualified oil-filled operational equipment. Such facilities would be able to benefit from both of the burden-reduction options proposed under today's action. The owner or operator could choose to develop a contingency plan and a written commitment of manpower, equipment and materials in lieu of secondary containment for qualified oil-filled operational equipment. Since no impracticability determination would be required for qualified oil-filled operational equipment, the owner or operator could self-certify his/her SPCC Plan and would not be required to have a PE develop and certify the contingency plan for the qualified oil-filled operational equipment. The responsibility of preparing a contingency plan and identifying the necessary equipment, materials and manpower to implement the contingency plan would fall on the owner or operator of the qualified facility.

C. Motive Power

There are some motive power containers already exempt from the SPCC requirements based on the rule exemption for containers with an oil storage capacity of less than 55 gallons. However, there are certain motor vehicles (including aircraft) that contain oil in capacities greater than or equal to 55 gallons solely for the purpose of providing fuel for propulsion, or solely to facilitate the operation of the vehicle. The concept of "motive power" is not addressed in the SPCC regulations, but the EPA–DOT MOU in Appendix A to 40 CFR part 112 specifically refers to the transportation of oil, not to transportation in the general sense. As a result, oil storage containers with a capacity greater than 55 gallons used for motive power fall under the SPCC rule and secondary containment and other SPCC requirements apply. However, EPA never intended to regulate motive power containers on buses, sport utility vehicles, small construction vehicles, aircraft and farm equipment, or facilities or locations such as heavy equipment dealers, commercial truck dealers, or certain parking lots that may be subject to the SPCC requirements (including bulk storage containment, inspection, and overfill protection) solely because of the presence of motive power containers. Nor does EPA intend to require facilities otherwise subject to the SPCC rule to include motive power containers in their Plans.

1. Definition of Motive Power

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to exempt motive power containers, defined as "onboard bulk storage containers used solely to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation." This definition is intended to describe containers such as the fuel tanks that are used solely to provide fuel for a motor vehicle's movement or the hydraulic and lubrication operational oil-filled containers used solely for other ancillary functions of a motor vehicle. This definition would not include transfers of fuel or other oil into motive power containers at an otherwise regulated facility, or a bulk storage container mounted on a vehicle for any purpose other than powering the vehicle itself, for example, a tanker truck or refueler. The definition of motive power containers would not include oil drilling or workover equipment. Specifically, it would not apply to the drilling or workover rigs themselves; however, other earthmoving equipment (such as a bulldozer, trucks, or earth-moving equipment) located at a drilling or workover facility would be included in the scope of the definition. Similarly, seismic exploration vehicles located at, for example, oil and gas drilling, workover and production facilities, would be included in the scope of the definition of motive power.

The Agency is seeking comments on the proposed definition of motive power containers or if there are any other definitions for "motive power" that would be more suitable. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Proposed Exemption

This proposed rule amendment would exempt motive power containers, as defined above, from SPCC rule applicability through a proposed additional paragraph under the general applicability section, § 112.1(d). Furthermore, these storage containers would not be counted toward facility capacity under § 112.1(d)(2). EPA recognizes that there is a potential for an oil discharge as described in § 112.1(b) from motive power containers, such as from a breach in the fuel storage container, from an overfill event, or from a rupture of oil-filled operational equipment such as a hydraulic line on heavy construction equipment. EPA has the authority, under 311(j)(1)(C) of the CWA, to impose requirements to prevent oil discharges from motive power containers. The Regional Administrator has the option under § 112.1(f) to require facilities with motive power containers to prepare and implement an SPCC Plan or any applicable part, if a determination is made that it is necessary in order to prevent a discharge of oil into waters of the United States.

EPA notes that although this proposal provides the fuel tanks and ancillary oil-filled operational equipment on motor vehicles with an exemption from SPCC requirements, oil transfer activities occurring within an SPCC covered facility would continue to be regulated. An example of such an activity would be the transfer from an onsite tank via a dispenser to motive power containers. This transfer activity is subject to the general secondary containment requirements of § 112.7(c), but is not subject to the requirements of § 112.7(h), because it does not occur across a loading/unloading rack. Regulating a transfer between unregulated motive power containers and a regulated tank is required by § 112.1(b), which requires that the SPCC rule apply to owners or operators of facilities that transfer oil and oil products. Another example would be an airport mobile refueler at an SPCC-regulated airport that transfers oil to motive power containers or to an aircraft. That transfer activity would again be subject to the general secondary containment requirements of § 112.7(c), but not subject to the

requirements of § 112.7(h), again because it does not generally occur across a loading/unloading rack.

An onboard bulk storage container that supplies oil for the movement of a vehicle or operation of onboard equipment, and at the same time is used for the distribution or storage of this oil is not subject to this proposed exemption. For example, a mobile refueler that has an onboard bulk storage container used to distribute fuel to other vehicles on a site may also draw its engine fuel (for propulsion) from that container. Because EPA continues to consider bulk storage containers mounted on vehicles or towed by a vehicle (such as a typical cargo tanker truck) subject to certain transfer-related SPCC requirements, these containers are not subject to today's proposed exemption. As noted above, the exemption applies only to onboard bulk storage containers used solely to provide motive power or to facilitate the operation of the vehicle.

EPA is not extending the exemption for motive power containers to oil drilling and workover equipment, including rigs. The Agency believes that due to the unique nature of oil drilling and workover rig operations and the large amounts and high flow rates of oil associated with these activities, it would not be appropriate or environmentally sound to exempt them from the SPCC requirements, and thus they should remain subject to 40 CFR part 112. The purpose of offering the exemption is to offer relief for a particular set of equipment (*e.g.*, automobiles) that may be present at an otherwise regulated SPCC facility, and not to offer relief for facilities that may be mobile and move from place to place as in the case of a drilling or workover rig. Although drilling and workover equipment, including rigs, are not exempt, other motive power equipment located at drilling or workover facilities (*e.g.*, trucks, automobiles, bulldozers, seismic exploration vehicles or other earth-moving equipment) would be exempted. The agency believes that the general protection and the spill response and planning activities provided at an otherwise regulated SPCC facility will help the facility to address the spills associated with these motive power containers. However, the specific provisions (such as blowout prevention) which are present in the current rule for drilling or workover rigs, need to be preserved to maintain an adequate level of environmental protection for these unique activities. Therefore, an exemption for drilling and workover equipment, including rigs, is inappropriate.

3. Alternative Options Considered

EPA considered other options to address motive power containers greater than 55 gallons in size. These options included: (1) Exemption of all motive power containers, except motive power containers on aircraft and mining equipment, which would be subject to the general requirements under § 112.7; (2) exemption of all motive power containers below a certain gallon threshold, with containers above this threshold remaining subject to the general requirements under § 112.7; and (3) exclusion of motive power containers only from the facility storage capacity calculation and bulk storage container requirements.

a. Equipment-Based Motive Power Exemption

EPA could choose to exempt motive power containers, except containers on aircraft and mining equipment, from the requirements of 40 CFR part 112. The majority of motive power containers would be exempt from the SPCC rule. EPA would require that the containers on aircraft and mining equipment be covered by the SPCC requirements because these containers typically have much larger volume than other motive power containers and potentially pose a greater threat to the environment in the event of a discharge as described in 112.1(b). However, in the context of motive power containers, there is no information on the degree of likelihood of a discharge from motive power containers of different oil storage capacities nor is there data available to EPA specific to mining and aircraft equipment discharges that would justify this option. Therefore, the Agency chose not to propose this option.

b. Threshold-Based Motive Power Exemption

Another option considered was to exempt motive power containers with a capacity below a certain threshold, and requiring containers with a capacity above the established threshold to have appropriate containment under § 112.7(c). Those motive power containers included in the rule would only be required to have general containment, and would be exempt from all other requirements in §§ 112.7 and 112.8(c). However, EPA rejected this option because it has no basis for choosing an appropriate threshold for these containers and there is no data that clearly supports any specific quantity. In addition, it would still present implementation problems for those motive power containers that were subject to the regulation.

c. Exclusion From Storage Capacity Calculation

EPA could exclude motive power containers from the storage capacity determination at a regulated facility and from the definition of bulk storage container to clarify that these containers are not counted towards the 1,320 gallon aboveground oil storage threshold for the regulation. Nevertheless, the facility would have to consider these containers in their overall facility SPCC Plan. Although motive power containers would not be considered bulk storage containers, they would be subject to the general requirements of the rule under § 112.7, including the provision for secondary containment. The facility SPCC Plan would have to identify the presence of motive power containers on-site, in addition to their reasonable potential for discharge as per § 112.7(b). This option is more complex for the regulated community and is not a clear exemption of motive power containers.

Each of these alternative options was rejected because they did not address the implementation issues with regulating motive power containers under the SPCC requirements. The Agency welcomes comments on these or other alternatives that could serve to reduce the burden for facilities with motive power containers, while at the same time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

D. Airport Mobile Refuelers

Airport mobile refuelers are vehicles that are used on an airport to refuel aircraft and ground service equipment. Their onboard bulk storage containers are used to transport and transfer fuel and are subject to the SPCC rule because they are containers used to store oil prior to use, while being used, or prior to further distribution in commerce. As such, they are subject to all applicable SPCC rule provisions, including the secondary containment provisions of § 112.8(c)(2) (applicable to all bulk storage containers) and § 112.8(c)(11) (applicable more specifically to mobile/portable bulk storage containers). These provisions require a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

Regulated community members in the aviation sector have expressed concern that requiring sized secondary containment for airport mobile refuelers is not practicable for safety and security reasons. They argue that requiring refuelers to park in specially designed secondary containment areas located within an airport's aircraft operations area could create a safety and security hazard because it entails grouping the vehicles or placing impediments in the operations area. In addition, they claim that requiring mobile refuelers to return to containment areas located within the airport's tank farm between refueling operations may increase the risk of accidents (and therefore accidental oil discharge), as the vehicles would travel with increased frequency through the busy aircraft operations area. They also claim that providing secondary containment for mobile refuelers during airport operations presents inherent difficulties and point to controls on design, inspection, maintenance and operation of mobile refuelers imposed by the Federal Aviation Administration's Advisory Circulars. For example, the storage containers on the mobile refuelers must be manufactured to U.S. DOT–406 specifications for pressure vessels (49 CFR 178.346).

EPA is aware that certain airports subject to FAA's regulations at 14 CFR part 139 require certification by the FAA Administrator or his delegated agent. As part of this certification, the Agency understands that compliance with Uniform Fire Code requirements, among other requirements in 14 CFR part 139, must be detailed in the Airport Certification Manual to obtain FAA approval and thus an Airport Operating Certificate per part 139. The Agency understands that the applicable Uniform Fire Code includes National Fire Protection Association's (NFPA) 30, *Flammable and Combustible Liquids Code*, NFPA 407, *Standard for Aircraft Fuel Servicing* and NFPA 415, *Standard on Airport Terminal Buildings, Fueling Ramp Drainage*, and *Loading Walkways*. In particular, NFPA 407 requires that aircraft fuel servicing vehicles and carts shall be positioned so that a clear path of egress from the aircraft for fuel servicing vehicles shall be maintained [5.12.1]. Further, in NFPA 415, the code specifically states that in no case shall the design of a drainage system of any aircraft fueling ramp allow fuel to collect on the aircraft fueling ramp or adjacent ground surfaces where it constitutes a fire hazard [5.1.4]. As such, EPA believes that subjecting mobile airport refuelers to the specifically sized secondary containment requirements at § 112.8(c)(2) and (11) would directly conflict with the Uniform Fire Code applicable to fuel handling at airports. EPA believes, however, that these bulk storage containers should remain subject to the general secondary containment requirements at § 112.7(c) as this provision affords sufficient flexibility to the owner/operator and certifying PE to select a spill prevention method that would not conflict with the applicable Uniform Fire Code. Thus, EPA is proposing to exempt airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers in § 112.8(c)(2) and (11). EPA believes that this exemption is appropriate for airport mobile refuelers, so as not to conflict with the specific Uniform Fire Code requirements for airport fueling activities, while preserving environmental protection (especially for fuel transfers associated with airport mobile refuelers), afforded by the spill prevention provisions outlined in § 112.7(c). EPA also believes that this clarification for airport mobile refuelers applies to mobile refuelers operating at all airports, both those certified under 14 CFR part 139 and non-certified airports.

1. Definition of Airport Mobile Refueler

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to exempt airport mobile refuelers from the requirements of § 112.8(c)(2) and (11). In today's proposal, EPA defines an airport mobile refueler as "a vehicle with an onboard bulk storage container designed for, or used to, store and transport fuel for transfer into or from an aircraft or ground service equipment." This definition is adapted from definitions in the U.S. DOT Federal Aviation Administration's Advisory Circular 150/5230–4 on Aircraft Fuel Storage, Handling, and Dispensing on Airports, and NFPA 407 for Aircraft Fuel Servicing. The definition is intended to describe vehicles of various sizes equipped with a bulk storage container such as a cargo tank (tank trucks, tank full trailers, tank semitrailers, etc.) that are used to fuel or defuel aircraft at airports.

2. Proposed Amended Requirements

This proposed amendment would revise § 112.8(c)(2) and (11) to specifically exempt airport mobile refuelers, as defined above, from these provisions. Since airport mobile refuelers are mobile or portable bulk storage containers, the other provisions of § 112.8(c) would still apply. Secondary containment systems sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation would no longer be required. Notwithstanding, there is a potential for oil discharges as described in § 112.1(b) from airport mobile refuelers. Indeed, there are documented cases of reportable discharges while fuel is transferred from storage into the mobile refuelers and during aircraft refueling activities. Fuel leaks have occurred while the mobile refueler is parked or idle. Therefore, the general secondary containment requirements of § 112.7(c) would continue to apply to airport mobile refuelers under this proposal.

Section 112.7(c) lists several appropriate containment methods a facility owner or operator can provide, including curbs, gutters, barriers, or sorbent materials. However, EPA recognizes that permanent containment structures such as curbs may not be appropriate in all cases. The Agency made informal contact with nine airport engineering and construction firms who indicated that providing sized secondary containment areas for airport mobile refuelers is not a common practice. We also learned that mobile refuelers are not involved in every airport fueling operation, and when refuelers are present, there is no standard method for ensuring sized secondary containment. EPA cautions that these results are drawn from only a small number of firms that provide construction and engineering support for the aviation industry rather than directly from the airport owners or operators.

Appropriate containment and/or diversionary structures or equipment must be designed to prevent a discharge as described in § 112.1(b). The Agency believes general secondary containment should be designed to address the most likely discharge from the primary containment system. Section § 112.7(c) allows for the use of certain types of active containment measures (countermeasures or spill response capability) which prevent a discharge to navigable waters or adjoining shorelines. Active containment measures are those that require deployment or other specific action by the owner or operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge so long as the active measure is designed and can reasonably be implemented to prevent an oil spill from reaching navigable water or adjoining shorelines. Passive measures are permanent

installations and do not require deployment or action by the owner/operator. The efficacy of active containment measures to prevent a discharge depends on their technical effectiveness (e.g., mode of operation, absorption rate), placement and quantity, and timely deployment prior to, or following a discharge. For discharges that occur only during manned activities, such as those occurring during transfers, an active measure (e.g, sock, mat, other portable barrier, or land-based response capability) may be appropriate, provided that the measure is capable of containing the oil discharge volume and rate, and is timely and properly constructed/deployed. The Agency also believes that these active measures may be appropriately applied to other situations (e.g., when the refueler is not engaged in transfer operations or moving around the facility).

EPA believes that the general provisions for secondary containment address the most likely spill scenarios associated with this equipment (i.e., transfers from the refuelers to the aircraft). Section 112.7(c) does not prescribe a size for a secondary containment structure but does require appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b). These proposed revisions would maintain environmental protection, while still allowing the necessary flexibility for compliance with the general secondary containment requirements of the rule.

Alternatively, EPA considered whether the general secondary containment requirements of § 112.7(c) should be applied to airport mobile refuelers only during any fuel transfer activity and not while the refueler is moving or out of service (e.g. parked or idle) provided that the facility is in compliance with current NFPA 407 and NFPA 415 requirements and any applicable FAA requirements that govern fuel handling. If a facility is not in compliance with NFPA 407, and 415 and FAA requirements, then it must comply with the general secondary containment requirements at all times. The Agency did not propose this approach because NFPA 407 and NFPA 415 are designed for fire protection rather than environmental protection; a properly designed drainage system that meets the intent of NFPA 407 and NFPA 415 might not adequately prevent fuel from being discharged in quantities that may be harmful. In addition, EPA has no information on the degree of compliance with, alternatives to, or applicability of, NFPA 407 and NFPA 415 to all airport facilities. Consequently, EPA did not propose this approach. EPA welcomes comment on this issue.

The Agency seeks comments on the proposed definition for "airport mobile refuelers," the adequacy of general secondary containment requirements for preventing discharges as described in § 112.1(b) from airport mobile refuelers, whether the proposed regulatory relief satisfies the concerns of airport owners and/or operators, and the ability to apply active measures as described in § 112.7(c). Additionally, the Agency seeks comments on whether the relief provided specific to § 112.8(c)(2) and (11) should be more broadly applied to other types of mobile refuelers or railcars that are subject to § 112.8(c)(2) and (11) and § 112.12(c)(2) and (11). Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

E. Animal Fats and Vegetable Oils

In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute requires most Federal agencies to differentiate between, and establish separate classes for, various types of oil, specifically, animal fats and oils and greases, and fish and marine mammal oils, and for oils of vegetable origin, including oils from seeds, nuts, and kernels; and other oils and greases, including petroleum. EORRA also requires affected agencies to apply standards to the different classes, based on considerations of differences in the physical, chemical, biological, and other properties of these oils and on the environmental effects of the oils.

In the July 17, 2002 final SPCC rule, the Agency promulgated general requirements in § 112.7 for SPCC Plans for all facilities and all types of oil, as well as additional requirements tailored to specific types of facilities in §§ 112.8 through 112.15. At that time, in response to EORRA, EPA established separate subparts in the rule for facilities storing or using the various classes of oil listed in that act. Subpart C (§§ 112.12 through 112.15) sets out the requirements for facilities with animal fats and oils and greases, and fish and marine mammal oils; and for oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels (hereinafter "animal fats and vegetable oils" or "AFVO"). Subpart B (§§ 112.8 through 112.11) sets out the requirements for facilities with petroleum oils and non-petroleum oils other than AFVO. The Agency promulgated the identical requirements for facilities storing or using all classes of oil in the final rule. As a result, certain requirements, including requirements for types of facilities that only exist in the petroleum sector, also apply to facilities handling animal fats and vegetable oils.[2]

In today's proposal, the Agency proposes to amend Subpart C of part 112 by removing § 112.13 (requirements for onshore oil production facilities), § 112.14 (requirements for onshore oil drilling and workover facilities), and § 112.15 (requirements for offshore oil drilling, production, or workover facilities). As members of the regulated community pointed out, facilities that process, store, use, or transport animal fats and/or vegetable oils (AFVO) do not engage in production, drilling or workover. EPA agrees that these sections should not be included in part 112, subpart C and therefore proposes to remove them from the rule. The Agency seeks comment on the proposal to remove and reserve these sections of Subpart C of the regulation.

The Agency has not developed a proposal following the 1999 Advanced Notice of Proposed Rulemaking regarding differentiation of AFVO from petroleum and other oils in the SPCC rule (64 FR 17227). To assist the Agency in its ongoing consideration of this issue, EPA requests suggestions for additional amendments that would differentiate AFVOs from other classes of oils in the SPCC rule and scientific support for those amendments. In particular, EPA is seeking information that specifically addresses the criteria for differentiation set forth in EORRA, 33 U.S.C. 2720(b); that is, differences in the physical, chemical, biological, and other properties, as well as the environmental effects, of various types of oil, in order for the Agency to support a rationale for differentiation of oil spill prevention requirements. The Agency will continue to examine these issues to determine the appropriateness of amendments to the regulatory scheme which differentiate the SPCC requirements for AFVO from the requirements for petroleum and other oils.

VI. Proposed Extension of Compliance Dates for Farms

The agricultural community has provided EPA with additional

[2] The Agency also responded to a petition it received on August 12, 1994 to treat facilities that handle, store or transport animal fats and/or vegetable oils differently from those facilities that store petroleum based oil. EPA denied that petition, and published the denial in a **Federal Register** notice (see 62 FR 54508, October 20, 1997).

information and data which suggests that the universe of farms subject to the SPCC rule may be much larger than EPA estimated in the preparation of the 2002 SPCC rule revisions. EPA believes that the unique characteristics of farms pose particular challenges to SPCC compliance and that further consideration of the requirements as they relate to farms is warranted. We are particularly concerned that many of these farms are small and that subjecting them to these requirements may not be necessary. Therefore, EPA intends to review the impact of the SPCC requirements on farms and will take action in a future rulemaking.

While determining if the agriculture sector warrants specific consideration under the SPCC rule, EPA proposes to extend the compliance dates for preparing or amending and implementing SPCC Plans for farms that have a total storage capacity of less than 10,000 gallons. Our basis for taking this action is several fold. First, there are factors concerning the physical layout of a farm that make this sector unique within the universe of SPCC-regulated facilities. For example, farms vary considerably in design and size (less than an acre to many thousand acres). Further, the environment in which farms operate varies considerably from other industries. Farmers often own and/or farm land that are noncontiguous, and may be separated by roads and other obstacles. Oil is generally not centrally stored and oil containers may be widely dispersed. Certain SPCC requirements (such as fencing, lighting, etc.) may be disproportionately difficult and expensive for farmers to implement, and provide little environmental benefit. Also, because farms are often residential properties, under the existing rule, home heating oil tanks may be required to be covered by the farm's SPCC Plan. Other rule provisions, including security, would also affect the residential portions of a farm. For these reasons, we are proposing an extension of the compliance date for farms with a total storage capacity of less than 10,000 gallons. See Section B below, for details.

A. Eligibility Criteria

EPA proposes the 10,000-gallon threshold for farms to be consistent with the threshold quantity used in the NCP to classify oil discharges to inland waters as "major" (40 CFR 300.5). Thus, a facility storing less than 10,000 gallons of oil could not be involved in a major discharge based on the NCP quantitative criterion alone, although use of this numerical criteria is not meant to imply that smaller discharges are not harmful. This same 10,000-gallon threshold discharge volume is also one factor used in identifying facilities that must prepare and submit a Facility Response Plan (FRP) under § 112.20(f)(1). In addition, 10,000 gallons is a common storage capacity and such a threshold would extend the compliance dates for a significant portion of the farm sector. Data provided by the agricultural industry and the U.S. Department of Agriculture indicate that the average aggregated aboveground oil storage capacity at farms surveyed in 2005 was 5,550 gallons; approximately 83 percent of surveyed farms have aggregated oil storage below 10,000 gallons. Farms with less than 1,000 acres had an average oil storage capacity of less than 2,500 gallons; farms with over 1,000 acres had an average oil storage capacity of almost 8,000 gallons. (See "Fuel/Oil Storage and Delivery for Farmers and Cooperatives," USDA, March 2005, in the docket for today's proposal.)

The Agency seeks comments on whether this threshold appropriately addresses the concerns of farms with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. If commenters suggest alternative volume thresholds, it will be important for the comments to also include a justification for such alternative volume thresholds in order for the Agency to adequately consider the comments submitted. This data would be useful in final rule deliberations.

The Agency considers a farm as a specific type of facility under the SPCC rule and proposes a specific definition for farm under today's proposal. For this proposed extension, EPA would define "farm," in part, by adapting the definition used by the National Agricultural Statistics Service (NASS) in its Census of Agriculture. NASS defines a farm as any place from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year. Operations receiving $1,000 or more in Federal government payments are counted as farms, even if they have no sales and otherwise lack the potential to have $1,000 or more in sales.

EPA also considered the definition it uses to exempt farm tanks under the Underground Storage Tank (UST) regulations at 40 CFR part 280. The Resource Conservation and Recovery Act (RCRA) as amended, section 9001(1)(A), exempts farm and residential USTs storing less than 1,100 gallons of motor fuel for "noncommercial" purposes. As defined in 40 CFR 280.12, a farm tank is a tank located on a tract of land devoted to the production of crops or raising of animals, including fish. The preamble to the UST rule explains that the term "farm" includes fish hatcheries, rangeland, and nurseries with growing operations, but does not include laboratories where animals are raised, land used to grow timber, and pesticide aviation operations. This term also does not include retail stores or garden centers where the product of nursery farms is marketed, but not produced, nor does EPA interpret the term "farm" to include golf courses or other places dedicated primarily to recreational, aesthetic, or other non-agricultural activities. (See 53 FR 37082, 37117, September 23, 1988.)

EPA also considered defining a farm by listing the appropriate North American Industry Classification System (NAICS) codes, but we believe that the definition proposed today in § 112.2, along with the 10,000 gallon threshold quantity, more effectively identifies the sector to which the extension would appropriately apply. Potentially affected entities that fall within certain NAICS codes, including 111 (Crop Production) and 112 (Animal Production), are likely to fall within the proposed definition of farm and should consider the definition and eligibility criteria further to determine if the proposed extension applies.

EPA utilized elements of the UST definition of farm, in combination with the Census definition, in developing today's proposal. By combining elements of both of these approaches, the Agency believes the proposed definition more specifically targets the intended universe for the extension. EPA seeks comment on the proposed definition for farms, and whether an alternate definition of "farm" may be more appropriate. Comments may also address the proposed 10,000 gallon threshold for qualifying for the extension, and whether an alternative threshold may be more appropriate. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

B. Proposed Compliance Date Extension for Farms

With today's action, EPA proposes to extend the compliance dates for the owner or operator of a farm, as defined in proposed § 112.2, that has a total storage capacity of 10,000 gallons or less, to prepare or amend and implement the farm's SPCC Plan. The Agency proposes to extend the farm compliance dates until EPA completes information collection and analysis to

determine if differentiated SPCC requirements may be appropriate for farms. If the Agency determines that differentiated requirements for farms are warranted, the Agency will publish a notice in the **Federal Register** proposing new compliance dates for eligible farms.

In working to determine how to properly address farms under the SPCC regulation, EPA will be partnering with USDA to acquire information to determine if differentiation may be appropriate. EPA believes that, at this time, an extension is appropriate because of the large scope of the agricultural community that may be subject to the SPCC requirements, the fact that many farms are small, and the time needed to determine how the SPCC requirements should apply if at all, and the effect of today's proposal on the farm sector. We are also considering as an alternative approach to exempt farms below a set oil storage capacity threshold (such as 10,000 or 20,000 gallons) from the SPCC regulation.

EPA seeks comment on whether the proposed extension is warranted, or if a specific time period would be more appropriate than the proposed indefinite extension. EPA also requests comment on whether it is more appropriate to exempt all farms having less than a certain oil storage capacity threshold (such as 10,000 or 20,000 gallons) from all SPCC requirements. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

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

Under the terms of Executive Order 12866, this action has been judged as a "significant regulatory action" because it will 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. Therefore, this action was submitted to OMB for review and the Agency has prepared a regulatory analysis in support of today's action, titled, "Regulatory Analysis of the Spill Prevention, Control, and Countermeasure Proposed Rule" (November 2005). Changes made in response to OMB suggestions or recommendations will be documented in the public record. EPA requests comments from the public on the costs and benefits of any of the possible regulatory changes discussed in this proposed rulemaking, as well as on appropriate methodologies for assessing them.

1. Summary of Regulatory Analysis

The regulatory analysis developed in support of today's action considers changes in regulatory compliance costs for affected facility owners and operators, changes in paperwork burden, and impacts on small businesses. In addition, EPA examined qualitatively the potential impacts of the regulatory options on oil discharge risk. EPA intends to continue to update its estimates and assumptions for use in the analysis supporting the final rule.

a. General Approach

This analysis develops benefit and cost estimates for the proposed actions in the four major components of the proposed rule:

Qualified facilities with smaller storage capacities;

- Oil-filled operational equipment;
- Motive power;
- Airport mobile refuelers.

The analysis then assesses the impacts of the alternative regulatory options that EPA considered.

For each of the components, the benefits consist of reductions in social costs accruing from reductions in compliance costs. The main steps used to estimate the compliance cost impacts of the SPCC Proposed Rule are as follows:

Develop the baseline universe of SPCC-regulated facilities and unit cost of compliance estimates for the analysis;

- Estimate the number of facilities affected by each of the proposed options;
- Estimate unit compliance costs for all elements of the proposed options;
- Estimate compliance cost savings to potentially affected facilities; and
- Annualize compliance cost savings over a ten-year period and discount the estimates to the current year.

EPA also considered the potential impacts of the proposed rule and alternative options on the risk of oil discharges, which could lead to harmful environmental, human health, and welfare consequences. Because of the lack of data on regulated entities and their likely response to the regulatory options, the magnitude of such risks is highly uncertain. Therefore, EPA examined the general nature of the proposed and alternative changes to assess possible effects on risk.

b. Baseline for the Analysis

The impacts of the proposed regulation depend on the assumed baseline of industry behavior in the absence of a new rulemaking. EPA developed a baseline for the regulatory analysis to assess the change in regulatory compliance costs associated with each of the proposed options, mutually exclusive of each other. The baseline provides the benchmark from which changes in regulatory behavior, caused by the proposed options, are measured.

EPA is aware of industry concerns regarding potential non-compliance among certain facility sizes or sectors, although no reliable empirical evidence exists to assess the scope and magnitude of such non-compliance. EPA explicitly considered whether to incorporate non-compliance in its regulatory analysis of the 2002 revised rule: "It is possible that some facilities have misinterpreted the existing regulation and are not currently in full compliance with existing requirements, but there is no practical way to measure the level of non-compliance. Moreover, the costs of coming into compliance with the clarified requirements are not properly attributed to this final regulation."

This rule does not impact any facilities that are not already required to meet the standards of the SPCC rule. The costs of SPCC requirements were already imposed on the regulated community by prior rulemaking in 1973 and 2002. For the benefit-cost analysis, therefore, EPA is treating these costs as

liabilities the regulated entities currently have—whether or not they have actually made the capital expenditures to comply. In this analytical construct, these firms are simply delaying the expenditures for the costs they already carry. Therefore, EPA used as its baseline the requirements under 40 CFR part 112 ("SPCC rule"), as amended in 2002 (67 FR 47042). EPA does recognize, however, that there is non-compliance with the SPCC requirements by some portion of the regulated community.

c. Description of SPCC-Regulated Universe

This section describes the universe of facilities subject to current and proposed SPCC regulations. Calculating the number of regulated entities is not straightforward. The SPCC rule does not include a notification requirement and, with certain exceptions, owners and operators do not submit their SPCC Plans to EPA. The Agency has invested considerable resources into estimating the number of entities affected by the SPCC rule.

EPA has updated its previous estimates of the number of regulated facilities. The Agency used data from the 2002 Economic Census, the Census of Agriculture, and a variety of other governmental and non-governmental sources to estimate the number of regulated facilities in a large set of industrial and commercial sectors. Since data were not available for all states, the basic estimation procedure involved extrapolating from eight state databases using information from the U.S. Census Bureau. The estimates of the SPCC universe were developed for 31 industry sectors. Full documentation of the estimates appears in the Regulatory Analysis document accompanying this proposal.

In total, EPA estimates that 618,000 facilities are currently regulated under the SPCC rule. Oil production facilities (28 percent), farms (25 percent) and electric utility plants (8 percent) account for most of the SPCC-regulated facilities. Following is a table that summarizes the estimated number of regulated facilities, by size category:

Category	Aggregate capacity	Number of facilities
I	1,320 to 10,000 gallons.	322,000
II	10,001 to 42,000 gallons.	216,000
III	42,001 to 1 million gallons.	77,000
IV	greater than 1 million gallons.	3,000

2. Qualified Facilities

Today, EPA is proposing to provide an option for qualified facilities to eliminate the requirement for PE certification, and to provide flexibility with respect to security measures and integrity testing for these facilities. This proposed option would provide the greatest relief to owners and operators of new facilities that are preparing their first SPCC Plan, as well as cost savings for owners and operators of existing facilities that make substantive changes to their Plans in the future.

a. Universe of Affected Facilities

As noted above, EPA estimates that approximately 322,000 facilities with storage capacities below 10,000 gallons are subject to the SPCC requirements in the first year. Over the next ten years, approximately 335,000 facilities with storage capacities below 10,000 gallons would be subject to SPCC on average. As with all of the regulatory options considered in developing today's proposed rule, facilities would have the choice of complying with the existing SPCC rule (as amended in 2002) or taking advantage of the proposed change. EPA assumes that facilities would likely choose an alternative requirement if (a) they met the criteria, and (b) it was less costly or otherwise offered greater benefits than the existing requirement. As with the other options being considered today, EPA does not know how many facilities would meet the criteria and choose to avail themselves of the "Qualified Facility" options. Therefore, EPA examined the impact of the "Qualified Facility" options under three scenarios: 25 percent, 50 percent, and 75 percent of Category I facilities would likely meet "Qualified Facility" status and decide to implement this approach. EPA estimated that the 84,000 facilities would choose to take advantage of this option under the 25-percent scenario; 167,000 facilities under the 50-percent scenario, and 251,000 facilities under the 75 percent scenario.

b. Compliance Cost Savings

The main assumptions affecting all regulatory options were based on updated assumptions from the analyses conducted for the 2002 final rule. For example, EPA revised the cost estimate for obtaining Professional Engineer (PE) certification of a new SPCC Plan. The estimate increased from $1,120 to $2,000 for a PE to certify a new Plan and from $560 to $750 for a PE to certify a technical change to an existing Plan. The estimates are based on findings from discussions with several engineering firms.

The unit cost of integrity testing was estimated based on interviews with several tank inspectors. EPA calculated the total cost of integrity testing per facility by multiplying for a single tank by the number of tanks per facility.[3]

EPA multiplied burden hour estimates by the hourly wage rates for specific labor categories to determine the per-facility costs associated with the proposed rule's paperwork requirements. The labor wage rates for private industry were derived from the March 2005 U.S. Department of Labor's Employment Cost Indexes and Levels.[4]

EPA estimates that if 50 percent of the facilities complied with the alternative proposed today for qualified facilities that this option could reduce compliance costs by $22.5 million and $18.4 million per year, discounted at 3 percent and 7 percent, respectively. EPA assumed that the proposed flexibility for integrity testing would reduce the unit cost of testing by 50 percent. If 25 percent of facilities under 10,000 gallons qualified for this option, compliance costs would decrease by $11.2 million and $9.19 million per year, discounted at 3 percent and 7 percent, respectively. If 75 percent of facilities under 10,000 gallons qualified for this option, compliance costs would be reduced by $33.7 million and $27.6 million per year, discounted at 3 percent and 7 percent, respectively.

3. Oil-Filled Operational Equipment

Today, EPA is proposing to allow owners and operators of facilities featuring certain kinds of oil-filled operational equipment to establish and document an inspection or monitoring program, prepare an oil spill contingency plan and provide a written commitment of manpower, equipment, and materials in lieu of providing secondary containment without making an individual impracticability determination. The option is limited to facilities that have had no discharges as described in §112.1(b) from any oil-filled operational equipment in the ten years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than ten years.

a. Universe of Affected Facilities

The proposed changes for qualified oil-filled operational equipment could

[3] The number of tanks per facility was calculated using state oil tank databases.

[4] United States Department of Labor, Bureau of Labor Statistics, Employer Costs for Employee Compensation, June 2005.

address such items as hydraulic systems, lubricating systems (e.g., those for pumps, compressors, pumpjacks, and other rotating equipment including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil to enable operation of the devices. Due to data and time limitations, EPA focused its economic analysis on the electric utility sector. Consequently, the analysis likely underestimates the total cost savings from the proposed "qualified oil-filled operational equipment" action and the alternative options.

Specifically, EPA used data on the number of substations listed by each major utility reporting to the Federal Energy Regulatory Commission (FERC).[5] A national estimate was extrapolated from these data using the ratio of the megawatt hours sold by utilities to the estimated total retail megawatt hours of electricity sold nationwide according to the EIA.

EPA estimated that the total number of new facilities with total oil-filled operational equipment would be approximately 2,040 in the first year. Over the next ten years, approximately 2,450 new facilities are expected to be added annually on average. This number underestimates the universe of facilities affected by the proposed change, since it does not include oil-filled operational equipment from other industries. Facilities with qualified oil-filled operational equipment are expected to use a contingency plan with a written commitment of manpower, equipment and materials and have an established inspections/monitoring program.

EPA assumed that existing SPCC-regulated facilities with qualified oil-filled operational equipment would already have secondary containment or a determination of impracticability of secondary containment with a contingency plan and a written commitment of manpower, equipment and materials in accordance with § 112.7(d). In such cases, facilities would not benefit from this option. EPA has provided an economic impact analysis (Appendix A to the Regulatory Analysis), which examines avoided facility expenditures.

[5] Major regulated utilities must file FERC Form No. 1, on which utilities report information on their substations and electrical equipment. "Major" is defined as having (1) one million megawatt hours or more; (2) 100 megawatt hours of annual sales for resale; (3) 500 megawatt hours of annual power exchange delivered; or (4) 500 megawatt hours of annual wheeling for others (deliveries plus losses).

EPA acknowledges that some fraction of new facilities would, according to the current SPCC rule requirements, provide an impracticability determination and provide a contingency plan and a written commitment of manpower, equipment and materials, rather than pursue secondary containment. In these cases, the proposed action's cost savings would be lower, since owners and operators would only be avoiding an impracticability determination rather than secondary containment. EPA does not know what fraction of facilities falls into this situation, and has decided not to incorporate the scenario in the analysis. As a result, EPA's analysis likely overestimates the cost savings to facilities in the electric utility industry from the proposed action.

However, EPA believes that the overall assessment of cost savings from this component of the rule may be significantly underestimated. This is due to the omission of potential cost savings that would accrue to all other industries outside of electrical utilities.

b. Compliance Cost Savings

EPA estimates that this component of the proposal could reduce compliance costs by as much as $56.7 million and $45.9 million per year, discounted at 3 percent and 7 percent, respectively. EPA calculated cost savings based on the assumption that new facilities with qualified oil-filled operational equipment would save the difference between the cost of secondary containment and the cost of preparing a contingency plan and a written commitment of manpower, equipment and materials. EPA estimated annual per-facility cost savings of $9,000 to $61,000 for new facilities, depending on a facility's size and other characteristics.

The Agency recognizes, that at some facilities, owners or operators with PE-certified SPCC Plans have made a determination that secondary containment is impracticable, and have implemented contingency plans and a written commitment of manpower, equipment and materials for the non-qualified oil-filled operational equipment. Such facilities would not see significant cost savings from this component of the current rule. The analysis of cost savings underestimate the number of facilities with qualified oil-filled operational equipment, but overestimates the cost savings for facilities that have been counted.

4. Motive Power

It is not EPA's intent to regulate onboard bulk storage containers used solely to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation. Although EPA has no empirical data on the amount of such storage at facilities regulated by the SPCC rule, EPA does not expect that many facility owners and operators have included motive power in their oil storage capacity calculations and SPCC Plans. For those who have considered motive power storage, EPA assumes that the volume that would be exempt under the proposed rule would not represent a large fraction of the facility's aggregate capacity.

a. Universe of Affected Facilities

To identify industries that are potentially affected by motive power exemptions, EPA started with information from industry comments to the 2002 SPCC rule. Commenters from the crop production, forestry/logging, and utilities industries indicated they had motive power equipment. EPA identified additional industry groups by examining industries targeted by the major motive power equipment manufacturers. Caterpillar, Deere & Company, Kubota Corporation, Joy Global Inc., CNH Global NV, and Terex Corporation are some of the largest motive power equipment manufacturers. Each company lists the industries targeted by their products. EPA used these listings as the basis for classifying industries likely to have motive power containers.

EPA has no empirical data on the number of facilities with motive power containers with oil storage of 55 gallons or greater. To estimate the number of facilities affected by the "Motive Power" proposed rule, EPA examined three scenarios: 10 percent, 25 percent, and 50 percent of the facilities in sectors with motive power may be affected by the proposed regulatory option. EPA estimated that 29,000 facilities have "motive power" oil storage under the 10-percent scenario; 71,600 facilities under the 25-percent scenario; and 143,000 facilities under the 50-percent scenario.

b. Compliance Cost Savings

EPA assumed that ten percent of the facilities in industries identified as having motive power containers might take advantage of the proposed exemption. Other facilities could also have motive power containers, however EPA expects that they have not considered such storage as part of their compliance with the SPCC rule. Because EPA expects most facilities with motive power containers to meet the SPCC rule's oil storage thresholds, regardless of motive power, EPA assumes that the

cost savings from the proposed exemption will be modest, with the possibility of saving small amounts of compliance costs, principally for secondary containment for these motive power containers. EPA estimates that the proposed option will reduce compliance costs by $0.92 million and $0.75 million per year, discounted at 3 percent and 7 percent, respectively. The main benefit of the proposed option would be to provide greater clarity of EPA's regulatory intent.

EPA also examined two other scenarios: 25 percent and 50 percent of facilities in industries identified as having motive power containers might take advantage of the proposed exemption. Under the 25-percent scenario, compliance costs would be reduced by $2.29 million and $1.87 million per year, discounted at 3 percent and 7 percent, respectively. Under the 50-percent scenario, compliance costs would be reduced by $4.58 million and $3.74 million, discounted at 3 percent and 7 percent, respectively.

5. Airport Mobile Refuelers

EPA proposes to exempt airport mobile refuelers from the specifically sized bulk storage secondary containment requirements of § 112.8(c)(2) and (11). EPA defines an airport mobile refueler as a "vehicle with an onboard bulk storage container designed for, or used to, store and transport fuel for transfer into or from aircraft or ground service equipment." The general secondary containment requirements of § 112.7(c) would still apply to these airport mobile refuelers and to the transfers associated with this equipment. Since airport mobile refuelers are mobile or portable bulk storage containers, the other provisions of § 112.8(c) would still apply.

The Agency researched regulatory compliance of airports with SPCC requirements for secondary containment, and found that some airports do not have sized secondary containment in place. EPA found that secondary containment for mobile refuelers is not a common practice and that mobile refuelers rarely have a designated area to park. Factors such as the land value at many commercial airports prohibits a single, designated parking area for mobile refuelers.[6] EPA analyzed potential cost savings to the industry using an assumption that new facilities would have to provide secondary containment in accordance with § 112.8(c)(2) and (11) for airport mobile refuelers. Therefore, the estimated annual cost savings consist of the potential expenditures avoided of providing secondary containment for new airport mobile refuelers.

The Agency estimated the total number of new airports at 479 in the first year. Over the next ten years, approximately 535 new airports are expected to be added annually on average. EPA assumed one to three mobile refuelers per airport,[7] or approximately two per airport on average. EPA estimates that this component of the proposal could reduce compliance costs by $6.43 million and $5.23 million per year, discounted at 3 percent and 7 percent, respectively. The derivation of these estimates is explained in Chapter 8 of the Regulatory Analysis.

6. Projected Impacts on Human Health, Welfare, and the Environment

The main benefit of the proposed rule is lower compliance costs for certain types of facilities and equipment. EPA expects these reduced expenditures to translate to net social benefits. These benefits may be partially offset by potential increases in risk of oil discharges, due to less stringent requirements compared to the existing SPCC rule.

However, EPA has designed the proposed rule to minimize increases in environmental risk. For example, EPA is providing an option to avoid Professional Engineer certification for qualified facilities that have no history of reportable discharges. Any decision to apply environmental equivalence or pursue an impracticability determination would still require PE certification, except for security and integrity testing. For the other relief offered in the proposal, most facilities will have general secondary containment that would help prevent discharges as described in § 112.1(b). In summary, although the magnitude of any increase in risk under each of the proposed options is unclear, EPA does not believe that these changes in spill risk are significant.

To the extent that lower compliance costs encourage greater overall compliance, the proposed rule may actually prevent discharges from currently non-compliant facilities that would occur in its absence.

7. Alternative Regulatory Options

EPA considered other options for addressing public comments to the NODAs published on September 20, 2004. Following are summaries of the changes in compliance costs estimated for each alternative option (for qualified facilities and qualified oil-filled operational equipment), as well as EPA's rationale for rejecting the alternative option.

a. Qualified Facilities

As an alternative option, EPA considered a notification requirement for qualified facilities that have been operating for less than ten years, along with eliminating the requirement for PE certification and providing flexibility for integrity testing and security for all qualified facilities. EPA estimates that the alternative option could reduce compliance costs by $22.3 million and $18.4 million per year, discounted at 3 percent and 7 percent, respectively. To arrive at these figures, EPA assumed that 50 percent of facilities under 10,000 gallons would qualify for this option. EPA also assumed that the proposed flexibility for integrity testing would reduce the unit cost of testing by 50 percent. EPA assumed that the total burden of notification for a facility would be three hours: one hour of managerial time, one hour of technical time, and one hour of clerical time. If 25 percent of facilities under 10,000 gallons qualified for this option, compliance costs would decrease by $11.2 million and $9.13 million per year, discounted at 3 percent and 7 percent, respectively. If 75 percent of facilities under 10,000 gallons qualified for this option, compliance costs would be reduced by $33.5 million and $27.4 million per year, discounted at 3 percent and 7 percent, respectively. EPA decided not to pursue this option because it does not differ substantively from the proposed option; an additional notification burden was not considered necessary.

As an alternative option, EPA considered establishing three facility-size tiers according to SBA's recommendations based on facility's total oil storage capacity (Jack Faucett Associates, 2004). EPA estimates that this alternative option could reduce compliance costs by $42.9 million and $35.0 million per year, discounted at 3 percent and 7 percent, respectively. To arrive at these estimates, EPA assumed that all SPCC-regulated facilities with oil storage capacity between 1,320 and 5,000 gallons would take advantage of the option, eliminating the cost of preparing and maintaining a written SPCC Plan. Additionally, EPA assumed that all SPCC-regulated facilities with oil storage capacity between 5,001 and 10,000 gallons would take advantage of

[6] For detail, see "Results of Research Project on Airport Engineering and Construction Firms", Abt Associates Inc. memorandum, 2004.

[7] Based on Federal Aviation Administration estimates (*http://www.faa.gov/data—statistics/*).

the option and eliminate the cost of PE certification.

The cost savings associated with the three-tier plans, however, come at the expense of losses in environmental protection. Although EPA agrees that a reduction in burden may be appropriate for facilities handling smaller quantities of oils, smaller facilities still pose risks to the environment given the nature of the product. Therefore, some type of Plan or documentation is warranted even for these smaller facilities. The tiered option also raises significant implementation issues. For example, certain facilities would require compliance with the SPCC rule without a written SPCC Plan. EPA believes that a facility would not be able to properly implement oil spill prevention measures—including notification, equipment maintenance, inspection and training—without written documentation to inform the owner or operator of his/her responsibilities. Additionally, EPA inspectors conducting on-site visits would have no written Plan or documentation to assess the facility's effectiveness in implementing their spill prevention strategy. Even with model plans, owners or operators of larger facilities may not have the expertise to create their own SPCC Plan without input from a PE.

EPA also considered two additional options to provide relief to qualified facilities: a compliance date extension and a suspension of all requirements. These options would not have an impact on compliance costs, but would only delay expenditures at affected facilities. EPA decided against these options because owners or operators of qualified facilities would remain uncertain about the timing and type of future requirements that would apply to them. The preferred option would set forth explicit requirements for qualified facilities that reduce compliance costs within the current compliance date schedule. The extension/suspension options also would pose additional problems related to implementation and environmental protection.

b. Oil-Filled Equipment

EPA explored a three-tiered structure option in response to comments on the Notice of Data Availability (NODA) for oil-filled operational equipment (69 FR 56184, September 20, 2004). The option is based on a proposal put forth by the Utility Solid Waste Activities Group (USWAG). The option would allow an owner or operator to define discrete units of equipment as individual facilities and reduce requirements imposed on units with capacities less than 20,000 gallons. EPA estimates that this alternative option could reduce compliance costs by $17.6 million and $14.2 million per year, discounted at 3 percent and 7 percent, respectively.

EPA also considered two administrative options to provide relief to oil-filled operational equipment: a compliance date extension and a suspension of all requirements. These options would not have an impact on compliance costs, but would only delay expenditures at affected facilities. EPA decided against these options because facility owners or operators would remain uncertain about the timing and nature of requirements that eventually would apply to them. Since many facilities have oil-filled operational equipment, delaying changes to these requirements could lead to a significant number of facilities needing to modify their existing Plans more than once to accommodate future rule changes. A suspension would increase the risk of discharge at facilities with qualified oil-filled operational equipment during the interim period, due to the delayed implementation of preventive measures.

8. Key Limitations of the Analysis

One of the main limitations of the regulatory analysis is EPA's lack of data on facilities regulated under the SPCC rule. As mentioned earlier, the rule does not include (and never included) a notification requirement and, with certain exceptions, regulated entities do not need to submit their SPCC Plans to EPA. Without conducting a statistically valid survey, EPA is limited to data already collected by state or federal agencies or by proprietary sources. Such data are collected for diverse purposes and are not necessarily ideal for evaluating regulatory options, because they often omit portions of the regulated universe or lack sufficient detail to ascertain the impacts of changes in certain requirements. The type of information collected also varies among the different sources. Data provided by industry organizations or individual businesses are often anecdotal or based on surveys that are not statistically valid; and cannot be reliably extrapolated to a larger universe. As a result of this limitation of data on regulated facilities, EPA has had to rely on updated figures from 1996 for most industry sectors, as well as federal and proprietary sources for a small number of other sectors. Because none of these sources give adequate detail to evaluate the potential impacts of individual regulatory options, EPA has chosen to examine various scenarios for each option to bound the range of cost savings that could occur.

Approaches to compliance will depend on site-specific circumstances. For example, compliance costs vary not only on the volume of oil stored and handled, but also on the types of oil at a site, the number of tanks (and their volume), and the locations of the tanks across a site. Given the wide range of industries and facility sizes affected by the SPCC rule—as well as geographical and climatic conditions—it is difficult to specify a realistic baseline against which regulatory changes can be measured. Therefore, it is also difficult to estimate the changes that could occur under various regulatory options.

Finally, many of the cost assumptions used in the regulatory analysis are based on interviews with a limited number of PEs. It is very difficult to simply assess "typical" costs when the costs of compliance are closely related to site-specific factors. Ideally, future analyses could explicitly account for such variability in costs.

9. Conclusions

Applying both a 3 percent and a 7 percent discount rate, the proposed regulatory changes could yield compliance cost savings of $22.5 million and $18.4 million for the "qualified facility" option; $56.7 million and $45.9 million for the "qualified oil-filled operational equipment" option; $0.92 million and $0.75 million for "motive power" exemption; and $6.43 million and $5.23 million for airports with mobile refuelers, respectively. Costs of these components are not summed, since simple addition would overstate cost savings by not accounting for interactions between the impacts of the different components. EPA does not believe that these cost reductions would be offset by any significant losses in environmental protection.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (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 0328.12.

EPA does not collect the information required by SPCC rule on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user

of the data is the facility. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA reviews SPCC Plans: (1) When it requests a facility to submit a Plan after certain oil discharges or to evaluate an extension request; and, (2) as part of EPA's inspection program. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Act as implemented by 40 CFR part 112.

In the absence of this proposed rulemaking, EPA estimates that approximately 618,000 facilities would be subject to the SPCC rule in 2006 and have SPCC Plans. In addition, EPA estimates that approximately 4,520 new facilities would become subject to SPCC requirements annually. In the absence of this proposed rulemaking, EPA projects that the average annual public reporting and recordkeeping burden for this information collection would be 1,980,000 hours.

Under today's proposed rulemaking, qualified facilities would no longer need a licensed Professional Engineer to certify their Plans. Facilities that store oil solely in motive power containers would no longer be regulated, while other facilities with oil storage in addition to motive power containers may incur lower compliance costs. Today's proposal would also allow greater use of contingency plans and written commitment of manpower, equipment and resources without requiring an impracticability determination when combined with an inspection or monitoring program as an alternative to secondary containment for qualified oil-filled operational equipment. It would also allow airport mobile refuelers to fall under a facility's general secondary containment requirements, rather than require specifically sized secondary containment.

Under the proposed rule, an estimated 372,000 regulated facilities would annually be subject to the SPCC information collection requirements of this rule during the information collection period. This figure excludes farms with oil storage capacity of 10,000 gallons or less, to reflect the proposed compliance extension. Under this proposed rule, the estimated annual average burden over the next 3-year ICR period would be approximately 1,490,000 hours, resulting in a 25 percent average reduction. The estimated average annual public reporting for individual facilities already regulated under the SPCC rule would range between 3.46 and 6.04 hours, while the burden for newly regulated facilities would range between 37.2 and 64.1 hours as a result of this proposal. The net annualized capital and start-up costs for the SPCC information collection portion of the rule would average $0.32 million and net annualized operation and maintenance (O&M) costs are estimated to be $26 million for all of these facilities combined.

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 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 EPA–HQ–OPA–2005–0001. 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 December 12, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by February 10, 2006. 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 organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined in the SBA's regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this proposed rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would reduce regulatory burden on qualified facilities and qualified oil-filled operational equipment. Qualified facilities would

no longer need a licensed Professional Engineer to certify their Plans. Facilities that store oil solely in motive power containers would no longer be regulated, while other facilities with oil storage in addition to motive power containers may incur lower compliance costs. Today's proposal would also allow greater use of contingency plans and a written commitment of manpower, equipment and materials without requiring an impracticability determination as an alternative to secondary containment for qualified oil-filled operational equipment when combined with an established and documented inspection or monitoring program. It would also allow airport mobile refuelers to fall under a facility's general secondary containment requirements rather than require specifically sized secondary containment. We have therefore concluded that today's proposed rule would relieve regulatory burden for small entities and welcome comments on issues related to such impacts.

Overall, EPA estimates that today's proposal would reduce annual compliance costs by $81 million (net present value) using nominal dollars and $98 million using annualized values with constant dollars. Small facilities, in particular, would benefit. For example, EPA estimates that the proposed rule would lower compliance costs by $22.5 million and $18.4 million at 3 percent and 7 percent discount rate for facilities with less than 10,000 gallons of oil storage capacity.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-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 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. EPA has determined that this 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 one year. Today's proposed rule would reduce burden and costs on affected facilities by approximately $81 million per year (net present value) using nominal dollars and $98 million per year using annualized values with constant dollars.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the proposed rule would be to reduce burden and costs for qualified regulated facilities, including certain small governments that are subject to the rule.

E. Executive Order 13132—Federalism

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

This proposed rule does not have federalism implications. It would 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. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the Federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (October 22, 1991). This proposed rule would not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

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

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's proposed rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, "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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks

addressed by this action present a disproportionate risk to children.

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

This 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.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, NTTAA does not apply.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: December 2, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 112 as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A [Amended]

2. Amend § 112.1 by revising paragraph (d)(2)(ii) and adding paragraph (d)(7) to read as follows:

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For the purposes of this exemption, only containers with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is "permanently closed," or a "motive power container" as defined in § 112.2.

* * * * *

(7) Any "motive power container," as defined in § 112.2. The transfer of fuel or other oil into a motive power container at an otherwise regulated facility is not subject to this exemption.

* * * * *

3. Amend § 112.2 by adding definitions for "Airport mobile refueler"; "Farm", "Motive power container", and "Oil-filled operational equipment" in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Airport mobile refueler means a vehicle with an onboard bulk storage container designed, or used to store and transport fuel for transfer into or from aircraft or ground service equipment.

* * * * *

Farm means a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year.

* * * * *

Motive power container means any onboard bulk storage containers used solely to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation. An onboard bulk storage container which is used to store or transfer oil for further distribution is not a motive power container. The definition of motive power equipment does not include oil drilling or workover equipment, including rigs.

* * * * *

Oil-filled operational equipment means equipment which includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device. Oil-filled operational equipment is not considered a bulk storage container, and does not include oil-filled manufacturing equipment (flow-through process).

* * * * *

4. Amend § 112.3 by designating the existing text of paragraph (a) as (a)(1) and adding (a)(2), designating the existing text of paragraph (b) as (b)(1) and adding (b)(2), revising the introductory text of paragraph (d), and adding paragraph (g) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a)(1) * * *

(2) If your farm has a total oil storage capacity of 10,000 gallons or less, the compliance dates described in paragraph (a)(1) of this section are delayed indefinitely or until the Agency publishes a final rule in the **Federal Register** establishing a new compliance date.

(b)(1) * * *

(2) If your farm has a total oil storage capacity of 10,000 gallons or less, the compliance dates described in paragraph (b)(1) of this section are delayed indefinitely or until the Agency publishes a final rule in the **Federal Register** establishing a new compliance date.

* * * * *

(d) Except as provided in paragraph (g) of this section, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.

* * * * *

(g) *Qualified Facilities.* The owner or operator of a facility that meets the qualification criteria in paragraph (g)(1) of this section may choose to self-certify the facility's SPCC Plan and any technical amendments to the Plan in lieu of certification by a licensed Professional Engineer.

(1) *Qualification Criteria.* A facility is qualified for owner or operator self-certification of its SPCC Plan if it meets the following criteria:

(i) The aggregate aboveground storage capacity of the facility, as determined according to § 112.1, is 10,000 gallons or less; and

(ii) The facility either:

(A) Has been in operation for at least ten years immediately prior to the date of self-certification and in the ten-year period immediately prior to self-certification had no discharges as described in § 112.1(b); or

(B) Is beginning operations or has been in operation for fewer than ten years without any discharges of oil as described in § 112.1(b).

(2) *Self-Certification.* If you are the owner or operator of a qualified facility

and you choose to self-certify your Plan or technical amendments to your Plan, you must certify in the Plan that:

(i) You are familiar with the requirements of this part;

(ii) You or your agent have visited and examined the facility;

(iii) The Plan has been prepared in accordance with accepted and sound industry practices and standards, and with the requirements of this part;

(iv) Procedures for required inspections and testing have been established;

(v) The Plan is being fully implemented;

(vi) The facility meets the qualification criteria set forth under § 112.3(g)(1);

(vii) The Plan does not utilize the environmental equivalence and impracticability provisions under § 112.7(a)(2) and 112.7(d), except as described in paragraph (g)(3) of this section; and

(viii) The Plan and individual(s) responsible for implementing the Plan have the full approval of management and the facility has committed the necessary resources to fully implement the Plan.

(3) *Self-Certified Plan Exceptions.* Except as provided in this subparagraph, a self-certified SPCC Plan must comply with § 112.7 and the applicable requirements in subparts B and C of this part:

(i) Environmental Equivalence. The Plan may not include alternate methods to the applicable requirements listed in § 112.7(a)(2).

(ii) Impracticability. The Plan may not include any impracticability determinations as described under § 112.7(d).

(iii) Security (excluding oil production facilities). The owner or operator must choose to either:

(A) Comply with the requirements under § 112.7(g); or

(B) Prepare a security plan that describes how the facility controls access to the oil handling, processing and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; addresses the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

(iv) Bulk Storage Container Inspections. In lieu of the requirements in §§ 112.8(c)(6) and 112.12(c)(6), an owner/operator must test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. The owner or operator must determine, in accordance with industry standards, the appropriate inspector/testing personnel qualifications, the frequency and type of testing/inspections which take into account container size, configuration, and design (such as containers that are: equipped with a floating roof, shop built, field erected, skid-mounted, elevated, equipped with a liner, double walled, or partially buried). Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.

5. Amend § 112.5 by revising paragraph (c) to read as follows:

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.

* * * * *

(c) Except as provided in § 112.3(g), have a Professional Engineer certify any technical amendments to your Plan in accordance with § 112.3(d).

6. Amend § 112.7 by revising paragraph (a)(2), (c) introductory text, (d) introductory text, and adding paragraph (k) to read as follows:

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

* * * * *

(a) * * *

(2) Comply with all applicable requirements listed in this part. Except as provided in § 112.3(g), your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraph (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in § 112.4(d) and (e).

* * * * *

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), except as provided in paragraph (k) of this section for qualified oil-filled operational equipment. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

* * * * *

(d) Provided your Plan is certified by a licensed Professional Engineer under § 112.3(d), if you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2) and 112.12(c)(11) to prevent a discharge as described in § 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under § 112.20, provide in your Plan the following:

* * * * *

(k) *Qualified Oil-Filled Operational Equipment.* The owner or operator of a facility with oil-filled operational equipment that meets the qualification criteria in paragraph (k)(1) of this section may choose to implement for this qualified oil-filled operational equipment the alternate requirements as described in paragraph (k)(2) of this section in lieu of applying the general secondary containment requirements of paragraph (c) of this section.

(1) *Qualification Criteria—Reportable Discharge History:* The facility where

the oil-filled operational equipment is located either:

(i) Has been in operation for at least ten years immediately prior to the date of Plan certification and in the ten-year period immediately prior to the Plan certification date had no discharges as described in § 112.1(b) from any oil-filled operational equipment, or

(ii) Is beginning operations or has been in operation for fewer than ten years without any discharges as described in § 112.1(b) from any oil-filled operational equipment;

(2) *Alternative Requirements to General Secondary Containment.* The owner or operator of a facility with qualified oil-filled operational equipment must:

(i) Establish and document the facility procedures for inspections or a monitoring program to detect equipment failure and/or a discharge; and

(ii) Unless you have submitted a response plan under § 112.20, provide in your Plan the following:

(A) An oil spill contingency plan following the provisions of part 109 of this chapter.

(B) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

Subpart B—[Amended]

7. Amend § 112.8 by revising paragraphs (c)(2) and (c)(11) to read as follows:

§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

* * * * *

(c) * * *

(2) Construct all bulk storage tank installations (except airport mobile refuelers) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

* * * * *

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except in the cases of airport mobile refuelers, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

* * * * *

Subpart C—[Amended]

§ 112.12 Specific Spill Prevention, Control, and Countermeasure Plan requirements.

8. Amend § 112.12 by revising the section heading to read as set forth above.

§ 112.13 [Removed and Reserved]

9. Remove and reserve § 112.13.

§ 112.14 [Removed and Reserved]

10. Remove and reserve § 112.14.

§ 112.15 [Removed and Reserved]

11. Remove and reserve § 112.15.

[FR Doc. 05–23917 Filed 12–9–05; 8:45 am]
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H.R. 4145/P.L. 109–116

To direct the Joint Committee on the Library to obtain a statue of Rosa Parks and to place the statue in the United States Capitol in National Statuary Hall, and for other purposes. (Dec. 1, 2005; 119 Stat. 2524)

H.R. 126/P.L. 109–117

To amend Public Law 89-366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore. (Dec. 1, 2005; 119 Stat. 2526)

H.R. 539/P.L. 109–118

Caribbean National Forest Act of 2005 (Dec. 1, 2005; 119 Stat. 2527)

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Angel Island Immigration Station Restoration and Preservation Act (Dec. 1, 2005; 119 Stat. 2529)

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Franklin National Battlefield Study Act (Dec. 1, 2005; 119 Stat. 2531)

H.R. 1973/P.L. 109–121

Senator Paul Simon Water for the Poor Act of 2005 (Dec. 1, 2005; 119 Stat. 2533)

H.R. 2062/P.L. 109–122

To designate the facility of the United States Postal Service located at 57 West Street in Newville, Pennsylvania, as the "Randall D. Shughart Post Office Building". (Dec. 1, 2005; 119 Stat. 2541)

H.R. 2183/P.L. 109–123

To designate the facility of the United States Postal Service located at 567 Tompkins Avenue in Staten Island, New York, as the "Vincent Palladino Post Office". (Dec. 1, 2005; 119 Stat. 2542)

H.R. 3853/P.L. 109–124

To designate the facility of the United States Postal Service located at 208 South Main Street in Parkdale, Arkansas, as the Willie Vaughn Post Office. (Dec. 1, 2005; 119 Stat. 2543)

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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	(869-056-00053-7)	62.00	Apr. 1, 2005
18 Parts:			
1-399	(869-056-00054-5)	62.00	Apr. 1, 2005
400-End	(869-056-00055-3)	26.00	[6] Apr. 1, 2005
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	(869-056-00060-0)	64.00	Apr. 1, 2005
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	(869-056-00069-3)	58.00	Apr. 1, 2005
1300-End	(869-056-00070-7)	24.00	Apr. 1, 2005
22 Parts:			
1-299	(869-056-00071-5)	63.00	Apr. 1, 2005
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	(869-056-00078-2)	30.00	Apr. 1, 2005
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
30-39	(869-056-00094-4)	41.00	Apr. 1, 2005
40-49	(869-056-00095-2)	28.00	Apr. 1, 2005
50-299	(869-056-00096-1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
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18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
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1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
*1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
*140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
*166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
*200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
*500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
*0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–052–00191–1)	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)	(869–056–00197–5)	63.00	Oct. 1, 2005
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	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
*15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
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	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
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	(869–056–00213–1)	11.00	Oct. 1, 2005
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	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

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